

(1975) 04 MAD CK 0035

In the Madras High Court

Case No : Tax Case No. 265 of 1971 and Revision No. 164 of 1971

State of Tamil Nadu

APPELLANT

Vs

Voltas Ltd.

RESPONDENT

Date of Decision : 10-04-1975

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 8

Citation : (1976) 37 STC 445

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : K Venkataswami, Additional Government Pleader I, for the Appellant; V. Ramachandran, for the Respondent

Judgement

V. Ramaswami, J.—In this revision petition, two points are involved. One is the right of the assessee to claim exemption on a turnover of Rs. 45,325.77 relating to the sale of medicinal preparations containing alcohol u/s 8 read with item 3 of the Third Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act"). The other is the claim of exclusion from the taxable turnover of a sum of Rs. 33,360 representing the Bombay sales tax paid in Maharashtra State by the assessee on their purchase of tractors. For the assessment year 1966-67, the respondent-assessee submitted a total taxable turnover of Rs. 4,18,58,543.98 and Rs. 2,68,03,833.90, respectively, and had claimed exemption to an extent of Rs. 4,97,450.74 on the ground that they represented sales of medicinal preparations containing alcohol and, therefore, u/s 8 read with item 3 of the Third Schedule, they are exempt. The Appellate Assistant Commissioner gave a relief except to an extent of Rs. 45,325.77. The rejection in respect of this amount was on the ground that there was no proof of payment of excise duty on this sum of Rs. 45,325.77 on the entire quantity, and not merely on the ingredients. When this matter came up before the Tribunal, the assessee produced evidence to show that they have paid excise duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, on their entire quantity. Therefore, the Tribunal allowed this sum of Rs. 45,325.77 also.

2. It is seen from the evidence that the assessee had paid duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, in the State of Maharashtra. We have held today in *Orient Pharma Private Ltd. v. Government of Tamil Nadu* [1976] 37 S.T.C. 437 (T. C. No. 65 of 1973, etc.) and *State of Tamil Nadu v. Calcutta Chemical Co. Ltd.* [1976] 37 S.T.C. 443 (T. C. No. 120 of 1970, etc.), that such goods are not liable for exemption u/s 8, both on the ground that the duty is not paid in this State and also on the ground that the payment of duty under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, does not make the goods exempt from tax u/s 8 read with item 3 of the Third Schedule. Therefore, the revision petition filed by the revenue so far as it related to the exemption of Rs. 45,325.77 has to be allowed.

3. The other point related to the amount of sales tax paid by the assessee in the Maharashtra State on the purchase of tractors. The respondent-assessee purchased tractors in Maharashtra and brought them to this State and sold them to various persons. The sale of tractors is governed by the Price Control Order notified by the Government of India under the Essential Commodities Act, 1955. Under that Order, a dealer cannot sell the tractors exceeding the sale price fixed under Clause 4 of that Order. "Sale price" is defined as meaning the amount payable to a manufacturer or dealer as consideration for the sale of a tractor inclusive of any charges for cost of freight or delivery, but exclusive of any sum charged as tax on the tractor as a finished product. In exercise of the power under Clause 4, the Government of India fixed the price of tractors at Rs. 20,900 each. While selling these tractors to the various persons in this State, the assessee charged the sale price of Rs. 20,900 for each of these tractors and added to this money the sales tax paid by them to the Maharashtra Government and the sales tax payable under the Tamil Nadu General Sales Tax Act separately. The assessing authority wanted to include the sales tax paid to the Maharashtra Government by the assessee in the taxable turnover of the assessee. The assessee contended that the tax which is separately shown is not part of the price of the articles sold, and, in fact, they are not entitled to sell the tractors for more than the price fixed under the Price Control Order. The assessing authority rejected this claim on the ground that the Control Order came into effect only on and from 30th March, 1967, but the transactions in this case were between 2nd March, 1967, and 30th March, 1967. At the appellate stage, the assessee pointed out that though the Control Order as such was issued on 30th March, 1967, the Government of India by their letter dated 2nd March, 1967, had written to them that they have fixed the price for each tractor at Rs. 20,900 and that the price fixed by them had come into immediate effect, that therefore, they bona fide thought that the Price Control Order has come into effect even from 2nd March, 1967, and that they have charged the sales tax and the price of tractor also separately. The Tribunal accepted this contention and held that the sales tax paid by the assessee to the Maharashtra State is not liable to be included in the taxable turnover. We are in entire agreement with this part of the order of the Tribunal. Though it might be argued that the assessee need not have given effect

to the Order of the Government of India in their letter dated 2nd March, 1967, we do not think that an assessee could have ignored this letter with impunity. Further, whether this letter had any legal effect or not, when the Government of India had fixed the price and the dealer was charging that price and separately collecting sales tax, we cannot hold that the dealer intended to include the sales tax in the price of the tractor itself. The Price Control Order itself, which later on came to be made under the Essential Commodities Act, injuncted the dealer from selling the tractor at a price exceeding the sale price fixed by the Government of India. Therefore, we have no doubt that the sales tax paid by the dealer to the Maharashtra Government and collected by them when they sold tractors to the various purchasers in this State under the separate heading is not liable to be included in the taxable turnover of the assessee. We, therefore, dismiss the revision in so far as this point is concerned.

4. Accordingly, the order of the Tribunal is set aside in so far as it related to the turnover of Rs. 45,325.77 relating to the sale of the medicinal and toilet preparations, and in other respects, the order of the Tribunal is confirmed. The revision is accordingly partly allowed. There will be no order as to costs.