(1985) 02 MAD CK 0023

In the Madras High Court

Case No : Tax Case No''s. 19 and 20 of 1985 (Revision Case No''s. 18 and 19 of 1985)

The State of Tamil Nadu APPELLANT

Vs

East Coast Constructions and Industries RESPONDENT

Date of Decision : 11-02-1985

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4, 5, 7, 7A

Citation : (1986) 61 STC 337

Hon'ble Judges : M.A. Sathar Sayeed, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant;

Judgement

Ramanujam, J.—In this tax revision case filed by the revenue, the decision of the Sales Tax Appellate Tribunal holding that the turnover of

Rs. 9,55,485.78 could not be brought to charge u/s 7-A(1)(a) of the Tamil Nadu General Sales Tax Act, 1959, has been challenged.

2. The assessees are building contractors and engineers. For the assessment year 1980-81, they reported a taxable turnover of Rs. 54,161.96.

This however did not include a turnover of Rs. 9,55,485.78 which represented the purchase value of sand and blue-metal from unregistered

dealers, which the assessee had used in the construction of the buildings. The assessee claimed that the said sum of Rs. 9,55,485.78 representing

the purchase price of blue-metal and sand cannot be brought to charge u/s 7-A of the Act. That contention was negatived by the assessing

authority and the said turnover was brought to charge. The matter was taken in appeal to the Appellate Assistant Commissioner, who also sustained the levy u/s 7-A of the Act on the said turnover. Thereafter, the matter was taken up in further appeal to the Sales Tax Appellate

Tribunal by the assessee denying his liability to be assessed to tax u/s 7-A of the Act on the said turnover of Rs. 9,55,485.78. The Tribunal, after

dealing with the scope of section 7-A(1)(a) of the Act and following the decision of the Andhra Pradesh High Court in Nandanam Construction

Co. v. Assistant Commissioner [1983] 53 STC 42, held that section 7-A(1)(a) of the Act will not apply to the disputed turnover of Rs.

9,55,485.78 as the assessee had purchased sand and blue-metal only for the construction of the buildings and not for the manufacture of other

goods for sale. In that view, the Tribunal set aside the assessment on the disputed purchase turnover.

3. According to the learned Additional Government Pleader, the facts of this case attract the decision of the Supreme Court in Ganesh Prasad

Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, and in so far as the decision of the Andhra Pradesh High Court in Nandanam

Construction Co. v. Assistant Commissioner [1983] 53 STC 42 is inconsistent with the said decision of the Supreme Court in Ganesh Prasad Dixit

Vs. Commissioner of Sales Tax, Madhya Pradesh, the Tribunal should not have applied the decision of the Andhra Pradesh High Court. Before

considering the various decisions referred to by the learned Additional Government Pleader in support of his case that the disputed purchase

turnover can be assessed u/s 7-A(1)(a) of the Act, we would like to refer to the said provision.

Section 7-A runs as follows :

7-A. Levy of purchase tax. - (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any

goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be,

and either,

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to the purchase as aforesaid at the rate mentioned in section 3, 4 or 5, as the case may be, whatever be the

quantum of such turnover in a year.

Section 7-A(1) consists of three clauses. However, on the facts of this case, clause (c) cannot obviously apply. The contention of the learned

Additional Government Pleader is that even if clause (a) of section 7-A(1) is held not to apply to the facts of this case, clause (b) thereof may

apply. We have, therefore, to consider the scope of clauses (a) and (b) of section 7-A(1) of the Act, to find out whether the disputed purchase

turnover could be assessed under either of these clauses. Clause (a) can be applied only when the goods purchased had been consumed in the

manufacture of other goods for sale or otherwise. The expression ""otherwise"" occurring in clause (a) will qualify only sale and not the expression

consumed"". Therefore, that provision will come into play only when the purchasing dealer consumes the goods in the manufacture of other goods

for sale or otherwise. Clause (a) obviously cannot apply when the purchasing dealer consumes the goods in the construction of buildings, which is

an immovable property and can in no sense be called ""other goods"". In our view, clause (a) can be invoked only when the purchasing dealer

consumes the goods purchased in the manufacture of other movable properties and not when the goods purchased are in the construction of

buildings, which cannot be held to be a movable property.

