(1995) 02 MAD CK 0040

In the Madras High Court

Case No : Tax Case (R) No. 1067 of 1983

State of Tamil Nadu APPELLANT

Vs

Ultramarine Pigments Ltd. RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Citation : (1995) 02 MAD CK 0040

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petition herein. Before the assessing officer, the assessee claimed exemption of Rs. 44,227.17

and Rs. 23,267.01, totalling to Rs. 67,494.18, since the sales were not fructified.

2. The assessment year involved in this revision is 1976-77. The assessing officer found that out of the claim Rs. 44,227.17, the claim for Rs.

24,713.79 is barred as it related to the assessment year 1975-76. Similarly in respect of detergent (branch) to the claim to the tune of Rs.

3,308.88 was also found time-barred. In view of this, the assessing officer, disallowed the claim and accordingly levied tax at 8 per cent. on Rs.

24,713.79 and 5 1/2 per cent. on Rs. 3,308.88. On appeal, the Appellant Assistant Commissioner confirmed the order passed by the assessing

officer. On further appeal before the Tribunal, the assessee made an alternative plea that inasmuch as the same goods were taxed twice, once in

the assessment year 1975-76 and again in the assessment year 1976-77, the assessee is entitled to refund of sales tax paid. For the assessment

year 1975-76, since goods sold are taxable at single point, the Tribunal accepted this plea put forward by the assessee and granted the relief as prayed for. It is against that order, the department is in revision before this Court.

3. Learned Additional Government Pleader (Taxes) submitted that inasmuch as the assessee has not claimed exemption in the assessment year

1975-76, during which assessment year the goods were returned, the assessee cannot claim exemption in the subsequent year as per the relevant

provisions of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as ""the Act"". Reliance also was placed upon the decision in

Traders and Traders, Importers and Exporters and Manufacturers, Representatives Madras Vs. State of Tamil Nadu, in order to contend that the

claim ought to have been made within six months from the date of return of the goods. Inasmuch as that was not done, it was submitted that the

assessee is not entitled to any exemption as claimed.

4. We have also heard learned counsel appearing for the assessee, who supported the order passed by the Tribunal. The fact remains that the

assessee offered to sell the goods in the assessment year 1975-76 and the same was returned. Hence the sale was not fructified. But, the tax on

the intended sale turnover was collected by the department. The assessee claimed return of the tax in the subsequent assessment year, viz., in

1976-77. It is the contention of the department that the return of the tax can be claimed within six month from the date of return of the goods as

per the decision of this Court on this aspect and the provision contained in rule 5B of the Tamil Nadu General Sales Tax Rules, 1959. But, the

assessee submitted that the goods which were returned in the assessment year 1975-76 were sold in the assessment year 1976-77. The goods are

liable to tax at single point. Therefore, it was submitted that the sale turnover of the same goods cannot be taxed once again in the assessment year

1976-77. This plea put forward by the assessee is acceptable in view of the decision of this Court rendered in Peico Electronics & Electricals Ltd.

v. State of Tamil Nadu 1990 78 STC 88 wherein on this aspect, this Court held as under :

One more important factor is, that the goods returned as a result of unfructified sales and taken delivery of by the appellant were sold again, and

the Revenue has collected tax on that. This fact was also brought to the notice of the Board of Revenue by the learned counsel appearing for the

appellant. However, that was squarely met by the Board of Revenue in its order, except stating that the assessee has to be blamed for the same. In

any event, the Revenue is not entitled to get the tax collected twice on the same goods while the goods are exigible, to tax on a single point. But we

may make it clear that we are not basing our decision on this ground alone. We are satisfied that in the facts and circumstances of the case and in

the light of the principles laid down by this Court and the Supreme Court, the turnover in question represents the unfructified sales and, therefore,

the tax paid on those ""unfructified sales"" is liable to be returned, and the rejection on the ground that the claim was not made in time treating the

same as ''sales returns'', cannot be sustained.

Thus, inasmuch as the goods sold in the year 1976-77 is taxable at single point and inasmuch as the same goods were taxed in the assessment year

1975-76, the plea put forward by the assessee for deduction on the turnover of Rs. 23,731 at 8 per cent. and of Rs. 3,004 at 5 1/2 per cent. from

the turnover assessed to tax in the assessment year 1976-77 is acceptable, especially in view of the above cited decision of this Court. Therefore,

we see no infirmity in the order passed by the Tribunal in allowing the claim put forward by the assessee in this regard.

5. Accordingly the revision is dismissed. No costs.

6. Petition dismissed.

