(1991) 03 MAD CK 0035

In the Madras High Court

Case No : Tax Case (Revision) No. 1229 of 1981

State of Tamil Nadu APPELLANT

Vs

Vinyl Cable Industries RESPONDENT

Date of Decision : 25-03-1991

Acts Referred:

Citation : (1991) 03 MAD CK 0035

Hon'ble Judges : A.S. Anand, C.J;Raju, J

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant;

Judgement

Dr. A.S. Anand, C.J.—The only question that requires our consideration is whether the sales effected by the respondent-assessee were

local sales to the exporter or export sales through the agents. The assessing authority during the revision of the assessment proceedings relating to

the year 1971-72 came to the conclusion that the transactions were only sales to a local buyer for export and were not, therefore, export sales by

the respondent-assessee. In arriving at this finding the assessing authority did not deal with the contention raised on behalf of the respondent-

assessee that the sales effected to the foreign buyers were in the course of export and were effected through the agents. The first appellate

authority noticed the following contentions raised on behalf of the respondent-assessee with a view to show that the sales effected to the foreign

buyers were in the course of export and effected through the agents of the assessee, M/s. India Motor Parts and Accessories Ltd. :

(a) The agents M/s. Impal, on our advice, offered to supply cables to the foreign buyer and quoted the rate and delivery schedules.

(b) On acceptance from the foreign buyers, the agents informed the principals, the appellants, who started production of the cables.

(c) The cables, as and when they were produced, were despatched through the excise gate pass of the appellants, clearly mentioning the

destination of the goods.

(d) The appellants billed on the agents exactly at the rate quoted to the foreign buyers and the agents were allowed a percentage commission for

acting on behalf of the appellants for effecting the export.

(e) Thus the sales were primarily of export in character and M/s. Impal was not at all a local buyer to attract local tax.

2. After having noticed the contentions raised on behalf of the assessee-respondent, the appellate authority, without considering or discussing the

contentions, rejected the same on the ground that the assessee-respondent had got no records to prove the contention and even went to the extent

of saying that ""they are not interested in prosecuting the appeal"". The contentions of the assessee-respondent were rejected and the appeal was

dismissed. The matter was taken by the assessee-respondent to the Tribunal. The contentions which have been raised by the assessee-respondent

were reiterated before the Tribunal also. The Tribunal, on the facts and circumstances of the case concluded as follows :

Even then in the light of the facts it is clear that there was an agency between the Impal and the appellants. So long as there is proof of agency and

so long as the agent has sent the goods, not as his own but as agent of a principal, there is privity of contract between the principal and the foreign

buyer, even in cases where the agent has not disclosed the name of the principal.

3. The findings recorded by the Tribunal supra, on the basis of the facts and circumstances of the case, clearly established that there was proof of

agency available, even in the absence of a written agreement of agency, from the various factors existing in the transactions between the parties. So

long as proof of agency is there and so long as the agent sent the goods, not as his own but as agent of another principal, unmistakably there is

privity of contract between the principal and the foreign purchaser notwithstanding the fact that the agent did not disclose the name of the principal.

There is no requirement in law that the agent must disclose the name of the Indian principal in respect of the transactions which are entered into with the foreign buyer to establish that the sale is in fact an export sale and not a local sale. The finding recorded by the Tribunal on the basis of the

facts and circumstances noticed in the case that the export made by the assessee-respondent was through the agent and, therefore, the transactions

in question were in the course of export and as such the sales were not exigible to tax under the Tamil Nadu General Sales Tax Act, 1959, is

unexceptionable. The finding is based on proper appreciation of the material on record. It is neither unreasonable nor does it suffer from any other

infirmities. The order of the Tribunal, under the circumstances, does not call for interference. The tax revision case therefore fails and is dismissed.

No costs.

4. Petition dismissed.

