
(1978) 11 KL CK 0015
In the High Court Of Kerala
Case No : T.R.C. No. 31 of 1978

The Jay Engineering Works Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-11-1978

Acts Referred:

Citation : (1979) 43 STC 492

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : V.M. Kurien, A.I. Mohamed Basheer, K.K. Gangadharan, E.M. Sadrul Anam and A.V. Thomas, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Kerala Vs. Jay Engineering Works Limited, Ernakulam, AIR 1983 SC 369 : (1983) 1 SCALE 151 : (1983) 2 SCC 81 : (1983) 2 SCR 361 : (1983) 53 STC 97

Gopalan Nambiyar, C.J.—This tax revision case raises a somewhat interesting question. The question of law which has been formulated in the memorandum of revision in accordance with the form prescribed, is as follows:

Is not the sales returns of Rs. 98,400 liable to be deducted under Rule 9(b) of the Kerala General Sales Tax Rules from the total turnover for the year 1972-73, as the goods were returned within three months from the date of delivery of the goods and its sales turnover was returned and taxed when the sales were made ?

The assessee is a dealer in fans, sewing machines and spare parts. For the assessment year 1972-73, they returned before the Assistant Commissioner of Sales Tax, Special Circle, Ernakulam, total and taxable turnovers of Rs. 53,31,654.38 and Rs. 52,02,943.27. Exemption was claimed in respect of a turnover of Rs. 1,28,711.11. The turnover in respect of which exemption was claimed was made up of Rs. 30,311.11, under sales to Indian Naval Services

Canteen, and Rs. 98,400 under the sales returns. The first item was allowed, and the second was disallowed on the ground that this was not included in the turnover for the year in question. The year in question was 1972-73. The claim for exemption of the turnover was based on Rule 9(b) of the Kerala General Sales Tax Rules, which is as follows:

9. Determination of taxable turnover.-In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer:...

(b) (i) all amounts allowed to purchasers in respect of goods returned by them within a period of 3 months from the date of delivery of the goods, to the dealer when the goods are taxable on the amount for which they have been sold provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser;

(ii) all amounts received from the sellers in respect of goods returned to them within a period of 3 months from the date of delivery of goods by the dealer when the goods are taxable on the amount for which they have been bought provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received....

The rule allows deduction of all amounts to purchasers in respect of goods returned by them within a period of three months from the date of delivery of the goods to the dealer when the goods are taxable to the dealer. It seems to us plain that the claim for refund can be made only after the return of the goods. In this case, the goods were returned in April; and the claim for exemption could have been made only subsequent thereto as it was actually made. It appears to us, at the first blush at any rate, to be rather impracticable that the claim should have been negatived on the ground that for the assessment year in question, viz., 1972-73, the turnover in respect of which the exemption was claimed, was not included in the return of assessment. It could not obviously be so included, as the return of the goods itself was only subsequent to the close of the assessment year on 31st March, 1972.

2. But this view which commends itself to us at the first blush on the language of the rule, and which seems to be supported, as we shall show, by a decision of the Madras High Court and another decision of the Andhra Pradesh High Court, has been strongly objected to by the learned Government Pleader. The learned Government Pleader argued with force that the rule should not be read and construed in isolation, but must be related to the provisions of the Act. He invited our attention to the definition of "turnover" in Section 2(xxvii) of the Act. That section defines "turnover" as the aggregate amount for which the goods are either bought, or sold, or supplied or distributed by a dealer, either directly or through another. We omit the rest of the words of the main part of the definition as not material. There is explanation (2), which is important, and which reads as

follows:

Explanation (2).-Subject to such conditions and restrictions, if any, as may be prescribed in this behalf,-

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover; and

(iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former.

We are here concerned with Clause (ii) of the explanation. That furnishes the statutory basis for earning exemption from assessment of the turnover or from non-inclusion in the turnover. The mode and the manner of earning the exemption is provided by Rule 9(b) of the Rules, which is in discharge of the statutory obligation indicated by Clause (ii) of explanation (2). Attention was called by the Government Pleader to the provisions of Section 5, which emphasises that every dealer shall pay tax on his taxable turnover for that year. This provision was stressed to emphasise that the scheme of the Act was to make each assessment year the unit of assessment, and to reckon the turnover and exemption with respect to each year of assessment. In the light of these provisions, the learned Government Pleader argued that the view taken by the Tribunal is correct and was not open to interference.

3. For the assessee reliance was placed on the Division Bench ruling of the Madras High Court in *Devi Films (Private) Ltd. v. State of Madras* [1961] 12 S.T.C. 274 and *State of Andhra Pradesh v. Vauhini Pictures P. Ltd.* [1962] 13 S.T.C. 847. The Madras ruling was later followed in *Madras Radiators and Pressings v. State of Tamil Nadu* [1976] 37 S.T.C. 123. These decisions undoubtedly support the stand of the assessee.

