

(1997) 12 MAD CK 0058

In the Madras High Court

Case No : T.C. No. 209 of 1994 (Revision No. 66 of 1994)

State of Tamil Nadu

APPELLANT

Vs

Kothari Plantations and Industries Ltd.

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6, 6(1), 8, 8(3)

Citation : (1997) 12 MAD CK 0058

Hon'ble Judges : M.S. Janarthanam, J; K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : K. Elango, for the Appellant;

Judgement

Janarthanam, J.—This revision, at the instance of the Revenue, is directed against the order dated 8th day of October, 1991 of the Tamil

Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai-20 (for short, "the Tribunal") and made in M.T.A. No. 124 of 1991 relating to

the assessment year 1986-87.

2. The assessee-Tvl. Kothari Plantations and Industries Ltd., at No. 766, Anna Nagar, Madurai-20, are dealers in chemicals and oils. It appears

that the assessee-dealers had effected purchases of paper from other States and sold the same, while in transit without actual handling in the

relevant assessment year 1986-87. The turnover of such transactions of sale of paper amounts to Rs. 38,435. The assessee-dealers in respect of

the said transactions were able to produce "E1" forms; but, however, they were unable to produce "C" forms from the dealers in the other States,

to whom, the transit sales of paper were effected. During the course of assessment, it appears, the assessee-dealers claimed exemption in respect

of the said transit sales of paper.

3. The assessing officer, namely, the Deputy Commercial Tax Officer, Madurai Rural (North) Circle, however, rejected such a claim and levied tax on such transit sales at appropriate rate.

4. The aggrieved assessee-dealers filed appeal in A.P. No. 41 of 1989 (CST) before the Appellate Assistant Commissioner (CT), Madurai North, Madurai-20 (for short, "the AAC").

5. The said AAC, however, of course, on consideration of the materials and after hearing the arguments of the representatives appearing for either side, rejected the claim of the assessee and confirmed the assessment made by the assessing officer in that regard.

6. The assessee-dealers did not leave the matter there. They, however, agitated further by filing an appeal before the Tribunal, as stated above.

7. The Tribunal, on consideration of the materials placed on record and on hearing the arguments of the respective representatives of the parties, however, allowed the appeal, by holding that the assessee-dealers are entitled to claim exemption u/s 6(2) of the Central Sales Tax Act, 1956 (Act

No. 74 of 1956 for short, "the CSTA"). The rationale or reasoning for such projection of a hue of view was that the assessee-dealers had filed

E1 forms. They, however, did not produce "C" forms from the dealers outside the State, to whom, transit sales were effected. But, nonetheless,

they produced "C" forms of the dealers, to whom transit sales were effected in respect of the other transactions from which, the Tribunal was able

to reach a conclusion that the dealers, to whom inter-State sales of paper were effected by the assessee-dealers were registered dealers and

therefore, the non-production of "C" forms covering the transactions, in the instant case, is of no consequence. The Tribunal also placed implicit

reliance upon two decisions emerging from the Madhya Pradesh High Court, namely, Commissioner of Sales Tax v. Shivnarayan Jagatnarayan

[1978] 42 STC 315 and Chimanlal Voerchand v. Additional Assistant Commissioner of Sales Tax [1988] 68 STC 278 for holding that it is not

necessary for the assessee-dealers to produce "C" forms to claim exemption u/s 6(2) of the CSTA.

8. The Revenue, aggrieved by the said decision of the Tribunal, as stated above, resorted to the present action - Tax Case (Revision) No. 209 of

1994.

9. Despite service of notice to the assessee-dealers, for reasons best known to them, they did not engage a counsel of their choice; nor anyone on their behalf is present in court, to defend their cause in this action.

10. This Court is, therefore, left with no other alternative, except to hear the arguments of Mr. K. Elango, learned Government Advocate (Taxes) representing the Revenue and dispose of this matter.

11. The only question that arises for consideration is as to :

Whether the order of the Tribunal, on the facts and in the circumstances of the case, is sustainable in law ?

12. The point : The rationale or reasoning of the Tribunal is traceable mainly to the two decisions of the Madhya Pradesh High Court, as stated

above. Their Lordships of the Madhya Pradesh High Court, in the aforesaid decisions, happened to consider the salient provisions adumbrated u/s

6(2) of the CSTA read with rule 8-D of the Madhya Pradesh Sales Tax (Central) Rules, 1967 and in the process of such consideration, they came

to the conclusion that the claim of exemption u/s 6(2) of the CSTA by production of ""E1"" forms alone is sufficient and there is no need at all to

produce ""C"" forms. It is also pertinent to note that though these decisions were rendered in the years 1978 and 1987 yet they are relatable to

assessment years, namely, 1963-64 and 1968-69, 1969-70 and 1970-71 respectively.

