(1997) 12 MAD CK 0140

In the Madras High Court

Case No : Tax Case Revision Petition No''s. 528 of 1993 and 541 of 1994 and Revision No''s. 317 of 1993 and 252 of 1994

Tan India Limited APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 9(2A)
Tamil Nadu General Sales Tax Act, 1959 — Section 12(4), 12(5)

Citation : (2003) 133 STC 311

Hon'ble Judges : K.P. Sivasubramaniam, J;Janarthanam, J

Bench : Division Bench

Advocate : N. Inbarajan, in T.C.R No. 528 of 1993 and K. Elango, Government Advocate Taxes in T.C.R No. 541 of 1994, for the Appellant; N. Inbarajan in T.C.(R) No. 541 of 1994 and K. Elango, Government Advocate (Taxes) in T.C.(R) No. 528 of 1993, for the Respondent

Judgement

Janarthanam, J.—Desirable it is, to dispose of these revisions--the former and latter ones, being filed at the instance of the assessee and the Revenue respectively--by a common order, inasmuch as the points or issues involved are common relatable to the assessment year 1988-89.

2. The assessee-company Tvl. Tan India Limited, Kumarapa-layam are manufacturers of cement. The cement manufactured by them, it is said, are sold intra-State and inter-State. The head office of the assessee-company is located at Kumarapalayam. It is having its factory at Katterikuppam. It is having a branch at Palghat in Kerala State.

3. During the assessment year 1988-89, it appears, the ultimate buyers at Kerala State placed specific orders at Palghat branch for delivery of cement to them. The orders so placed at the branch at Palghat, it appears, had been transmitted to the Head Office at Kumarapalayam. The Head Office, in turn, it is said, directed the factory to effect despatches in conformity with the orders placed by

the identifiable ultimate buyers at Palghat. The factory, in turn, effected despatches either to those ultimate buyers directly or by sending the consignment to Palghat branch and then effected delivery to those ultimate buyers therein. The Palghat branch, it appears, prepared the invoices there, received the sale price of cement from various ultimate buyers and thereafter, transmitted the amount so collected to the Head Office.

4. The assessee-company claimed, during the course of assessment by the assessing officer, that the aforesaid transactions amounted only to "stock transfer to its branch of Palghat for open market sales" and, therefore, not exigible to tax.

5. (a) The claim so made, however, had been rejected by the assessing officer and he, in turn, treated the transactions, as inter-State sales and levied tax at the appropriate rate, in the absence of production of "C" forms.

(b) The assessing officer also imposed penalty at 150 per cent of the tax due upon the assessee-company for filing incorrect and incomplete return u/s 12(5) (iii) of the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959--for short, "TNGSTA") read with Section 9(2-A) of the Central Sales Tax Act, 1956 (Act No. 74 of 1956--for short "CSTA").

6.(a) The Appellate Assistant Commissioner (CT), Erode for short "AAC"), on appeal, did not agree with the claim of the assessee-company that the entirety of the transactions represented only "stock transfer to its branch office at Palghat" and, therefore, not exigible to tax and approved of the stand taken by the assessing officer that the said transactions represented only inter-State sales.

(b) He also confirmed the penalty of 150 per cent of the tax due, as had been imposed upon the assessee-company by the assessing officer.

7. The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore-18 (for short "Tribunal"), on further appeal, found that all the transactions, excepting the despatches effected in favour of the three identifiable ultimate buyers in Kerala, namely, (i) Memory Traders, Veradiyam, (ii) P.M. Abdul Rahman, Ponani and (iii) O.K. Mustafa, Chempecheri found to be inter-State sales exigible to tax at appropriate rate, as found by the authorities below, namely, the assessing officer and AAC. He, however, found that the despatches effected to those three traders, as stated above, represent only "stock transfer to its branch at Palghat" and, therefore, not exigible to tax, under CSTA. The rationale or reasoning given by the Tribunal for holding that the despatches effected to the three traders as stated above represented only branch transfer, is that these despatches were not directly effected to the said traders ; but on the contrary, the despatches were effected to them through the branch office at Palghat and that is all and nothing further. The Tribunal, however, reduced the penalty to fifty per cent of the tax due.

8. The former action--Tax case (Revision) No. 528 of 1993 had been resorted to

by the assessee-company challenging the disallowed claim of exemption by the Tribunal relatable to "stock transfer" for open market sale, besides holding of penalty to the extent of fifty per cent of the tax due, while the latter action--Tax Case (Revision) No. 541 of 1994 had been resorted to by the Revenue challenging the allowed portion of the claim in favour of the assessee-company relatable to branch transfers, that is to say, despatches effected to three specified traders through the branch holding them as "Branch transfers" besides, reduction of the penalty to the extent of hundred per cent.

9. From the submissions of Mr. N. Inbarajan, learned counsel appearing for the assessee and Mr. K. Elango, learned Government Advocate (Taxes) representing the Revenue, the one and only point that crops up for consideration is as to

"Whether the order of the Tribunal, as stated above, on the facts and in the circumstances of the case, is sustainable in law ?"

