(1991) 07 MAD CK 0020

In the Madras High Court

Case No : T.C. No. 373 of 1982 (Revision No. 86 of 1982)

State of Tamil Nadu — APPELLANT

Vs

Madras Petro Chem Ltd. — RESPONDENT

Date of Decision : 11-07-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 23, 3, 3(3), 3(4), 45(2)

Citation : (1991) 07 MAD CK 0020

Hon'ble Judges : Kanakaraj, J;A.S. Anand, J

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; C. Natarajan, for the Respondent

Judgement

Kanakaraj, J.—For the year 1978-79, the assessee/respondent reported a total and taxable turnover of Rs. 83,31,314.91 and Rs.

83,22,376, respectively. The assessee claimed concessional rate at 3 per cent. on the sales of transformer oil to the tune of Rs. 7,43,883.79 on the

production of form XVII prescribed under the proviso to section 3(3) of the Tamil Nadu General Sales Tax Act, 1959. In other words the

transformer oil was claimed as a component part in the manufacture of other goods inside the State by the person issuing the declaration form. The

assessing authority proposed to reject the claim for the concessional rate and sought to levy at the rate of 8 per cent. and objections were called

for. The assessee explained that the purchasing dealer that he was using the transformer oil as a component part and on the production of the

declaration form the selling dealer (assessee) is entitled to the concessional rate of 3 per cent. However, the assessing authority relied on the

circular issued by the erstwhile Board of Revenue in BPRT. 13/79 stating that transformer oil is not a component part of transformer and the

concessional rate u/s 3(3) of the Act cannot be made applicable. Accordingly, the said turnover was taxed at 8 per cent.

2. On appeal, the Appellate Assistant Commissioner held that transformer oil is only used in the process of cleaning or cooling and is not therefore

a component part of the transformer. He also relied on the above-said circular and rejected the claim of the assessee. On second appeal, the

Tribunal relying on a decision reported in Premier Electro-Mechanical Fabricators Vs. The State of Madras, held as follows :

Respectfully following the decision of our High Court we hold that once valid from XVII declarations have been filed, the question whether the

transformer oil is a component part or not, as certified by the buyer, is beyond the jurisdiction of the assessing officer. It is not in dispute that the

declarations have been otherwise properly filed. We, therefore, hold that the turnover of Rs. 7,43,883.79 is taxable at the lower concessional rate

of 3 per cent. as against 8 per cent. The assessment shall be modified accordingly.

3. The Revenue has come up in revision.

4. The argument of learned Additional Government Pleader (Taxes) is that the very look at the item, ex facie shows that the transformer oil cannot

be a component part of the transformer. In such apparent cases it would be doing violence to section 3(3) of the Act, if the proviso is given effect

to blindly. The ratio of the judgment in Premier Electro-Mechanical Fabricators Vs. The State of Madras, followed in other cases, argues the

Government Pleader, required reconsideration. On the other hand, Mr. C. Natarajan, the learned counsel for the respondent says that the

transformer oil is an identifiable constituent of the finished product. According to him, the oil is kept inside the finished product and sealed.

Secondly, it is not the duty of the selling dealer to question the declaration form given by the purchasing dealer to verify whether the particular

article is used as a component part or not.

5. To appreciate the rival contentions we will now set out the relevant provision, namely, section 3(3) of the Act with the chronological

amendments it had undergone. When the Act was introduced on March 11, 1959 the section stood as follows :

Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of any sale of goods mentioned in

the First Schedule by such dealer to another for use by the latter as component part of any other goods mentioned in that Schedule, which he

intends to manufacture for sale inside the State, shall be at the rate of only one per cent. on the turnover relating to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in

the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a

prescribed form obtained from the prescribed authority.

6. By Act 44 of 1961 the explanation was introduced :

Explanation. - For the purposes of this section, ''component part'' means an article which forms an identifiable constituent of the finished product

and which along with others goes to make up the finished product.