13. It is of signal importance to note at this juncture that sub-section (2) of section 6 of the CSTA, which was added by Act No. 31 of 1958 with

effect from October 1, 1958 was substituted by Act No. 61 of 1972 with effect from April 1, 1973. The decisions of the Madhya Pradesh High

Court were admittedly rendered for the assessment years prior to the substitution of sub-section (2) by Act No. 61 of 1972. There could have

been no chance for the Madhya Pradesh High Court to take into consideration the effect of the substituted sub-section (2) of section 6 of the

CSTA, although the decisions were rendered subsequent to the substitution, inasmuch as they were dealing with the assessments relatable to, the

years prior to such substitution of the said sub-section.

14. Sub-section (1) of section 6 of the CSTA authorises the levy of tax on the sales effected in the course of inter-State sales; but sub-section (2)

thereof exempts from such levy, the second and subsequent sales in the course of inter-State trade, if the conditions prescribed therein are fulfilled.

Two types of inter-State sales, which are charged to tax under the CSTA are, one coming u/s 3(a), the sale occasioning the movement of goods

from one State to another and the other coming u/s 3(b), that is, the sale effected by a transfer of documents of title to the goods, during their

movement from one State to another. However, sub-section (2) of section 6 thereof, grants, subject to certain qualifications and fulfilment of

certain formalities, exemption to an earlier inter-State sale of goods coming u/s 3(b), if it is subsequent to an earlier inter-State sales of section 3(a)

type or section 3(b) type provided the said subsequent sale is effected during the movement of the said goods from one State to another. In

otherwise, if the subsequent inter-State sale is effected by transfer of documents of title to goods, during the movement of the goods from one

State to another, pursuant to an earlier inter-State sale such subsequent inter-State sale is exempted from tax.

15. The exemption is subject to production of valid ""C"" forms and ""E1"" forms. The exemption is, however, subject to two other conditions, namely

(i) the second seller furnishes EI/EII forms to the prescribed authority, and (ii) a declaration ""C"" form is obtained from the purchaser, as provided

in section 8(4)(a), if the sale is to a registered dealer, if, however, the sale is to the Government, not being a registered dealer a certificate, referred

to in section 8(4)(b), has to be obtained. Further, what is requisite is that the goods are to be of the descriptions referred to in sub-section (3) of

section 8. These aspects of the matter are getting revealed from the salient provisions, in the shape of sub-section (2) of section 6 - a newly

substituted sub-section to be effective from April 1, 1973 and sub-section (3) and clauses (a) and (b) of sub-section (4) of section 8 of the CSTA.

16. The instant case is admittedly relatable to the assessment year 1986-87. Such being the case, the substituted sub-section (2) of section 6 of the

CSTA has to be necessarily applied. Applying, the substituted sub-section (2) of section 6 thereof, it goes without saying that the assessee-dealers

in order to claim exemption under sub-section (2) of section 6, have to necessarily file or produce, apart from ""E1"" forms, also ""C"" forms from the

purchasing dealers and in the absence of production of both the forms, namely, ""E1"" and ""C"" forms, exemption under sub-section (2) of section 6

cannot at all be claimed, and such exemptions are attractable to levy of tax at the appropriate rate.

17. The Tribunal of course, for coming to the conclusion that the purchaser outside the State, in whose favour, the transit sales had been effected,

is a registered dealer, relied upon certain "C" forms, of the purchasing registered dealer, relatable to the other transactions. Such sort of a

consideration is impermissible in law, on the face of the proviso appended to the newly substituted sub-section (2) of section 6 of the CSTA,

which requires a declaration referred to in clause (a) of sub-section (4) of section 8 from a registered dealer for the grant of exemption.

18. We may, however, state at this juncture that the AAC has properly applied his mind to the decisions of the Madhya Pradesh High Court

saying that those decisions are relatable to the assessment years prior to the substitution of sub-section (2) of section 6 by Act No. 61 of 1972

with effect from April 1, 1973. The Tribunal, in the view it had taken, did not conform to the view of the assessing officer relatable to the

transactions in question. We are sorry to state that this sort of a view, as taken by the AAC, has not at all been given any sort of a consideration by

the Tribunal, while penning down the order.

19. For the reasons as above, the order of the Tribunal cannot at all be stated to be sustainable in law, and the same deserves to be set aside.

20. In fine, the tax case (revision) is allowed; the order of the Tribunal is set aside and the order of AAC confirming the order of the assessing

officer relatable to the transactions in question shall stand restored.

21. Petition allowed.