(1992) 09 MAD CK 0040

In the Madras High Court

Case No : T.C. No''s. 223 to 225 of 1983 (Revision No''s. 105 to 107 of 1983)

State of Tamil Nadu APPELLANT

Vs

S. Murugaiyan RESPONDENT

Date of Decision : 15-09-1992

Acts Referred:

Citation : (1992) 09 MAD CK 0040

Hon'ble Judges : Raju, J;Abdul Hadi, J

Bench : Division Bench

Judgement

Raju, J.—The above three revisions not only involve identical issues for consideration but have been disposed of also together by the

Tribunal below. Submissions have also been made before us in common and consequently dealt with together.

2. The respondents-assessee are dealers in salt and the levy that is the subject-matter of dispute in these revisions relates to the one under the

Central Sales Tax Act, 1956. So far as the respondent-assessee in T.C. No. 223 of 1983 is concerned, the levy under the Central Sales Tax Act

relates to the assessment year 1979-80 and after giving due notice the assessing officer determined the total and taxable turnover for the said

assessment year at Rs. 9,62,692 and Rs. 4,22,500 respectively taxable at 10 per cent. So far as T.C. No. 224 of 1983 is concerned, the

respondent-assessee, a dealer in salt, was assessed for the year 1979-80 on a total and taxable turnover at Rs. 1,57,469 and Rs. 57,845

respectively taxable at 10 per cent.

3. The respondent-assessee in T.C. No. 225 of 1983 was also a dealer in salt and for the assessment year 1975-76, he was assessed under the

provisions of the Central Sales Tax Act on a total and taxable turnover at Rs. 21,71,156 and Rs. 9,10,383 respectively taxable at 10 per cent. In

all the above three cases the respondent-assessees admittedly sold salt packed in gunnies and that the sale of salt was exempt from the levy of tax

by virtue of a notification issued by the State Government in exercise of its powers u/s 17 of the Tamil Nadu General Sales Tax Act, 1959.

Consequently the taxable turnover determined and subjected to levy of tax was only the estimated sale value of the gunnies sold along with the salt

depending upon the prevailing rate and the number of gunnies utilised by the respective assessees for selling the salt. The rate of 10 per cent was

applied since the sales effected to dealers outside the State in the course of inter-State trade and commerce were not covered by C forms.

4. Aggrieved against the orders of the respective assessing officers, the assessees filed appeals before the concerned Appellate Assistant

Commissioners. The said appellate authority confirmed the assessments and dismissed the appeals filed by the assessees. Aggrieved the matter

was pursued further before the Tamil Nadu Sales Tax Appellate Tribunal, Main Bench at Madras.

5. The Tribunal, while placing reliance upon their earlier decision in T.A. No. 56 of 1980, which, in turn relied upon a decision of this Court in

Deputy Commissioner (C.T.), Coimbatore Division v. Vijaya Trading Co. [1980] 46 STC 400 set aside the assessments and the tax levied on the

sale value of the gunnies used for packing and selling the salt manufactured by them. The Tribunal was of the view that since the assessees had sold

for a particular price the salt along with the gunnies, the price charged must include both salt and gunnies and it being not possible to segregate the

two, the assessees could not be said to have sold gunnies and consequently the levy could not be sustained. The Tribunal was also of the view that

the deduction and exemption available to an assessee under the Tamil Nadu General Sales Tax Act was equally available under the Central Sales

Tax Act in view of the provisions contained in section 8(2-A) of the Central Sales Tax Act.

6. The above order of the Tribunal setting aside the levy of tax on the sale value of gunnies is challenged by the Revenue in these revision petitions.

Mrs. Chitra Venkataraman, learned Additional Government Pleader appearing for the Revenue, contended that indisputably the packing charges were not found mentioned separately and the sale value of the packing material, therefore, attracts the levy of tax since the exemption granted in

respect of the goods, viz., salt, would not enure also to the packing material used for non-taxable goods sold in inter-State trade and commerce

particularly when the packing charges were not separately noticed. The learned counsel relied upon a Division Bench judgment of this Court

reported in A.R. Manickam Chettiar & Sons v. State of Tamil Nadu [1992] 87 STC 134; (1992) 2 MTCR 6 to which one of us (Raju, J) was a

party, in support of the stand of the Revenue.

7. Per contra, Mr. C. Venkataraman learned counsel appearing for the respondent/ assessees contended that in view of the decision of a Full

Bench of this Court reported in State of Tamil Nadu v. V. V. Vanniaperumal & Co. [1990] 76 STC 203 the assessees could not be subjected to

levy of tax in respect of the gunny bags used for selling the salt since the exemption granted in respect of the sale of the commodity would enure to

the rescue of the assessees. According to the learned counsel, what was sold by the respective assessees was a bag of salt and consequently in the

light of the opinion expressed by the Full Bench in para 6 of its judgment the price of salt must be taken to be the price of a bag of salt and since

the salt itself is exempt there is no scope for levying tax on the bag of gunny alone by dividing separately the components consisting of the

commodity and the gunny which constituted a sale. The learned counsel for the assessee also relied upon the decision in Raj Steel and Others Vs.