10. The point : It appears, during the course of arguments, before the Tribunal, a memo had been filed by learned counsel for the assessee-company detailing the despatches effected of all the goods, not directly earmarked to the ultimate customers at Kerala State and the memo so filed is traceable to page 21 of the typed set filed in T.C. (R) No. 541 of 1994. From a perusal of the memo so filed, it is seen that it contains details relatable to six ultimate buyers, namely, (i) T. Abdul Majeed, Idakkara, Malapuram district; (ii) Ladikkalkunchi Mohideen, Kottakkal ; (iii) I.S.M. Industries, Olavacode ; (iv) Metre Trading Co. ; (v) M.M.T. Traders, Arangothrikara and (vi) E.S.M. Trading, Olavacode, for whom, the goods were not directly earmarked, but, however, the goods had been sent to them through the branch at Palghat. The Tribunal also found in paragraph 12 of its order that the despatches effected through the branch to those specified dealers, as per the memo filed by the assessee-company, did not represent inter-State sales ; but only "branch transfers". This apart, the Tribunal also found that the despatches effected to three other traders, about whom we have mentioned in the summation of the case, represented only "stock transfer" and not "inter-State sales". The rationale provided by the Tribunal for holding these despatches effected to those nine traders through their Palghat branch is one and the same.

11. The Revenue, while filing revision, perhaps, by way of inadvertence, referred to, in the facts and circumstances of the case, as if the despatches effected to three traders, namely, Memory Traders, Veeradiyam ; (ii) P.M. Abdul Rahman, Ponani ; and (iii) O.K. Mustafa, Chempecheri alone were held by the Tribunal as "stock transfer for open market sale". No specific reference is however, made, relatable to the six traders, in respect of whose cases also, the Tribunal held that the despatches effected to them were also "stock transfers".

12. Though such an omission is there, it cannot at all be stated that the Revenue is not agitating the transactions covering those six traders. The reason is rather obvious. The Revenue challenged the entirety of the allowance of the claim in favour of the assessee-company in the revision and the same is getting revealed

not only in the grounds ; but also from the memo of valuation given therein.

13. There is no pale of controversy that the identifiable ultimate buyers, hailing from Kerala State, placed specified orders at the branch of the assessee-company at Palghat. It is also equally not in dispute that the branch office at Palghat informed the head office at Kumarapalayam, about the specific requirements of the ultimate customers at Kerala. It is only on the information so furnished by the branch office, the head office either effected despatches directly to the ultimate buyers or to its branch office and thereafter, effected delivery to those ultimate buyers. Whether the despatches are effected from the Head Office to the ultimate buyers directly at Kerala or whether deliveries are effected to the ultimate buyers outside the State through the branch make no difference at all, in the eye of law. The reason is rather obvious. The goods moved from the State of Tamil Nadu to the State of Kerala, pursuant to or incident of a contract of sale entered into by the assessee-company with the identifiable ultimate buyers. Further, from the orders placed at the branch located at a different State and the order subsequently having been communicated to the head office in the State of Tamil Nadu, no legal consequence is likely to flow for the simple reason that the head office and the branch office were offices of the same company and they did not possess separate juridical personalities. The movement of goods from the head office was occasioned by the order placed by the customers and was an incident of the contract and therefore, from the very beginning from Kumarapalayam in the State of Tamil Nadu, all the way until delivery to the customers at Kerala State, it was an inter-State movement. The sale transactions were inter-State sales u/s 3(a) of CSTA.

14. By so holding, we are not taking a hue of view hitherto not projected by the apex Court of this country and the plain fact is that such a view has been projected in the case of Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, . In this, view of the matter, the order of the Tribunal holding that the despatches effected to nine ultimate identifiable buyers outside the State are only "stock transfer for open market sale" and, therefore, not exigible to tax, on the facts and in the circumstances of the case, is not sustainable in law. Therefore, we set aside the same.

15. We may now advert to the order of the Tribunal relatable to the reduction of penalty to fifty per cent of tax due. Section 12(5)(iii) of TNGSTA empowers the assessing authority to levy a penalty in a sum not less than fifty per cent and not more than one hundred and fifty per cent of the difference in tax payable on the turnover disclosed in the return and that determined by the assessing authority, in case the return submitted by the assessee is found to be incorrect and incomplete. It is not as if the assessee-company did not disclose the entirety, of the transactions in their accounts. The admitted fact is that the assessee-company disclosed the entire transactions in their turnover. But, what was done was that a portion of the turnover was claimed to be exempted from tax, as if the said turnover represented "stock transfer to its branch for open market sale".

In such state of affairs, it cannot at all be stated that the assessee-company had refracted or violated the salient provisions adumbrated under Clause (iii) of Sub-section (4) of Section 12, attracting penalty imposable under Clause (iii) of Sub-section (5) of Section 12 of TNGSTA, read with Section 9(2-A) of CSTA. We are therefore of the view that the order of the Tribunal in retaining the penalty to the extent of fifty per cent--the minimum prescribed, cannot at all be allowed to stand and the same deserves to be set aside and the same is accordingly set aside.

16. Both the Tax Case (Revisions) are thus disposed of. No costs.