4. In support of his submission that the use of the expression ""consumption of such goods in the manufacture of buildings"" will also fall within clause

(a) of section 7-A(1) of the Act, the learned Additional Government Pleader placed reliance on the decision of the Supreme Court in Ganesh

Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, . The purchasing dealer in that case was a building contractor and he is said to

have consumed the goods purchased in his business. After finding that he has used the materials purchased by him in his business, the Supreme

Court held that the purchase turnover of the building materials by the purchasing dealer will attract section 7 of the Madhya Pradesh General Sales

Tax Act, 1958, on the purchase price of the goods used in the course of their business as building contractors. The said decision proceeds on the basis that the materials purchased has been used in the course of the assessee''s business. Whether the assessee used the materials purchased by

him in the construction of buildings is not clear. As a matter of fact, to find out the factual position, we referred to the decision of the Madhya

Pradesh High Court in Ganesh Prasad Dixit v. Commissioner of Sales Tax [1966] 17 STC 14, which gave rise to the decision of the Supreme

Court in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, . But the said decision also does not indicate that the goods

purchased by the building contractor has been used in the construction of buildings. Therefore, neither the decision of the Madhya Pradesh High

Court in Ganesh Prasad Dixit v. Commissioner of Sales Tax [1966] 17 STC 14 nor the decision of the Supreme Court in Ganesh Prasad Dixit Vs.

Commissioner of Sales Tax, Madhya Pradesh, can be said to have decided the question as to whether section 7-A(1) will be applicable to a case

where a dealer purchased goods and used the same in the construction of a building, which is an immovable property. While constructing section

7-A(1)(a) of the Act which uses the expression ""consumes such goods in the manufacture of other goods for sale"", the significance of the

expression ""manufacture of other goods"" cannot be lost sight of. A person who is constructing a building, which is an immovable property, cannot

be said to manufacture other goods for sale so as to come within clause (a) of section 7-A(1) of the Act. In this case, the Tribunal has referred to

the decision of the Andhra Pradesh High Court in Nandanam Construction Co. v. Assistant Commissioner [1983] 53 STC 42 where the building

contractor purchasing goods for use in the construction of buildings has been held not to come within the mischief of clause (a). Even though that

decision supports the view taken by the Tribunal, it has not considered the scope of the expression ""manufacture of other goods for sale"" occurring

in clause (a) of section 7-A(1). The Andhra Pradesh High Court purports to follow the decision of the Supreme Court in Deputy Commissioner of

Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , which does not deal with a case of the purchasing dealer using

the goods in the manufacture of building. Admittedly, it was a case of a dealer purchasing pineapple and thereafter slicing and canning and selling.

The Supreme Court held that the slicing of a pineapple and canning does not convert it a different product but it still continues to be a pineapple and, as there is no manufacture of a new commodity, section 5A(1)(a) of the Kerala General Sales Tax Act, 1963, similar to section 7-A(1) of our

Act, will not apply. Therefore, even Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers,

which has been relied on by the Andhra Pradesh High Court can have no application to the facts of this case. Therefore, we have to proceed to

consider the case only on the basis of the language used in clause (a). As we have already expressed, that clause can be invoked only when the

purchasing dealer uses the goods purchased in the manufacture of other goods for sale, and not when he use the goods in the construction of

immovable property. Thus, the view taken by the Tribunal that section 7-A(1)(a) of the Act will not apply to the assessee''s case, for the goods

have been utilised for the construction of buildings and not in the manufacture of other goods for sale, has to be upheld as correct.

5. The learned Additional Government Pleader then contends that even if clause (a) does not apply, clause (b) thereof may be invoked in the

circumstances of the case as there has been a disposal of the goods purchased in any manner otherwise than by way of sale in this case. This

contention of the learned Additional Government Pleader ignores the significance of the use of the expression ""disposes"" in clause (b). ""Disposal of

goods in any manner other than by way of sale"" would indicate that there has been a transfer of the goods other than by way of sale from the

assessee to some other person. In this case, admittedly there is no disposal or transfer of the goods in any manner otherwise than by way of sale as

contemplated by the section, but the goods have been used in the construction of the buildings and such user cannot be said to be a disposal of the

goods as contemplated by clause (b) of section 7-A(1) of the Act. We are, therefore, of the view that clause (b) of section 7-A(1) of the Act has

no application at all. In this view we are not in a position to disagree with the conclusions arrived at by the Tribunal in this case. T.C. (R) No. 19 of

1985 is, therefore, dismissed.

T.C. (R) No. 20 of 1985.

6. This tax revision case is against the order of the Tribunal dismissing the enhancement petition filed by the revenue as regards the cancellation of

the levy of penalty u/s 12(5) of the Tamil Nadu General Sales Tax Act. In the connected case T.C. (R) No. 19 of 1985, we have held that the

assessee is not liable to be taxed u/s 7-A of the Act on the purchase turnover of Rs. 9,55,485.78. Now that the tax on the disputed turnover has

been set aside by the Tribunal, the Tribunal is justified in cancelling the quantum of penalty levied by the appellate authority on the basis of its

finding that the sum of Rs. 9,55,485.78 is taxable u/s 7-A of the Act. Since the assessment on the disputed turnover is set aside, there cannot be

any levy of penalty for non-disclosure of the purchase turnover of Rs. 9,55,485.78. Therefore, this tax revision case is also dismissed.