
(1990) 11 MAD CK 0064
In the Madras High Court
Case No : T.C. No. 345 of 1981

State of Tamil Nadu

APPELLANT

Vs

T.M.T. Drill (Private) Ltd.

RESPONDENT

Date of Decision : 05-11-1990

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 6(d)

Citation : (1991) 82 STC 59

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

Bench : Division Bench

Advocate : R. Karuppan, Additional Government Pleader, for the Appellant; P. Jayaraman, for the Respondent

Judgement

Abdul Hadi, J.—This tax revision case is against the order of the Sales Tax Appellate Tribunal deleting a turnover of Rs. 6,29,700 from assessment for the assessment year 1977-78 on the ground that it is the turnover coming under rule 6(d) of the Tamil Nadu General Sales Tax Rules (hereinafter referred to as "the Rules"). The said rule provides that in determining the taxable turnover, amounts realised by a dealer by sale of his business as a whole shall be deducted from the total turnover of the dealer. But, it is clear that the Tribunal is wrong in treating the transaction as a sale of assessee's "business as a whole". As per the very finding of the Tribunal, the transaction was only a transfer of certain specific assets of the assessee-company, viz., plant and machinery and car of the above referred to value of Rs. 6,29,700 and furniture and fittings to the tune of Rs. 1,26,010 and land and buildings to the tune of Rs. 13,54,500. So, it cannot be considered as a transfer of "business as a whole", that is, transfer of all the assets and liabilities (or at least of the assets and liabilities of one branch of the assessee's business), as was the case in Deputy Commissioner (C.T.) Vs. K. Behanan Thomas, . The Tribunal itself observed as follows :

"In the appellant's case, we find, that the appellants have taken steps to enter into collaboration agreement with M/s. Chicago Pneumatic Tool Company Ltd., of

U.S.A., for which it has become necessary to initially float a private limited company to be a wholly owned subsidiary company of the appellants. Accordingly in the meeting of the Board of Directors of the appellants' company on March 19, 1977, a resolution was passed to float the wholly owned subsidiary company which was a private limited company as Revathy Equipments (P) Ltd., to which the fixed assets of the appellants' company to the value of Rs. 21,10,210 have been transferred in the name of the newly floated company, Revathy Equipment Private Limited. The fixed assets so transferred included a machinery to the value of Rs. 5,92,700 and motor cars for Rs. 37,000".

So, what was transferred was not the business of the assessee as a whole, but only its "fixed assets". To such a case, the above referred Deputy Commissioner (C.T.) Vs. K. Behanan Thomas, will not apply. In the above referred Deputy Commissioner (C.T.) Vs. K. Behanan Thomas, it was only held that even when a branch of the assessee's business, which was an independent unit by itself, was sold, rule 6(d) of the Rules could be applied. In the decision in The State of Tamil Nadu Vs. Thermo Electrics, also it was reiterated that rule 6(d) contemplates transfer of the business as a going concern and not as a transfer of assets alone.

2. In answer to another question that was posed by one of us, namely, whether the above transaction would not be a sale because there was no money consideration as such but only shares were allotted in the name of the new company floated, the decision in Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, was brought to our notice. It was a case similar to the present one. The following observations therein answer the said question :

"In the Tamil Nadu General Sales Tax Act, 1959, the expression "sale" is defined as every transfer of property in goods by one person to another in the course of business "for cash or for deferred payment or for other valuable consideration". The learned counsel's point was that the expression "valuable consideration", occurring in the definition cannot be given a wide meaning so as to include the allotment of fully-paid shares in consideration of passing of title in the goods as in the present case. The learned counsel referred to a decision of the Supreme Court in *Devi Dass Gopal Krishnan v. State of Punjab* [1967] 20 STC 430. In that case, the Supreme Court did not lay down that if there is a transfer of goods for valuable consideration, other than cash, the transaction cannot be regarded as sale. What the Supreme Court meant to lay down was that a valuable consideration should be something akin to cash payment or deferred payment in order to make the transfer a sale. In this case, the transfer of machinery by the assessee to the company, as well as the allotment of shares by the company to the assessee, were recorded in the company's books, by means of appropriate entries in the company's assets account and the share capital account. The consideration thus was shown as a cancellation of one debt by another : a debt by the company for the value of the machinery purchased and an obligation of the petitioner to subscribe to the face-value of the equity shares. In the face of these entries in the accounts cancelling two interconnected or interdependent

debts, the consideration must be held as equivalent, or akin, to cash and cannot be treated as a mere exchange or barter."

In the present case also, the shares given in lieu of the plant and machinery, etc., are to be taken as "cancellation of one debt by another", as held in the abovesaid Premier Electro Mechanical Fabricators Vs. The State of Tamil Nadu, .

3. Therefore, this tax revision case is allowed and the deletion by the Tribunal, of the abovesaid turnover is set aside, holding that the said turnover is chargeable to tax. In the circumstances of the case, there will be no order as to costs.

4. Petition allowed.