

(1997) 09 MAD CK 0106

In the Madras High Court

Case No : Tax Cases No"s. 642 and 643 of 1988 (Revision No"s. 114 and 115 of 1988)

State of Tamil Nadu

APPELLANT

Vs

Manilal and Co.

RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Constitution of India, 1950 — Article 32

Citation : (1997) 09 MAD CK 0106

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

Bench : Division Bench

Judgement

Jayasimha Babu, J.—The State has come up in revision against the order of the Sales Tax Appellate Tribunal wherein it held that the State of Tamil Nadu is not entitled to levy Central sales tax on the wire rods manufactured in the State of Tamil Nadu and sold to buyer outside the State. The assessment year in question is 1980-81. The assessee is a manufacturer of wire rods having its business in the State of Maharashtra.

2. It has sent those rods to the State of Tamil Nadu for manufacturing welded mesh, out of those rods. The mesh so manufactured, which is a different commercial product, was then sold to buyers outside the State of Tamil Nadu. The movement of the goods so sold, viz., the welded mesh commenced from the State of Tamil Nadu.

3. The assessee had contended before the Tribunal that it has paid the Central sales tax on this sale to the State of Maharashtra, and therefore, it could not be compelled to pay tax once again to the State of Tamil Nadu. It was also contended by the assessee before the Tribunal, that the Central sales tax is levied under a Central enactment, which is payable to Government of India, and that it is only by virtue of the authority given by the Government of India to the States through the Central Sales Tax Act, that the States are in a position to

collect the Central levy, which, however, remains of Central levy, and not a State levy. The further submission of the assessee was that if one State acting as an agent of the some principal has collected the tax on a transaction, no other State, acting as an agent of the very same principal would have the authority to collect the tax in the name of the principal, viz., the Government of India.

4. The Tribunal accepted the arguments so advanced on behalf of the assessee, and placing reliance on the decision of the High Court of Bombay in the case of Commissioner of Sales Tax v. Barium Chemicals Ltd. [1981] 48 STC 121, had held that on account of the tax having been paid in the State of Maharashtra no other State was entitled to collect that tax, even though admittedly, the appropriate State to levy and collect the tax on this transaction was the State of Tamil Nadu. It was not in dispute at any stage, that the movement of the welded mesh commenced from the State of Tamil Nadu and not from the State of Maharashtra, and that u/s 9(1) of the Central Sales Tax Act, the appropriate State would be the State of Tamil Nadu.

5. This Court in the case of S. Mohamed Ibrahim Hadhee v. State of Madras [1968] 21 STC 378, has held that while there can only be one charge under the Central Sales Tax Act, on identical inter-State turnovers, but the levy and collection will have to be made by the appropriate State which is the State from which the goods have moved pursuant to the sale, and had rejected the plea that if a wrong State has already assessed, levied tax, it would no longer be open to the State, from which the movement commenced to collect the tax.

6. As there is no doubt as to the State which is competent to levy the tax the movement of the material that was sold to buyers outside the State having commenced from the State of Tamil Nadu, the appropriate State u/s 9(1) of the Act, for levying and collecting the Central sales tax, is the State of Tamil Nadu.

7. Learned counsel for the assessee, however, contended that since the tax has been paid in a wrong State, the court should direct that State to make over the amounts so collected by it to the State of Tamil Nadu. Counsel relied on the decision of the Supreme Court in the case of Bharat Heavy Electricals Limited v. Union of India [1996] 102 STC 373 to contend that such a direction be given by this Court. Counsel relied upon the direction given by the court in that case, for the adjustment of the tax amounts collected between the concerned States to which the assessee had paid the tax, as there were rival claims from many States as to which one of them was the State competent to levy tax, on the transaction in question.

8. The observations made in the case of Bharat Heavy Electrical Limited etc. Vs. Union of India and Others etc., , on which counsel places reliance, have been explained by the Supreme Court in the case of Ashok Leyland Ltd. v. Union of India [1997] 105 STC 152. B. P. Jeevan Reddy, J., who rendered the decision in the case of Bharat Heavy Electrical Limited etc. Vs. Union of India and Others etc., , as also in the case of Ashok Leyland Limited Vs. Union of India (UOI) and

Others, speaking for the court, after referring to the observations made in *Bharat Heavy Electricals Limited v. Union of India* [1996] 102 STC 373 that if in a given case, an assessee says that the particular transaction which is sought to be taxed in State "A" has already been taxed in State "B", nothing prevents him from impleading the State "B" in proceedings in State "A" and have the matter decided in the presence of all parties, went on to state the following :

"23. The said observation, no doubt, projects a point of view, but it has to be understood in the particular facts of that case. In that case, orders of sales tax authorities of any particular State had not become final. When more, than one State sought to tax the same transaction on different basis, BHEL came to this Court by way of a writ petition under article 32 of the Constitution and certain directions were made by this Court. Moreover, the matter there was decided by the High Court and the various State Governments who were impleaded as respondents did not object to the jurisdiction of the High Court to decide the dispute - dispute as to the true nature of the transaction and who should tax it. In this matter, the situation is different. The orders of several State authorities have become final and there is no way provided by the Act following which the finality of those orders can be undone and the question of the true nature of the transaction decided afresh with participation of the State authorities to both the States. There is yet another fact, viz., the State Governments are objecting to the jurisdiction of Tamil Nadu sales tax authorities to summon them and decide the question which may require them to revise their own orders. This situation did not arise in BHEL"

9. It is therefore, evident that when the order passed by one of the States has become final, and that State is not willing to submit itself to the jurisdiction of the authorities, of the other State seeking to tax the same transaction, such other State cannot be compelled to reopen a concluded assessment or submit itself to the jurisdiction of the authorities in another State.

10. In this case, the assessment order made for the year in question, in respect of the assessee's inter-State sales, have become final in the State of Maharashtra. The State of Maharashtra is not bound to reopen the same and it cannot be compelled to do so, in those proceedings. It is also not a party to these proceedings.

11. Counsel further contended that in the decisions reported in *Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others*, , *Oil India Ltd. Vs. The Superintendent of Taxes and Others*, and *Sundaram Industries Limited v. Assistant Commissioner of Commercial Taxes (Assessment) I* [1983] 52 STC 214 the courts had directed refund of tax, which had been paid erroneously. Such an order of refund can only be made in a proceedings properly laid under the appropriate statute. No such relief can be granted in a proceedings under the Tamil Nadu Act, with respect to a proceeding initiated, and which has become final under the Maharashtra Act.

12. The Tribunal was erred in holding that the State of Tamil Nadu was not entitled to collect the tax, on these transactions. The order of the Tribunal, is therefore, set aside, and that of the assessing officer restored.

13. Revisions are allowed accordingly.

14. Petitions allowed.