7. By Act 29 of 1980, section 3(4) was introduced as follows :

3. Amendment of section 3, Tamil Nadu Act 1 of 1959. - In section 3 of the principal Act -

(i) in sub-section (3) for the words ''three per cent.'' the words ''four per cent.'' shall be substituted;

(ii) after sub-section (3), the following sub-sections shall be added, namely -

(4) Notwithstanding anything contained in sub-section (1), (2) or (3), the tax payable by a dealer in respect of any sale of goods -

(i) mentioned in the First Schedule, and

(ii) specified in a scheme published by the Government, by notification

by such dealer to another for use by the latter as raw material of any other goods mentioned in that Schedule and specified in the said scheme,

which he intends to manufacture inside the State for sale shall be at the rate of four per cent. on the turnover to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in

the prescribed manner within the prescribed period a declaration duly filled in and signed by the dealer to whom the goods are sold containing the

prescribed particulars in a prescribed form obtained from the prescribed authority :

Provided further that any dealer who after purchasing the goods in respect of which he had furnished any declaration proves to the satisfaction of

the assessing authority that he was unable to make use of the goods so purchased for the purposes specified in the declaration, shall pay the

difference of tax payable on the turnover relating to the sale of such goods at the rate prescribed in the First Schedule and four per cent. :

Provided also that the dealer purchasing the goods maintains a separate stock account for each of the goods purchased by him under the scheme

mentioned in this sub-section showing such particulars as may be prescribed.

(5) The scheme referred to in sub-section (4) may provide for -

(i) the goods or class of goods which can be used as raw materials of other goods in respect of which the scheme shall apply;

(ii) the goods or class of goods in the manufacture of which such raw materials shall be used;

(iii) the dealer or class of dealers selling such raw materials;

(iv) the dealer or class of dealers using such raw materials; and

(v) the conditions and restrictions subject to which the concessional rate of tax shall apply.

(6) The Government may, by notification, rescind, revoke, amend or modify any scheme referred to in sub-section (4).

8. By Act 44 of 1986, section 3(3) and 3(4) was recast as follows :

2. Amendment of section 3, Tamil Nadu Act 1 of 1959. - In section 3 of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of

1959), -

(1) for sub-sections (3) and (4), the following sub-sections shall be substituted, namely :-

'' (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of sale of any goods, other

than consumables, to another for use by the latter, in the manufacture inside the State for sale by him of any goods -

mentioned in the First Schedule other than those falling under items 70(b), 70(c) and 107 of the said Schedule

or

involved in the execution of works contract

shall be at the rate of only four per cent. on the turnover relating to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in

the prescribed manner within the prescribed period a declaration duly filled in and signed by the dealer to whom the goods are sold containing the

prescribed particulars in a prescribed form obtained from the prescribed authority :

Provided further that any dealer who, after purchasing the goods in respect of which he had furnished any declaration, fails to make use of the

goods so purchased for the purpose specified in the declaration but disposes of such goods in any other manner, shall pay the difference of tax

payable on the turnover relating to sale of such goods at the rate prescribed and four per cent. :

Provided also that the dealer purchasing the goods maintains a separate stock account for each of the goods purchased by him showing such

particulars as may be prescribed.

Explanation. - For the purposes of this sub-section ''consumables'' means fuels, welding electrodes, welding rods, abrasives, carbide tip tools and

lubricating oils.

(4) Where any dealer, after availing the concessional rate of tax under sub-section (3) does not sell the finished goods but despatches them to a

place outside the State either by branch transfer or by transfer to an agent, by whatever name called, for sale, or in any other manner, except as a

direct result of sale or purchase in the course of inter-State trade or commerce shall pay, in addition to the concessional rate of tax already paid

under sub-section (3), tax at two per cent. on the value of goods so purchased.''

