(1997) 08 MAD CK 0086

In the Madras High Court

Case No : Tax Case (Revision) No. 704 of 1986

State of Tamil Nadu APPELLANT

Vs

K.K. Ram Trading Corporation RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Citation : (1997) 08 MAD CK 0086

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Advocate : K. Elango, for the Appellant; N. Sri Prakash for N. Inbarajan, for the Respondent

Judgement

Jayasimha Babu, J.—The question raised in this revision petition is as to whether the gunny bags in which the cotton seeds were sold by the assessee are to be subject to tax even though there was no express agreement between the assessee and the assessee''s buyer that the commodity would be delivered in gunny bags. The sale bills produced by the assessee do not refer to the packing material, but only the commodity that was sold, viz., cotton seeds.

2. The notional value of the gunny bags was estimated by the assessing officer at Rs. 6,28,476 and was subject to tax of Rs. 62,848 principally on the ground that according to the calculations made by the assessing office, the assessee was realising a very high gross profit of 7 per cent. He calculated the value of 2,09,492 bags of cotton seeds at Rs. 2,32,01,376.16 and determined the value per bag at Rs. 110.75. He computed the purchase price of the cotton seeds at Rs. 103.08. He, thereafter, proceeded to presume that this high profit margin was due to the non-payment of tax on the sale value of the gunny bags.

3. The fact that the assessee had purchased gunny bags against C forms for Rs. 6,91,425 during the assessment year, viz., 1982-83 was not in dispute. That the assessee had sold cotton seeds, which are declared goods and exempt from Central sales tax in these gunny bags is also not in dispute. The notional value of

these gunny bags are sought to be included solely on the ground that the profit margin was unduly high and the nature of the commodity was such that it could not have been sold except in gunny bag, the container used by the assessee.

4. The Appellate Assistant Commissioner agreed with the view of the assessing officer. The Tribunal, which is the final forum in determining question of the facts, has held that the Revenue had failed to prove that there was an implied agreement or implied condition in the contract of sale for the sale of the gunny bags along with the cotton seeds. The Tribunals also found that according to the trading account of the assessee, the purchase value of the cotton seeds worked out at Rs. 109.37 and the sale value at Rs. 110.14, which showed a profit of 0.77 per cent only. The Tribunal also referred to certain transactions, wherein the assessee had sold the cotton seeds packed in gunny bags supplied by the buyer. It found that the price charged by the assessee to its buyer was not very different when packed in gunny bags supplied by the assessee and when packed in gunny bags supplied by the buyer. The Tribunal recorded a finding that the Revenue had failed to establish that there was any implied agreement for sale of gunny bags in the transaction of sale of cotton seeds between the assessee and the buyers. It noticed the fact that in the bills produced, there was no mention about the value of the packing material either expressly or impliedly. The assessee had filed before the Tribunal certified copy of its trading account, as also copies of the sale bills issued by the assessee for inter-State sales of cotton seeds.

5. The Tribunal, on a careful scrutiny of all the materials placed before it and evaluating their evidenciary value, has thus found, as a matter of fact, that the Revenue had not discharged the onus, which lay upon it, to show that there was an implied agreement for the sale of the packing material along with the commodity that was sold, viz., cotton seeds. The Tribunal, therefore, granted relief to the petitioner and held that the notional value of the gunny bags was not liable to be included in the total turnover of the petitioner.

6. Learned counsel for the Revenue relying upon the decisions of this Court in State of Tamil Nadu v. V. V. Vanniaperumal & Co. [1990] 76 STC 203 (FB), Raj Steel and Others Vs. State of A.P. and Another, , State of Tamil Nadu v. Auro Food (P) Ltd. [1995] 98 STC 484 (Mad.), State of Tamil Nadu v. V. Balu Chettiar [1996] 100 STC 120, State of Tamil Nadu v. S. Murugaiyan [1996] 101 STC 363 and an unreported judgment [Since reported in [1998] 109 STC 52 (Mad.). in Tax Case (Revision) No. 885 of 1984 (State of Tamil Nadu v. N. Subramania Chettiar decided on January 22, 1997) submitted that regard being had to the nature of the commodity and packing being essential for its delivery, the cost of the packing materials must necessarily be included in the total turnover even though there was no express term for sale of packing material in the sale agreement, such a term for the sale of the packing materials should be implied.

7. Learned counsel for the assessee, on the other hand, contended that the question as to whether there was an agreement to sell the packing material is

pure question of fact and that question cannot be decided on fictions or surmises. Counsel referred to the decision of the Supreme Court in the case of Jamana Flour and Oil Mill (P) Ltd. Vs. State of Bihar, and the decision of the apex Court in the case of Raj Sheel v. State of Andhra Pradesh [1989] 74 STC 379.

8. The Supreme Court in the case of Raj Sheel [1989] 74 STC 379 observed, inter alia, as under :

"It is, therefore, perfectly plain that the issue as to whether the packing material has been sold or merely transferred without consideration depends on the contract between the parties. The fact that the packing is of insignificant value in relation to the value of the contents may imply that there was no intention to sell the packing, but where any packing material is of significant value it may imply an intention to sell the packing material. In a case where the packing material is an independent commodity and packing material as well as the contents are sold independently, the packing material is liable to tax on its own footing. Whether a transaction for sale of packing material is an independent transaction will depend upon several factors, some of them being :

1. The packing material is a commodity having its own identity and is separately classified in the Schedule;

2. There is no change, chemical or physical, in the packing either at the time of packing or at the time of using the content;

3. The packing is capable of being reused after the contents have been consumed;

4. The packing is used for convenience of transport and the quantity of the goods as such is not dependent on packing;

5. The mere fact that the consideration for the packing is merged with the consideration for the product would not make the sale of packing an integrated part of the sale of the product."

9. Counsel also referred to the decision of the Supreme Court in the case of Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh [1966] 17 STC 624, wherein the court emphasised the fact that whether or not there is an agreement to sell the packing material is a pure question of fact.

10. Learned counsel for the respondent also submitted that the cases relied upon by the learned counsel for the Revenue were all distinguishable on their own facts as they were cases, where there was admission regarding the sale of the packing material or that the Tribunal or the High Court had found that the Revenue had discharged its onus to show that there was an implied agreement for the sale of packing material or that it found that the value of the packing material was high or it exercised its jurisdiction in appeal and not in revision.

11. Even if two different views are possible on the facts, which were considered by the Tribunal, this Court would not interfere solely on the ground that a

different view on the same set of facts is possible and that the Tribunal had failed to take such a view. It was open to the Tribunal, after appreciating the facts placed before it to come to a conclusion as to whether the Revenue had discharged its onus of establishing that there was an implied agreement for sale of the packing material. The Tribunal has found that onus was not discharged. The reasons given by it for coming to such a conclusion cannot be regarded as perverse even if an alternate view is possible on the same set of facts. The Tribunal is normally the final forum for determining the question of fact. Even though there is a lingering suspicion that the packing material, may, in fact, have been sold, that by itself cannot constitute sufficient grounds for upsetting the finding recorded by the Tribunal on the consideration of the facts placed before it. It is needless to say that this decision is confined to the facts considered in this case, and no general proposition regarding the taxability or otherwise of packing material, where the nature of the commodity makes it essential to use packing material to put it in a deliverable state, can be said it could have been laid down.

12. The revision is, therefore, dismissed. No costs.

13. Petition dismissed.