

(2010) 07 MAD CK 0330

In the Madras High Court

Case No : Tax Case (Revision) No. 2318 of 2008

State of Tamil Nadu

APPELLANT

Vs

Lakshmi Opticals

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 3B

Citation : (2011) 43 VST 33

Hon'ble Judges : M.M. Sundresh, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Haja Naziruddin, Special Government Pleader, for the Appellant; A. Thiagarajan, for S. Balamurugan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kaufulla J.

1. The Revenue has come forward with this revision. The challenge is to the order of the Sales Tax Appellate Tribunal, dated October 14, 1998 passed in Madurai Tribunal in Appeal Nos. 117 of 1997. The assessment year was 1994-95. The respondent/assessee is a dealer in opticals.

2. The questions of law raised in the above revision are as under :

(1) Whether, in the facts and circumstances of the case, the Tribunal which is the final fact finding authority is legally correct in having concluded that the assessee after having purchased frames have sold them as such without fitting them into spectacles while the assessing authority has given categorical finding that the frames had not been sold as such without fitting them in spectacles ?

(2) Whether the order of the Tribunal in not having restored the penalty levied u/s 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 is legally sustainable ?

3. According to the petitioner, the sale of spectacles by the respondent/ assessee is liable to be taxed as a single item of product falling under item 54 of Part C of

the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, inasmuch as the said spectacles are sold by the respondent to its customers as a product through separate bills for (i) frame and (ii) lens.

4. Before the Tribunal, the respondent/assessee contended that the manufacture of spectacles based on a specific description issued by the Doctors and choosing the lens pertaining to the power prescribed, the same is handed over to the skilled labourers for processing and sizing the lens such as grinding the shape of the lens, etc., before fitting the same into the frame. It was therefore contended that such a process of manufacture according to the specific requirement is based on prescription issued by the Doctor, which would fall within the concept of "works contract" falling u/s 3B of the Tamil Nadu General Sales Tax Act. It was therefore contended that under sub-section (2)(b) of section 3B, any other goods used in the works contract in the same form in which the said goods were purchased and such goods already suffered tax on the ground of second sales, the respondent/assessee who was entitled for exemption in respect of the frames which was used in the process of manufacture of spectacles. Such a contention of the respondent/assessee who had used the frames in the spectacles, having suffered tax once, will have to be treated as second sales when it was sold again to the individual customers and consequently such sale of frames is exempted from the payment of tax. On that basis, the Tribunal set aside the order of the assessing officer as well as the first appellate authority.

5. We heard Mr. Haja Naziruddin, learned Special Government Pleader and Mr. A. Thiagarajan, learned senior counsel appearing for the respondent/ assessee.

6. At the outset, we wish to state that we are not inclined to agree with the contentions made on behalf of the respondent/assessee that manufacture of spectacles is governed by the concept of works contract covered by section 3B of the Tamil Nadu General Sales Tax Act, 1959. In the first place, what is sold by the respondent/assessee to their customers is the spectacle. The spectacle is manufactured to the requirement of each of the customers based on a prescription of an ophthalmologist. What is significantly absent in that process is, as rightly contended by the Special Government Pleader, the respondent/ assessee is predominant in each and every part of the spectacles, viz., the frame, lens and other accessories and parts attached to it.

7. Further, what is being carried out by the respondent/assessee falls within the expression "manufacture", i.e., manufacture of spectacle based on the orders placed by the customers. Even such manufacturing activity is carried on by the respondent/assessee in their workshop. Therefore, in every respect, we find that the necessary ingredients of works contract are absent. However, we are not inclined to interfere with the order passed by the Tribunal. Even otherwise, the spectacle manufactured by the respondent/ assessee, which contains a frame and lens and certain other parts, can be independently analysed in order to find out whether any tax is leviable on such different parts contained in the spectacles. To appreciate the said position, the specific content of the entry, viz.,

item 54 in part C of the First Schedule to the Tamil Nadu General Sales Tax Act requires extraction, which reads as under :

54. Original entry from April 1, 1994 :

Spectacles (other than those specified in the Third Schedule), sunglasses, goggles and attachments, parts and accessories thereof.

8. Under the First Schedule, such a spectacles would attract levy of tax in the event of sale in the State at the point of first sale.

9. In the case on hand, it is not in dispute that a frame which is part of a spectacles, has already suffered tax, inasmuch as such frames were purchased by the respondent/assessee independently, at which point, levy of tax has taken place. Similarly, lenses are also independently purchased by the respondent/assessee. The purchase of such lenses also suffered tax in the first point. When the respondent/assessee indulged in the process of manufacture of spectacles, depending upon the prescription of each of the customers, the lens had to be necessarily ground in order to achieve the power prescribed, which also involves certain other process, such as shaping according to the slot in the frame in order to make a snugly fitting. Therefore, lenses which are either common in size or even in different sizes, have to undergo the process of manufacture, in order to get transformed into a lens with the power as specified in the prescription of the ophthalmologist. Therefore, the lenses which get transformed into a different product based on the requirement of each of the customer, such a lens is a new product by itself and thereby at the time of sale of such lens fitted in a frame chosen by the customers of the respondent, definitely attracts levy of tax and that would be a levy at the point of first sale in this State.

10. As far as the frame is concerned, the same does not undergo any other change at the hands of the respondent/assessee, except that the lens is fitted into the frame for being sold as a spectacles to the customers. We are therefore, convinced that while the frame sold to the customers retains its character as a frame, the lens fitted into the frames alone would attract payment of tax by virtue of its sale at the point of first sale in the State, while a frame which has already suffered tax and being sold in the same form, would not attract tax, once over again being a second sale. The contention that what is sold is spectacles and therefore, the sale of it should be charged to tax at the point of first sale, cannot be accepted, inasmuch as in entry 54 itself, it is specifically provided that spectacles, sun glasses, goggles and attachments, parts and accessories, are to be treated as an item of product. Therefore, a frame which is a part of a spectacles having already suffered tax at the point of first sale, there is no reason why the respondent/assessee should suffer payment of tax again when its sale to its customer will be a second sale and not at the point of first sale. The conduct of the respondent/assessee in having raised two separate bills, one for the frame and other for lens while delivering the spectacles to its customers, cannot be held to be an act of evasion of tax by the respondent/ assessee. It is

well known canon of construction in taxation field that avoidance is not evasion. It will also be relevant to state that in a spectacle the lens being detachable, the customer can always use the frame separately by getting a different lens fixed depending upon the need, may be due to any change in the power of the lens. Therefore, treating the frame as a separate article of spectacle cannot be faulted. We therefore, hold that the action of the respondent/assessee in having raised two separate bills, one for the frame and the other for the lens and thereby, there would be collection of tax on sale of lens alone and not on the frame was permissible and cannot be questioned.

11. Therefore, for the reasons stated above, we find no merit in these tax case revision and the questions of law are answered against the Revenue. The tax case revision therefore fails and the same is dismissed. No costs.