State of A.P. and Another, and Deputy Commissioner of Sales Tax Vs. Aysha Hosiery Factory (P) Ltd. and Others, in support of his submission.

7A. We have carefully considered the submission of the learned counsel appearing on either side in the light of the decisions relevant for our

consideration. We are unable to approve the findings of the Tribunal in setting aside the assessment against the assessees in these cases. As noticed

earlier there is no controversy over the fact that the salt was sold packed in gunnies and the price charged or received therefore was for the

commodity packed and sold and no charge or price of gunnies was exhibited or shown separately in the bills. The issue relating to the taxability of

the packing material was decided by the Full Bench of this Court in the decision reported in State of Tamil Nadu v. V. V. Vanniaperumal & Co.

[1990] 76 STC 203. It was held by the Full Bench in the context of sale of oil that the bargain of sale was to be considered to be for a tin of oil

and the goods gold were composite goods and even the fact that the price of the oil and the tin was charged separately in the bills was immaterial

and the packing charges were deductible only when the packing was done subsequent to the sale and not otherwise. Again in the decision reported

in A.R. Manickam Chettiar & Sons v. State of Tamil Nadu [1992] 87 STC 134; (1992) 2 MTCR 6 a Division Bench of this Court, while taking

into account the Full Bench judgment referred to supra as well as two other decisions of the apex Court and another decision of this Court,

considered the levy of tax on the turnover relating to the sale value of gunny bags used for selling rice and paddy and expressed the view that when

what was sold was not merely goods as such, but, the sale of goods along with the packing material the gunny bags used and the price relating to

the gunnies was liable to be included in the taxable turnover and subjected to tax. The view taken by the Tribunal to the contrary that there was no

sale of gunny bags as such but the sale was of the salt packed in gunnies for a consolidated price and, therefore, the levy cannot be sustained

cannot be approved by us in the light of the decisions referred to supra.

8. The learned counsel for the assessees could not successfully challenge the above position. That is why learned counsel has taken a stand that if it

be considered that what was sold was a bag of salt, then the rate of tax that is applicable to the sale value of salt alone could be applied to the

gunnies and if the sale value of the salt is exempt, the gunnies also could not be subjected to tax. As noticed earlier inspiration is drawn for such a

stand by the learned counsel from the observation in para 6 of the judgment of the Full Bench in State of Tamil Nadu v. V. V. Vanniaperumal &

Co. [1990] 76 STC 203 which reads as hereunder :

But we do not agree with the other finding in that judgment referred to earlier that the sale price of the oil shall be separately taxed and the sale

price of the tin should be separately taxed at the rates applicable to each of them. As we said above only tin of oil is sold. There is no intention for

sale or purchase of tin. The intention is to purchase of oil which of course is in tin. Therefore, whatever is the price paid, it must be taken to be the

price of the oil. May be if more oil is sold and delivered in a container brought by the purchaser the price may be lesser than the oil sold in tin

container, but nevertheless, when oil is sold in tin, the price that is paid is the price of the oil. Therefore, total turnover of the price has to be taxed

and there is no question of taxing separately for the price of oil and price of tin at different rates.

The reasoning of the Full Bench that when on is purchased, what was sold was a fin of oil and not oil alone, was meant to convey that that goods

were sold as composite goods so that a contract to sell the packing material can be inferred or implied from the contract to sell the goods itself.

But in my view, same cannot be pressed into service, out of context to claim an exemption given under a notification to the goods sold would

include within it the packing materials also. The exemption specifically granted under an executive notification in respect of sale of goods cannot be

extended to the packing materials also by such fiction and to the categories of goods never contemplated or visualised by the Government which

granted the exemption only in respect of sale of salt.

9. To appreciate the stand taken for the assessee it would be useful to refer to the notification relating to the grant of exemption. The Government,

in exercise of its powers u/s 17 of the Tamil Nadu General Sales Tax Act, 1959 issued G.O.MS. No. 976, Revenue dated March 28, 1959,

granting exemption in respect of the tax payable under the Tamil Nadu General Sales Tax Act on the sale or purchase of the goods or class of

goods or by the class of persons or institutions in regard to the whole or part of the turnover as specified in the Schedule to the notification. Entry

61 of the Schedule of the said notification specifies ""sales of salt by any dealer"" to be exempt in full from the levy of tax under the said Act. In

Varasuki and Co. v. Province of Madras [1951] 2 STC 1 a Division Bench of this Court had an occasion to consider the very issue as to whether

an exemption of an article, viz., salt from sales tax would enure to the benefit of a dealer to claim exemption in respect of sale value of the gunny

bags in which the goods, viz., salt have been packed and sold. The Division Bench while repelling the claim of the assessee has held as hereunder :

...... On principle, it seems to us that any exemption of any article must be strictly construed and confined to the exemption itself and not extended.

Thus, if salt is exempted, but not the gunny bags in which it is packed and sold, if we exempt the gunny bags without a special exemption to that

effect, then gunny bags in which rice and other articles are packed, and drums and tins in which oil is packed, etc., will also claim exemption, and it

is admitted that they have not been exempted and that they cannot be exempted because they will be included in the definition of ''turnover'' under

the rules.

