(1995) 01 MAD CK 0040

In the Madras High Court

Case No : Tax Case (Revision) Petition No. 1021 of 1983

State of Tamil Nadu — APPELLANT

Vs

Van Vanaspathy Udyog — RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:
Central Sales Tax Act, 1956 — Section 6

Citation : (1995) 01 MAD CK 0040

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

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader, for the Appellant; Pramodh Kumar Chopda, for the Respondent

Judgement

Thanikkachalam, J.—The department is the petitioner herein. In the place of business of the assessee there was an inspection by the

Enforcement Wing on September 25, 1980. A verification of the records reveals that exemption was claimed to an extent of Rs. 1,84,336.80 on

the following transactions as sales u/s 6(2) of the Central Sales Tax Act, 1956. E. 1 sales is not in order. The first transaction relates to invoice No.

VVU/MDS/58, dated July 17, 1980, for Rs. 31,039.10. The assessee had clear the goods through the clearing agent and delivered locally as per

the delivery challan No. 58 dated July 17, 1980, issued and the direction given to the clearing agent in accordance with their letter dated July 18,

1980 and the payment receipt obtained from the clearing agent. It has been specifically stated in the letter to clear the consignment, arrange to

deliver the same at their godown at Royapuram as usual. The second addition of Rs. 1,53,297.70 relates to invoice No. VVU/MDS/68, dated

August 8, 1980. According to the assessing officer, in this case, the goods were delivered locally as per the delivery challan No. 68/8-8-1980.

According to the assessing officer goods sold is not the same as mentioned in the purchase bill. In the purchase bill the grade of the goods has been

noted as ""opaque"" whereas in the sale bill it has been noted as K.H.D. On the basis of these abovesaid two invoices, the assessing officer made

the above two additions. On appeal, the Appellate Assistant Commissioner confirmed the order of the assessing officer since according to the

Appellate Assistant Commissioner both the transactions relate to local sale and not sale in transit.

2. Aggrieved, the assessee filed appeal before the Appellate Tribunal. The Appellate Tribunal considered that both these items of sales are not

local sales but sales in transit. Therefore, the Tribunal deleted both the additions relating to the abovesaid transactions. It is against this order, the

department is in revision before this Court. The principle of law that has to be followed in a matter like this has been stated by this Court in the

decision reported in the case of State of Tamil Nadu v. N. Ramu Bros. (Electricals) 1993 89 STC 481. In [1993] 89 STC 481 [State of Tamil

Nadu v. Ramu Bros. (Electricals)] cited supra it has been stated as under :

It is only if a subsequent inter-State sale is effected by transfer of documents of title to the goods during the movement of the goods from one

State to another pursuant to an earlier inter-State sale that such subsequent inter-State sale would be exempt u/s 6(2) of the Central Sales Tax Act,

1956. If the subsequent sale is effected by any mode other than transfer of documents of title to goods exemption u/s 6(2) cannot be granted at

all.

3. So far as the addition of Rs. 31,039 in relation to invoice No. 58, dated July 17, 1980 is concerned, the learned Additional Government

Pleader for Taxes submitted that the goods were cleared by the agent of the assessee, after the goods reached the destination. Therefore,

according to the learned Additional Government Pleader for Taxes, there is no sale in the transit so as to grant exemption u/s 6(2) of the Central

Sales Tax Act. Learned Additional Government Pleader for Taxes pointed out that no document was shown by the assessee to prove that the sale

took place during transit. It was further submitted that the assessee''s clearing agent cleared the goods and the clearing charges were paid by the assessee. For all these reasons the learned Additional Government Pleader for Taxes submitted that in so far as this item is concerned, the sale did

not take place in transit and hence, exemption u/s 6(2) of the Central Sales Tax Act cannot be granted.

4. On the other hand the learned counsel appearing for the assessee submitted that the sale took place during transit. The goods were cleared even

though by the agent of the assessee, but it was cleared on behalf of the purchaser. According to the learned counsel for the assessee this is a

common practice prevalent in this line of trade. Hence it was submitted that the Tribunal was correct in holding that the sale took place during

transit and exemption u/s 6(2) of the Central Sales Tax Act would be applicable.

5. It remains to be seen that the goods were cleared after it reached the destination. The goods were cleared by the agent of the assessee.

According to the assessee, the goods were cleared by his agent on behalf of the purchaser. There is no evidence on record to show that the agent

of the assessee acted on behalf of the purchaser. The assessee paid the clearing charges. There is also no document to show that the goods were

sold during transit. In the absence of the transfer of documents, it is not possible to accept the contention put forward by the assessee that the sale

took place during transit and the agent of the assessee acted on behalf of the purchaser. Accordingly, we hold that the Tribunal was not correct in

deleting the addition of Rs. 31,039 relating to invoice No. 58.

6. Inasmuch as the assessee is not entitled to exemption u/s 6(2) of the Central Sales Tax Act, with regard to the addition of Rs. 31,039 we

restore the order passed by the Appellate Assistant Commissioner in confirming the addition made by the assessing officer.

7. So far as invoice No. 68 is concerned, the assessee produced transfer of documents to show that the goods were sold in transit. Even though,

the descriptions of the goods are different, the assessee established that the goods were sold during transit and hence, entitled to the benefit u/s

6(2) of the Central Sales Tax Act. The descriptions of the goods were stated differently since the assessee followed description of goods classified

by the Indian Standard Classification. Since this item of sale is second inter-State sale it is exempted u/s 6(2) of the Central Sales Tax Act. In view

of the fact that the railway itself has issued a certificate in favour of the second purchaser, there is no difficulty in coming to the conclusion that the

second sale took place during transit. In view of the foregoing facts, we consider that there is no infirmity in the order passed by the Tribunal by

deleting the addition of Rs. 1,53,297.70 since it is exempted u/s 6(2) of the Central Sales Tax Act. Accordingly, we consider that there is no

infirmity in the order passed by the Tribunal in deleting the abovesaid addition in view of the provisions contained u/s 6(2) of the Central Sales Tax

Act. In that view of the matter revision filed by the department is allowed in part. However, there will be no order as to costs.

8. Petition partly allowed.