(2) sub-sections (5) and (6) shall be omitted;

(3) in sub-section (7), for the expression ''notwithstanding anything contained in sub-section (1), (2), (3), (4) or (5)'', the expression

''notwithstanding anything contained in sub-section (1), (2) or (3), shall be substituted.

9. Two further amendments by Acts 20 of 1987 and 29 of 1990 are not material for the purpose of this tax case.

10. Therefore, for the purpose of this case at the relevant point of time section 3(3) stood only as follows :

Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of sale of any goods mentioned in

the First Schedule by such dealer to another for use by the latter as component part of any other goods mentioned in that Schedule, which he

intends to manufacture for sale inside the State, shall be at the rate of only one per cent. on the turnover relating to such sale :

Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in

the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in a

prescribed form obtained from the prescribed authority.

Explanation. - For the purpose of this sub-section, ''component part'' means an article which forms an identifiable constituent of the finished

product and which along with other goes to make up the finished product.

11. We have quoted the amendments introducing section 3(4) by Act 29 of 1980 and the introduction of second proviso by Act 44 of 1986 only

to show that the Legislature had taken care of any wrong declaration by the purchasing dealer by making the purchasing dealer liable for the

difference of tax payable on the turnover relating to the sale of such goods at the rate prescribed in the First Schedule and 4 per cent. In other

words the selling dealer is not made liable for the wrong declaration by the purchasing dealer. This is the purport of the judgment of this Court in

Premier Electro-Mechanical Fabricators v. State of Madras [1968] 22 STC 269. It will now be appropriate to quote the ratio of the said

judgment :

The assessee satisfies the requisite, if he complies with the proviso, and he is not called upon, beyond production of a declaration in form XVII, to

show that the declaration has been given effect to. It is true that, in order to satisfy the third requisite, the goods sold should be for use by a

purchasing dealer as component parts of some other goods to be manufactured. But the manner in which the seller has to satisfy the requisite is as

provided in the proviso to the sub-section, namely, production of the declaration in the prescribed form. Once that is done, there is no further obligation on the part of the selling dealer and he will automatically be entitled to the concessional rate. If the declaration turns out to be false, in the

sense that the goods purchased have not been used as declared in the prescribed form, the purchaser is exposed to the penalties provided by

section 23 and section 45(2)(e).

12. Mr. Natarajan, seeks to draw further support for the same proposition from the decision reported in The State of Madras Vs. Radio and

Electricals Ltd. etc., In that judgment the following observations in Civil Appeal 335 of 1965 are quoted :

We are of the opinion that whether or not the goods were in fact used for the stated purpose or even usable for such a purpose, so long as the

purchasing dealer has furnished the required declaration to the selling dealer, the selling dealer becomes under law entitled to the benefit of section

8(1) of the Act. It is no function of the selling dealer to enter into a judicial examination of whether the goods are in fact used or usable for the

manufacture or processing of goods for sale by the purchasing dealer. The purchasing dealer declares that they are required for such a purpose

and are further so specified in his form of registration granted by the sales tax authorities. It is not the function of the selling dealer to enquire

whether the requirement of the purchasing dealer is bona fide or even is or is not within the certificate of registration of that dealer.

13. In Chunni Lal Parshadi Lal Vs. Commissioner of Sales Tax, U.P., Lucknow, it is observed as follows :

The genuineness of the certificate and declaration in form III-A may be examined by the taxing authorities but not the correctness or the

truthfulness of the statements made therein. The taxing authorities may examine whether the certificate was issued in collusion or was forged or

fabricated, but not enquire whether the purchasing dealer had subsequently sold the goods or consumed them.

14. We do not think that it is necessary to multiply the decisions on this subject. Suffice it to say that having regard to the subsequent legislative

enactments referred to earlier, we are in respectful agreement with the views expressed in Premier Electro-Mechanical Fabricators v. State of

Madras [1968] 22 STC 269 and the order of the Tribunal does not require any reconsideration. Consequently, the revision fails and is dismissed.

There will no order as to costs.

15. Petition dismissed.