4. But the learned Government Pleader placed strong reliance on the decision of a Full Bench of the Madras High Court in *Traders and Traders v. State of Tamil Nadu* [1977] 40 S.T.C. 289 (F.B.), which is stated to have overruled the decisions in *Devi Films (Private) Ltd. v. State of Madras* [1961] 12 S.T.C. 274 and *Madras Radiators and Pressings v. State of Tamil Nadu* [1976] 37 S.T.C. 123. That makes it necessary to understand the scope and the ambit of the ruling of the Madras Full Bench. As will be seen from the learned Chief Justice's judgment, the reference to the Full Bench itself was for the determination of the scope of Section 13(5) of the Tamil Nadu General Sales Tax Act, 1959. The petitioner-assessee in that case was a dealer in medicine. He sold Methol worth over Rs.

69,000 to a customer in March, 1966. The customer returned the goods in September, 1966, and it was duly brought to account on the same day. In October, 1966, the assessee claimed refund in his monthly return for September, 1966. The assessing authority rejected the claim, and the same was confirmed by the Appellate Assistant Commissioner and the Tribunal. Section 13(5) of the Tamil Nadu General Sales Tax Act, as it stood at the relevant time, was as follows :

Where a dealer has refunded the price of articles returned by customers together with the tax collected from such customers in respect of the sale of such articles and where the amount representing the price refunded by the dealer is included in his turnover, the dealer shall be entitled to claim deduction of the tax levied in respect of such sale, within a period of six months from the date of sale by adjustment in the assessment and the final assessment shall be completed accordingly but such dealer shall not be entitled to claim any adjustment or refund of the tax in respect of the sale of such articles after the expiry of the said period of six months.

It was observed that as the assessee had failed to claim the deduction within the time stipulated in the section, his claim had to be disallowed. It was also observed that the section indicated that the deduction shall be by adjustment in the assessment and the final assessment was to be completed accordingly, and that this would imply that the return had been submitted and the final assessment had not been made. Having disposed of the case shortly on that ground, the Full Bench dealt with the reasoning in the order of reference which was to consider the correctness of the decision in *Madras Radiators and Pressings v. State of Tamil Nadu* [1976] 37 S.T.C. 123. There it was observed that Section 13(5) and rule 5-A(b)(i) deal with different rights of the dealer. The correctness of this observation was canvassed and examined with respect to the provisions of the Act. The definitions of "turnover", "total turnover" and "taxable turnover" were referred to, and also the explanation, in almost similar terms as the explanation that we have extracted earlier. The rule which discharged the purpose of the explanation was rule 5-A(b)(i) and that stated that all amounts refunded to purchasers in respect of goods returned by them to the dealer when the goods are taxable on the amounts for which they have been sold, would be eligible for exemption on certain conditions (which need not be noticed). Section 13(5) itself had been amended in 1964. The objects and reasons for the amendment were noticed by the Full Bench and these are significant. The Full Bench examined the scope of rule 5-A(b)(i) with respect to the Division Bench ruling in *Madras Radiators and Pressings v. State of Tamil Nadu* [1976] 37 S.T.C. 123 and *Devi Films (Private) Ltd. v. State of Madras* [1961] 12 S.T.C. 274. The decision of the Andhra High Court in *State of A.P. v. Vauhini Pictures P. Ltd.* [1962] 13 S.T.C. 847 was also noticed. It was observed that though the relevant rule was introduced only in 1973, it made clear the position that no claim for refund or adjustment of the tax u/s 13(5) could be entertained if it was not made within a period of six months from the date of sale. The Full Bench was therefore

of the view that under the rule again, an adjustment or refund cannot be obtained after six months from the date of sale, and that the rule cannot be read so as to be inconsistent with the section. We have examined the decision at some length in order to understand the precise scope and ambit of the decision. It was concerned to notice only the correctness of the principle stated by the Division Bench in the earlier case that the rule and the section dealt with different rights. The referring judgment of Ismail, J., had expressly highlighted this proposition as one which required reconsideration. The Full Bench devoted its attention to this aspect. We are, therefore, of the opinion that the Full Bench decision [1977] 40 S.T.C. 289 (F.B.) does not really deal with the aspect which we have to consider in the instant case.

5. As stated at the outset, the language of the rule and its scope and purpose, make it clear that the claim for deduction can be made only subsequent to the return of the goods and the refund of their sale price. In the instant case, it could not possibly be made till after April, 1972. It cannot affect the assessee's claim for deduction from turnover that, for the assessment year 1972-73, this turnover was not included and, on that ground the assessee's claim for deduction cannot be denied. It would neither be logical nor reasonable to insist on a claim for refund being made in the course of the assessment year during which the sale of the goods has been occasioned, when the goods themselves are returned and the claim for refund itself can arise only beyond the assessment year. The view that we take is supported by the two rulings of the Madras High Court in *Madras Radiators and Pressings v. State of Tamil Nadu* [1976] 37 S.T.C. 123 and *Devi Films (Private) Ltd. v. State of Madras* [1961] 12 S.T.C. 274, and by the ruling of the Andhra High Court in *State of Andhra Pradesh v. Vauhini Pictures P. Ltd.* [1962] 13 S.T.C. 847.

6. We allow this tax revision case and set aside the order of the Tribunal and remand the matter back to the Tribunal for passing consequential orders in accordance with law and in the light of the observations contained in this judgment. There will be no order as to costs.