(1956) 04 MAD CK 0017

In the Madras High Court

The State of Madras APPELLANT

Vs

The Bangalore Automobiles RESPONDENT

Date of Decision : 06-04-1956

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3(1)(b), 3(2)(iv)

Citation : (1957) ILR (Mad) 147 : (1956) 2 MLJ 309

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—These are petitions u/s 12-B of the Madras General Sales Tax Act to revise the order of the Appellate Tribunal.

2. The respondents were dealers in motor cars and their accessories. On the turnover of the sales of these goods, they were liable to pay sales tax

at the standard'' rate of Rs. 0-0-3 in the rupee, prescribed by Section 3(1)(b) of the Act. In addition they were liable to pay tax at the rate of Rs.

0-0-6 in the rupee u/s 3(2)(iv) of the Act. The assessing authorities included in the taxable turnover of each of these dealers amounts collected by

them by way of tax u/s 8-B. of the Act and assessed that part of their total turnover also at the rate of Rs. 0-0-9 in the rupee. In Krishnasaumi

Mudaliar''s case (1954) 2 M.L.J. 151 : (1954) S.T.C. 88, this Court held that the turnover made up of amounts collected by way of tax by a

registered dealer could not be assessed at all to any tax under the Act. Subsequent to that the Madras Legislature enacted Act XVII of 1954 to

validate the levy of tax on amounts collected by a dealer by way of tax. The validity of that Act has been upheld by us in Sundararajan and Co.,

Ltd. v. State of Madras (1956) 1 M.L.J. : (1956) 7 S.T.C. 105, and that has been reiterated by us in T.R.C. Nos. 46, etc. of 1955, in which we have just delivered judgment.

3. The only question that remains for determination in these cases is whether the Tribunal was right in the view it took that amounts collected by

way of tax and deemed to be part of the turnover of a dealer u/s 2 of Act XVII of 1954 were liable to be assessed only u/s 3(1)(b) of the Sales

Tax Act and that it would not be subject to the additional tax authorised by Section 3(2)(iv) of the Act.

4. The tax authorised by Section 3(1) of the Act is on the total turnover of a dealer; see Section 3(1)(b). The additional tax authorised by Section

3(2) of the Act is among others on the first sale of the goods mentioned in Section 3(2)(iv) and Section 3(2) directed that the additional levy shall

be in addition to the tax, to which the dealer seller is liable under Sub-section (1) on his total turnover for the year. Section 2 of Act XVII of 1954

runs:

In the case of sales made by a dealer before the 1st April, 1954, amounts collected by him by way of tax under the Madras General Sales Tax

Act, 1939...shall be deemed to have formed part of his turnover.

5. Turnover has been defined by Section 2(1) of the Act.

''Turnover'' means the aggregate amount for which goods are either bought by or sold by a dealer...for...valuable consideration.

6. The expression ''sale'' has been defined in Section 2(h) of the Act. It is with reference to these provisions, that we have to answer the question at

issue, whether the amounts collected by way of tax by a dealer on the sale of goods that fell within the scope of Section 3(2)(iv) of the Act are

liable to pay the additional tax u/s 3(2)(iv) of the Act.

7. The Tribunal recorded

tax collected by the dealer becomes part of his total turnover by reason of the Validation Act, and it follows that it will be subject only to the 3 pies

rate u/s 3(1)(b).

8. That the amounts collected by the dealer by way of tax became part of his turnover u/s 2 of Act XVII of 1954 does not admit of any

controversy at this stage. That it was part of the total turnover within the meaning of Section 3(1)(a) should also be beyond dispute. It should

follow that on that turnover also the dealer is liable to pay the tax prescribed by

Section 3(1)(b). But the question still remains, is the dealer also liable to pay the additional tax prescribed by Section 3(2)(iv).

9. As we pointed out, what Sections (2)(iv)authorises is the levy of the additional tax of Rs. 0-0-6 on the sale of any of the goods mentioned therein. What did the amounts collected by the dealer by way of tax under the authority of Section 8-B of the Act represent? In Sundararajan and Co., Ltd. v. State of Madras (1956) 1 M.L.J. 339 : (1956) 7 S.T.C. 105, we pointed out that the amounts collected by way of tax under the authority of Section 8-B of the Act were paid by the purchaser on the occasion of the sale by the dealer. We also pointed out ''vis a vis the dealer it is in reality part of the price the purchaser has to pay the seller for purchasing the goods. What was sold by the dealer was goods, Which fell within the scope of Section 3(2)(iv) of the Act. What the purchaser paid on the occasion of that sale was the price of the goods, the ''valuable consideration'' for the sale within the meaning of ''Sale'' and ''Turnover'' defined by the Act. No doubt the bill showed the price charged by the dealer and the amount collected by way of tax separately. But both the amounts were paid by the purchaser for effecting the sale in his favour and so both constituted the price he had to pay. It was the total that represented the consideration for the sale and as such the total of each of these sales constituted the turnover. Suppose the dealer had shown as separate items in his bill (i) his cost price, (ii) his profit and (iii) the tax which as a dealer he had to pay under the, Act, all of them together would still constitute the consideration for the sale, which the purchaser had to pay, and it is that total that would merge in the total turnover within the meaning of Section 3(1) of the Act. The fallacy in the reasoning of the Tribunal, as we see it, was to interpret the expression, ""total turnover"" in Section 3(1)(a) divorced from the definition of ''sale'' and ''turnover'' in Section 2 of the Act. They also overlooked the fact, that though the Act called the extra amount the purchaser paid as an amount collected by way of tax under the authority of Section 8-B, it was in reality part of the purchase price that the purchaser paid. That was the basis on which we upheld the validity of Act XVII of 1954. The concept of a consolidated purchase price, the consideration for the sale, necessarily involves correlation to the goods fold, and if the goods sold are liable to the additional tax, then it is the entire

purchase price that should furnish the basis for the computation of the tax

lawfully leviable.

10. For the purpose of taxing the two items, the price of the goods and the amount collected by way of tax, cannot be split up. Turnover includes

the amounts collected by the dealer, the amounts paid by the purchaser on the occasion of the sale. They constituted consideration for the sale.

There was no separate consideration passing from the dealer for the amounts collected by way of tax on the occasion of the sales. The goods sold

still constituted consideration for that sale. As we stated, this was the fundamental feature of the turnover which specifically became taxable u/s 2 of

Act XVII of 1954, and this feature, in our opinion appears to have been overlooked by the Tribunal. It should, however be noticed that our

decision in Sundararajan and Co., Ltd., v. State of Madras (1956) 1 M.L.J. 339 : (1956) 7 S.T.C. 105, was long subsequent to the decisions

rendered by the Tribunal.

11. We differ from the Tribunal, and we hold that the items in question which were excluded by the Tribunal from the scope of additional levy u/s

3(2)(iv) of the Act, are subject to the additional levy. The petitions are allowed. There will, however, be no order as to costs.