Consequently the exemption granted in respect of the sale of salt cannot be extended to the sale value of the gunnies though the gunnies have been

found used for packing and selling the salt as a composite transaction. The same view has been taken in A.R. Manickam Chettiar & Sons v. State

of Tamil Nadu [1992] 87 STC 134 (Mad.); (1992) 2 MTCR 6 also while considering the issue in respect of the sales of paddy and rice which

also were exempted goods while sustaining the levy of tax on the sale value or the price of gunnies used for the sale of rice and paddy. The

Division Bench, while dealing with these aspects, has held in the following terms :

The exemption under the Tamil Nadu General Sales Tax Act 1959 is in respect of sale of paddy and rice. However, when those commodities are

packed in gunny bags, the gunny bags cannot be said to lose their physical or commercial identity and merge as if they were part of the foodgrains

themselves. The argument that since paddy and rice were exempt from sales tax and, therefore, no tax can be levied on the cost of the gunny bags

in which they were packed is futile. When bags of paddy or rice are sold for a price which, as in the instant case as borne out from the reply of the

assessee to the notice includes price of gunny bags, the turnover in respect of gunny bags would be liable to sales tax under the Act.

The Supreme Court in Commissioner of Taxes v. Prabhat Marking Co., Ltd. [1967] 19 STC 84 considered a similar submission raised in that

case and repelled it. In the case before the Supreme Court the dealer had sold hydrogenated oil which was exempt from sales tax under the Assam

Sales Tax Act, 1947. The question which was raised before the Supreme Court was whether the value of the containers in which hydrogenated oil

was sold could be assessed to sales tax under the Act. The High Court had held that the value of the containers was not assessable to sales tax

unless price had been charged for the containers. While rejecting the view of the High Court the Supreme Court held that the value of the containers was assessable to sales tax under the Act if there was an express or implied agreement for the sale of such containers and the mere fact

that the price of the containers was not separately fixed made no difference to the assessment of sales tax"".

Consequently we are unable to approve the view taken by the Tribunal or accept the stand taken by the learned counsel for the assessees before

us.

10. The learned counsel for the assessees while relying upon the findings of the Tribunal based on section 8(2-A) of the Central Sales Tax Act also

relied on the decisions in Raj Steel and Others Vs. State of A.P. and Another, and Deputy Commissioner of Sales Tax Vs. Aysha Hosiery Factory

(P) Ltd. and Others, to contend that the benefit of exemption granted in respect of the commodity salt would enure to the packing material, viz.,

the gunny in which only the salt has been sold in the case before us. We are afraid we cannot countenance such a proposition on the basis of the

decisions relied on by the learned counsel. The provisions of section 8(2-A) of the Central Sales Tax Act only stipulate that the tax payable under

the Central Sales Tax Act by a dealer on his turnover or any part thereof, in so far as it relates to sale of any goods the sale or the purchase as the

case may be of which is under the sales tax law of appropriate State exempt from tax or subjected to tax generally at a rate which is lower than the

percentage fixed under the Central Sales Tax Act, shall be nil or as the case may be shall be calculated a the lower rate. The assessees in these

cases could at least claim the benefit of the above provisions on which the decision in Deputy Commissioner of Sales Tax Vs. Aysha Hosiery

Factory (P) Ltd. and Others, and similar peculiar provision of the Andhra Pradesh General Sales Tax Act which was the subject-matter of Raj

Steel and Others Vs. State of A.P. and Another, if it is substantiated that the exemption granted under the said Act was not only in respect of the

sale of salt but covered the sale value of the packing materials as well. In the light of our earlier finding that the exemption granted in respect of the

sale of salt cannot be extended to the sale value of the gunny bags in which the salt was packed and sold, the question of the assessees claiming or

availing of the benefit u/s 8(2-A) of the Central Sales Tax Act does not arise. If only the respondents are exempt or found to be eligible for exemption under the State Act in respect of the sale value of the gunnies the principle enshrined in section 8(2-A) could be invoked and not

otherwise. Inasmuch as we have categorically held that the exemption notification does not entitle even a dealer in salt subject to tax under the

Tamil Nadu General Sales Tax Act, 1959, to exemption in respect of the sale value of gunny bags in which the salt has been packed and sold, the

principle enshrined in section 8(2-A) of the Central Sales Tax Act becomes wholly irrelevant for the case before us. Consequently the Tribunal, in

our view, committed an error in relying upon the provisions contained in section 8(2-A) of the Central Sales Tax Act to give the benefit of

exemption in respect of the sale of salt to the sale value of gunnies also.

11. For all the reasons stated above, in our view the Tribunal committed an error in setting aside the assessment and levy of tax on sale value of

gunny bags in respect of the assessees. Consequently the tax cases are allowed, the order of the Tribunal is hereby set aside and the orders of the

assessing officer as confirmed by the first appellate authority shall stand restored. In the circumstances there shall be no order as to costs.

12. Petitions allowed.

