

(1995) 04 MAD CK 0037

In the Madras High Court

Case No : Tax Case (Revision) No. 1315 of 1984

State of Tamil Nadu

APPELLANT

Vs

Union Carbide India Ltd.

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3)

Citation : (1995) 04 MAD CK 0037

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

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; Anand David, for M/s. King and Partridge, for the Respondent

Judgement

Thanikkachalam, J.—The State is the petitioner. The assessee is M/s. Union Carbide India Ltd. At the time of check of accounts, the

department came to know that the accounts revealed that calendar sales of Rs. 46,500 have not been accounted for in the accounts. The assessing

officer proposed to levy penalty u/s 12(3) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"), since the turnover

on calendar sales was not disclosed either in the accounts or in the returns filed by the assessee, for the assessment year 1977-78. The assessee

explained that it acted as intermediary between its clients and M/s. Prasad Process Private Limited and arranged to print the calendars and the

property in the goods did not pass through it and hence the assessee is not liable to tax on the sales on calendars. The assessee relied upon sales

turnover in the returns. Accordingly, the penalty imposed was cancelled. It is against that order, the State is in revision before this Court.

2. Mrs. Chitra Venkataraman, the learned Additional Government Pleader,

submitted that admittedly, the assessee placed orders for printing the calendars and distributed the said calendars to its constituents and collected the value of the calendars. The sale value of the calendars was not disclosed either in the account books or in the returns filed by the assessee. There is no evidence on record to show that the assessee has acted as an intermediary between M/s. Prasad Process Private Limited and the Calcutta party. There is also no evidence on record to show that the value of the calendars collected from the constituents were paid back to the Calcutta party, on whose behalf orders were said to have been placed for printing the calendars. The learned Additional Government Pleader pointed out that the decision reported in Madurai Kaithari Javuli Urpathiyalargal Sangam Ltd. v. State of Tamil Nadu 980 45 STC 473 Mad would not be applicable to the facts of the present case. Since the assessee in the present case failed to disclose the sale turnover of calendars, either in the account books or in the returns filed by the assessee, it is stated that the Tribunal was not correct in setting aside the penalty, relying upon the decision in Madurai Kaithari Javuli Urpathiyalargal Sangam Ltd. and Another Vs. State of Tamil Nadu,

3. On the other hand, Mr. Anand David, the learned counsel appearing for the respondent, would submit that the assessee had acted only as an intermediary between the Calcutta party and the party to whom the calendars were distributed, that orders were placed for printing the calendars in accordance with the directions of the Calcutta party, that even though the assessee paid the charges to the printers and collected the charges for calendars from the constituents, such collection was repaid to the Calcutta party and that therefore there is no sale turnover in the case of calendars, liable to be included in the assessment of the assessee. It is further submitted that in view of the decision reported in Madurai Kaithari Javuli Urpathiyalargal Sangam Ltd. and Another Vs. State of Tamil Nadu, the Tribunal was correct in cancelling the penalty levied by the authorities below.

4. We have heard the rival submissions. On the scrutiny of accounts, the department came to know the sale turnover of calendars amounting to Rs. 46,500 was not included in the account books. It was also not disclosed in the returns filed by the assessee for the assessment year 1977-78.

Therefore, penalty proceedings were initiated u/s 12(3) of the Act. The assessee submitted that it acted only as an intermediary by placing orders for printing the calendars to M/s. Prasad Process Private Limited, who printed the calendars. Calendars were distributed to the constituents on payment of charges. These charges collected by the assessee, were remitted back to the Calcutta party, on whose behalf the calendars were printed. Therefore, it was submitted that the sale turnover on calendars was not includible in the assessment of the assessee. According to the assessee, there is no wilful non-disclosure of this turnover warranting penalty u/s 12(3) of the Act.

5. But, it remains to be seen that admittedly, the assessee placed an order for printing of calendars, to M/s. Prasad Process Private Limited, the printing charges were paid by the assessee, the calendars were handed over to the assessee and the assessee distributed the calendars to its constituents on payment of charges. Up to this point, the facts were accepted by the assessee. The assessee submitted that the sale price collected for calendars was remitted back to the Calcutta party on whose behalf the calendars were printed. For this aspect, there is no evidence on record on the side of the assessee to accept the contention put forward by the assessee. Admittedly, the assessee has not disclosed the payment of money, for printing the calendars. The charges for the calendars collected by the assessee from its constituents were also not disclosed in its accounts. There is also no evidence to show that the charges collected for printing the calendars were remitted back to the Calcutta party.

Therefore, in the absence of proper materials on record to support the contention put forward by the assessee, we are not in a position to accept the case of the assessee that there is no mala fide intention on the part of the assessee in not disclosing the turnover on sale of the calendars either in the books of accounts or in the returns. In the decision in *Madurai Kaithari Javuli Urpathiyalargal Sangam Ltd. and Another Vs. State of Tamil Nadu*, it was held that "having regard to the correspondence that passed between the Textile Control Officer and the assessee and also between the State Trading Corporation and the assessee, it was clear that the assessee was acting only as a kind of a mutual concern rendering some kind of help to its members. Its role in the scheme of the distribution of the dyes and other substances obtained from the State Trading Corporation was

only that of an intermediary between its members on the one hand and the textile control authorities and the State Trading Corporation on the other. It did not have any property in the goods which it transferred to its members. The fact that the assessee gave C forms would also not stand in the way of its being a mere intermediary or go-between, so as not to be a dealer. The assessee was therefore not liable to sales tax". But the facts of the present case are different. The assessee accepted the payment of printing charges and also accepted the collection of charges for the calendars from the constituents. But, there is no evidence on record to show that such charges collected by the assessee were handed over to the Calcutta party, on whose behalf the calendars were said to have been printed. Under such circumstances, we are unable to support the order passed by the Tribunal in cancelling the penalty levied. In that view of the matter, the impugned order of the Tribunal is set aside and the order passed by the Deputy Commissioner (CT) who is the appellate authority is restored. The Tax Case Revision No. 1315 of 1984 is therefore allowed. No costs.

6. Petition allowed.