

(2015) 04 MAD CK 0365
In the Madras High Court
Case No : T.C. (R) No. 34 of 2015

State of Tamil Nadu

APPELLANT

Vs

Tvl. Bata India Limited

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2(r), 39-B (3)

Citation : (2015) 04 MAD CK 0365

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : Manoharan Sundaram, AGP (Taxes), for the Appellant

Judgement

R. Sudhakar, J—This Tax Case (Revision) is preferred by the Department aggrieved against the orders passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in T.A. No. 88 of 2006.

2. The respondent in this case is a dealer in footwear and an assessee on the files of the Assistant Commissioner (CT) Zone IX, Chennai. The assessment in this case relate to the assessment year 2001-2002.

3. The issue involved in this case is that the Assessing Officer had rejected the claim of deduction from the total turnover, the sales tax portion, on the ground that though sales tax was not charged separately, the bills revealed that the dealer had charged the cost of goods including sales tax and not collected tax separately and in terms of Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, any amount collected by a dealer by way of tax should not be included in the turnover. Accordingly, the Assessing Officer revised the assessment levying tax on the entire amount without giving the benefit of the taxable portion of the turnover. The appeal by the assessee to the first appellate authority was futile against which an appeal was filed before the Tribunal.

4. The Tribunal, while holding that the turnover in question based on bills show

that it is inclusive of all taxes and that the books of accounts relating to the turnover clearly show breakup of sales tax payable on the goods sold, consequently, placing reliance upon the decision of this Court in *Bata India Ltd. v. State of Tamil Nadu* (T.C. (R) Nos. 1725/08, 1736/08 & 7/09 dated 4.1.2013) came to the conclusion that there was nothing wrong in collecting the gross sale price in the sale invoices and subsequently bifurcating the taxable turnover and tax element in the books of accounts and such, the assessee was eligible for deduction on the tax element shown in the books of accounts and set aside the order of assessment. Against the above said order of the Tribunal, the Department is before this Court by preferring the above revision.

5. The following substantial questions of law arises for consideration in this revision:--

"1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that it is not necessary to show the sale price separately in the invoice and that is sufficient if it is shown separately in the books of accounts?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the explaining the scope of (1-A) of Section 2(r) of TNGST Act that if sale price is shown in the books of accounts, it is sufficient to get deduction amounts even though the sale invoice contains lump sum amount inclusive of tax without charging the tax elements separately?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in not following the order of this Hon''ble Court in Tax Case (Revision) Nos. 1218 and 1242 of 2006 dated 19.09.2011 and W.P. No. 37025 of 2002 dated 01.04.2004?

4. Whether the facts and circumstances of the case, the Tribunal was right in law in deleting the consequential penalty?"

6. Mr. Manoharan Sundaram, learned Addl. Government Pleader (Taxes) appearing for the petitioner/Revenue fairly submits that the issue involved in this case has already been decided by this Court in case of the very same assessee for the assessment years 1987-88 to 1989-90 in T.C.(R) Nos. 837, 847, 857, 867 and 868 of 2006 dated 04.01.2013.

7. In the decision dated 04.01.2013 in T.C.(R) Nos. 837, 847, 857, 867 and 868 of 2006 (*The State of Tamil Nadu V. Tvl. Bata India Limited*), this Court, while considering the similar issue in respect of the very same assessee, following the decision in the case of *S.M. Garments V. State of Tamil Nadu*, held as follows:

"4. The learned Government Advocate (Taxes) fairly stated that in the present Tax Case Revisions, the Revenue does not raise the question relating to merits of the case i.e., Whether the sales tax and surcharge charged would form part of the turnover and whether the assessee is entitled to deduction as per Explanation (1A) to Section 2(r) of the Tamil Nadu General Sales Tax Act. Further, he brought to the notice of this Court that on merits, the issue is

squarely covered by this Court judgment dated 09.03.2012 in Tax Case Revision No. 1443 of 2006 in the case of Tvl. S.M. Garments, 743, Poonamallee High Road, Chennai-600 010 v. The State of Tamil Nadu, rep. By the Deputy Commissioner (CT), Chennai (Central) Division, Chennai-600 006, wherein, in paragraph 6 and 12, it was held as follows:

"6. In the present case, the petitioner/assessee had sold goods and charged his customers the price of goods and sales tax, surcharge and additional surcharge payable thereon. It is also seen that the sale bills also disclosed the amount charged, which was inclusive of sales tax. Further the assessee has maintained the books of accounts and the same also disclosed the price of goods, sales tax, surcharge and additional surcharge collected from the customers. The amounts collected by way of sales tax is Rs. 1,06,664/-. The above amount was not included in the turnover and the same was accepted by the assessing officer while completing the original assessment. The details regarding the amount collected by way of sales tax, surcharge and additional surcharge are as follows:

From a reading of the above, it is clear that both the seller and buyer know that the price of goods also includes sales tax on the goods sold. The relevant provision for our consideration is Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, which reads as follows:

"Section 2(r) "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, and rubber (natural rubber, latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgage, tenant or otherwise, shall be excluded from his turnover.

Explanation(1-A) -Any amount charged by a dealer by way of tax separately without including the same in the price of the goods bought or sold shall not be included in the turnover."

