

(1980) 12 MAD CK 0036

In the Madras High Court

Case No : Tax Case No. 517 of 1977 and Appeal No. 39 of 1977

Sudarsan Trading Company Ltd.

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-12-1980

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1981) 48 STC 366

Hon'ble Judges : Venugopal, J;V. Ramaswami-II, J

Bench : Division Bench

Advocate : S.P.L. Palaniappa and A.L. Somayaji for Aiyar and Dolia, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramaswami, J.—The assessee is a manufacturer and dealer among others in mango juice. For the assessment year 1971-72 by an

assessment order dated 26th October, 1972, the assessing officer determined the total and taxable turnover of Rs. 4,23,494 and Rs. 41,504

respectively. In determining this taxable turnover the assessing officer had allowed an exemption on a turnover of Rs. 3,81,990 on the ground that

it represented export sales of mango juice to Russia, through the State Trading Corporation, in the light of the judgments then prevailing. Later the

assessing officer initiated proceedings u/s 16 on the ground that the export was by the State Trading Corporation and there was a local sale by the

dealer in favour of the State Trading Corporation. After following the procedure prescribed by an order dated 6th August, 1973, the assessing

officer revised the assessment by including the turnover of Rs. 3,81,990 also in the taxable turnover. The assessee preferred an appeal to the

Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that in all the bills of lading, the appellant was shown as a shipper though for and on account of the State Trading Corporation and that in the invoice also it is mentioned clearly that the goods have been shipped against the order of the State Trading Corporation of India. The Appellate Assistant Commissioner also pointed out that though there are two different contracts, one by the State Trading Corporation with the Russian importer and another by the State Trading Corporation with the dealer, these two contracts have to be read together since the contract by the State Trading Corporation with the dealer was entered into in order to give effect or comply with the contract entered into by the State Trading Corporation with the Russian importer. In particular, the Appellate Assistant Commissioner pointed out that the dealer was made liable to comply with all the terms and conditions which the State Trading Corporation had to perform with reference to the contract entered into by it with the foreign importer. Viewing this as an integrated transaction and the agreement cannot be construed as mutually exclusive and in the light of the mode of preparation of the bills of lading and the invoices, the Appellate Assistant Commissioner held that they are all export sales and exempt from local sales tax. The Board of Revenue took suo motu proceedings probably in view of the later judgment of the Supreme Court in *Serajuddin and Others Vs. The State of Orissa*, . After following the procedure and after giving an opportunity to the appellant the Board held that the contract between the State Trading Corporation and the foreign buyer was independent and distinct from the contract between the local seller and the State Trading Corporation, that there was no privity of contract between the foreign importer and the local supplier, and that there was a sale by the dealer to the State Trading Corporation which attracted local sales tax. For this view, the Board relied on the decision in *Serajuddin and Others Vs. The State of Orissa*, . Since out of the five contracts which represented the total turnover of Rs. 3,81,990, one transaction was a direct export by the dealer from Cochin, that was omitted and the turnover of Rs. 2,73,240 covered by the other four transactions were held liable to sales tax. Accordingly, the order of the Appellate Assistant Commissioner deleting the turnover of Rs. 2,73,240 was set aside and the order of the assessing officer was restored to that extent. It is against this order of the Tribunal this

appeal has been preferred by the dealer.

2. In view of the decision of the Supreme Court in *Serajuddin and Others Vs. The State of Orissa*, , the learned counsel for the assessee-appellant

could not argue that the two contracts between the State Trading Corporation and the foreign importer and the State Trading Corporation and the

assessee were not to be treated as two independent contracts. If they are treated as independent contracts there being no privity of contract

between the assessee and the foreign importer the decision in *Serajuddin and Others Vs. The State of Orissa*, would clearly apply and the Board's

order would not be liable to be interfered with. But the learned counsel relying on certain observations in the later decision of the Supreme Court in

Murarilal Sarawagi and Others Vs. The State of Andhra Pradesh, contended that on the facts of this case it may be considered that the contracts

cannot be considered to be independent contracts and it is an integrated activity and that therefore even in respect of the four transactions there

was an export sale entitling an exemption. The passage relied on by the learned counsel in *Murarilal Sarawagi and Others Vs. The State of Andhra*

Pradesh, reads as follows :

The decision in *National Tractors, Hubli Vs. Commissioner of Commercial Taxes, Bangalore*, made no reference to the decision of this Court in

Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, . The correct law is laid down by this court in *Coffee Board,*

Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, and the *Serajuddin and Others Vs. The State of Orissa*, . The law is this. It

has to be found out whether the contracts between the merchants and the corporation are integrated contracts in the course of export or they are

different. If they are different contracts, as they are in the present case, the last purchaser within the State is the M.M.T.C.

3. There is a finding, as already stated, in this case that the two contracts between the State Trading Corporation and the foreign buyer and the

State Trading Corporation and the assessee are different contracts. There are also no grounds for holding that they are integrated contracts. The

contract entered into by the State Trading Corporation with the foreign buyer is dated 11th May, 1971. It is admitted that that contract does not

refer to the assessee as such. Therefore, it would have been open to the State

Trading Corporation to purchase mango juice from anybody in the market and not particularly from the assessee herein. The contract between the State Trading Corporation and the assessee is dated 21st May, 1971. Of course, this contract refers to the contract entered into by the State Trading Corporation with the foreign buyer. But from this fact it cannot be stated that it is an integrated activity connecting the assessee with the foreign importer. There should be something from which a direct connection between the foreign buyer and the local seller could be inferred from the contracts in order to enable the two contracts to be considered as integrated. Probably if there was only one manufacturer of mango juice and the foreign buyer wanted that to be supplied by the State Trading Corporation it might be possible for the assessee to contend that the two contracts are an integrated contract and that for all purposes it will have to be treated as one giving privity of contract between the assessee and the foreign buyer. Though in the bills of lading the appellant's name was shown as the shipper it is specifically made as for and on account of the State Trading Corporation. The individuality of the shipper therefore could not be maintained. Similarly, even the invoices clearly refer to the shipment of the goods against the order of the State Trading Corporation. In these circumstances, we are unable to agree with the learned counsel that the two contracts in this case should be treated as an integrated contract. The order of the Board of Revenue therefore is not liable to be interfered with. The appeal is accordingly dismissed. The respondent will be entitled to his costs. Counsel's fee Rs. 250.

4. Appeal dismissed.