The said explanation was amended from 01.01.1987. The word "turnover" is defined in Section 2(r) of the Act and it is related to the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration. So, the turnover has a specific meaning and that has to be taken into consideration for the purpose of levying tax. The Explanation was added, which says that the tax charged by the dealer should be shown separately otherwise, the same cannot be given deduction. The relevant issue for our consideration is whether the dealer has charged the tax

and the same was shown separately. But the Explanation does not specify that it should be shown in the invoice. The scope of the Explanation was considered by the Supreme Court in the case of *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, AIR 1985 SC 582 : (1985) 1 SCALE 74 : (1985) 1 SCC 591 : (1985) 2 SCR 643 and paragraph 52 reads thus:

52. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same." From a reading of the above, it is clear that the Explanation is to explain the meaning and intendment of the Act and also to clarify and support the dominant object of the Act and it cannot interfere with or change the enactment or any part thereof, which is relevant for the purpose of the Explanation. After considering the same, we find that the definition Clause in Section 2(r) of the Act is only to tax on the turnover and the intention of the Act is not to charge tax on tax. The view of the lower authority is that it is not shown in the invoice. Merely the tax amount collected from the purchaser was not shown in the invoice alone is not sufficient to include in the turnover. If it is shown other than in the invoice, the same also should be taken into consideration and the benefit should be given to the assessee. In the present case, it is reflected in the books of accounts and both the buyer and seller know what is the price of the goods and what is the component of the tax. It is not a notional amount, as the actual amount of tax was charged and the same was collected from the buyer and also paid to the Government. Therefore, in the present case, the assessee has shown it in the books of account separately and also the buyer, who buys goods also know what is the sale price of the goods and also the tax component of the goods. When the books of account reflected the correct position that the tax component is shown separately apart from sale price and the genuinity of the same was not questioned by the assessing officer or any of the authorities below, the authorities should not reject the claim of the assessee, as otherwise it would amount to tax on tax. Whenever the legislature

wanted to emphasise a particular mode should be adopted for the purpose of deduction, the same should be explicitly stated so in the provision.

12. This Court, in the case of THE STATE OF TAMIL NADU V. ULTRAMARINE AND PIGMENTS LTD. AND ANOTHER cited supra has taken a view that it is not necessary to show separately in the sales bills the sales tax collected for the purpose of claiming benefit of the Board's instructions not to include sales tax in the taxable turnover. Taking into consideration of the principles enunciated in the above judgments, the scope of Explanation and tax as well as the sales price shown in the accounts of the assessee separately and the seller and buyer know the details, we are of the view that the view taken by the Tribunal is not in accordance with law. Therefore, we set aside the order of the Sales Tax Appellate Tribunal and restore the order of the Appellate Assistant Commissioner and answer the question in favour of the assessee and against the Revenue. Accordingly, the above Tax Case Revision is allowed. No costs. "

The same view was taken by this Court in T.C.(R). No. 1928 of 2006 in the case of M/s. Garware Nylons Limited, 72, Thayar Sahib Street, Madras-2 v. The State of Tamil Nadu, rep. By the Commercial Tax Officer, Triplicane Assessment Circle by order dated 08.06.2012. Following the above judgment, there is no dispute with regard to the merits of the case and it is in favour of the assessee. However, in all the above Tax Case Revisions, the Revenue raised only jurisdiction point i.e., Question No. 1 with regard to the correctness of the Tribunal in accepting the explanation given and documentary evidence adduced for the first time before it contrary to Section 39-B (3) of TNGST Act. When we perused the documents, we find that the said question was not raised before the Sales Tax Appellate Tribunal. The Government Advocate (Taxes) appearing for the Revenue also fairly stated that they did not raise the said question before the Tribunal and they are raising the jurisdiction aspect only for the first time before this Court by way of question of law. We feel that the question now raised by the Revenue is only academic in nature, since the issue is squarely covered by the above cited judgment dated 09.03.2012 in Tax Case Revision No. 1443 of 2006. Hence, the first question does not arise for consideration by this Court and accordingly, the same is dismissed."

8. A perusal of the earlier decision of this Court on the very same issue, where Explanation (1-A) to Section 2(r) of the Act has been interpreted to mean that where even the sale bill is inclusive of the tax, if there is material to show that the account books are available to show correspondingly that tax has been separately collected and paid out to the Government, the question of excluding the tax component from the total turnover does not arise.

9. We also notice that in the explanation, the intentment of the statute is that any amount charged by the dealer by way of tax separately, without including the same in the price of the goods bought or sold, shall not be included in the turnover. This is to mean that tax collected will not be included in the turnover. There is no specification or indication in Explanation (1-A) that tax collected

should be shown separately in the bill and only then it shall be excluded in the turnover.

10. In view of the proposition of law as enunciated by this Court in Bata India case (supra), which clearly negatives the stand taken by the Revenue with regard to interpretation of Explanation (1-A) to Section 2(r), the present revision being filed on similar set of facts and law, this Court is of the considered opinion that the revision filed by the Revenue has to necessarily fail, as the decision in S.M. Garments case and Bata India case (supra) are squarely applicable to the facts of the present case. In view of the binding precedent, no question of law, much less substantial question of law arises for consideration in this petition.

11. In the result, finding no merit, this tax case (Revision) is dismissed. No costs.