
(2011) 09 MAD CK 0051
In the Madras High Court
Case No : TC (R) No. 914 of 2006

The State of Tamil Nadu

APPELLANT

Vs

Kawarlal

RESPONDENT

Date of Decision : 16-09-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(2)
Customs Act, 1962 — Section 2(26), 46, 47

Citation : (2011) 188 ECR 237

Hon'ble Judges : M. Jaichandren, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader Taxes, for the Appellant;
K. Sundareswaran, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—The Revenue is on revision as against the order of the Tribunal relating to assessment year 1992-93. The

following substantial questions of law were raised for consideration:

(i) Whether in the facts and circumstances of the case, the order of the Tribunal upholding the claim of exemption as high sea sales u/s 5(2) of the

CST Act is legally sustainable

(ii) Whether in the facts and circumstances of the case, the finding of the Tribunal that the sale was effected by transfer of documents of title have

been taken place before crossing the customs frontier is legally sustainable.

2. The Assessee herein is a dealer in pharmaceuticals and chemicals. On verification of accounts, it was seen that the Assessee claimed exemption

on the turnover of Rs. 12,50,814/- u/s 5(2) Central Sales Tax Act as representing High Sea Sales effected. In support of the claim, the Assessee

filed Bill of Lading and High Seas Agreement and pointed out that the goods in question were cleared by the purchaser by paying customs duty

through clearing and forwarding agent and that the Assessee had nothing to do with the clearance of the said goods.

3. The contention of the Assessee, however, was rejected by the Officer, pointing out that on verifying the original Bill of Entry available in the

Office of the Customs Department with the photocopy furnished by the Assessee, it was found that the name of the Assessee was found written in

the original copy of the Bill of Entry available in the Customs Department. Hence, the photocopy furnished by the Assessee could not be relied

upon. Consequently, the Assessing Officer rejected the plea of the Assessee. Aggrieved by the same, the Assessee filed an appeal before the

Appellate Assistant Commissioner.

4. It is seen from the order the Appellant Assistant Commissioner that after perusing the import documents and the High Sea Sales agreement,

High Sea sales invoices, forwarding and clearing agent's letters and payment of customs duty by the ultimate buyer to the Customs Department,

the said authority held that high sea sales were effected at Chennai Port and the buyers had paid the customs duty and the clearing and forwarding

agents had cleared the goods.

5. Following the decisions of the Apex Court reported in 107 STC 75 Brijlal Tulsion v. Commercial Tax Officer and J.V. Gokal and Co. (Private)

Ltd. Vs. The Assistant Collector Sales-tax (Inspection) and Others, , as well as the decision of the Andhra Pradesh High Court reported in 110

STC 394 Minerals and Metals Trading Corporation of India v. State of Andhra Pradesh, the Appellate Authority came to the conclusion that

when the import documents produced revealed that the goods imported were sold on high sea sale basis as per the agreement entered into with the

ultimate buyers and the goods were cleared by clearing and forwarding agents on behalf of purchasers, the assessment could not be upheld. Thus

the appeal was allowed. As against this, the Revenue went on appeal before the Sales Tax Appellate Tribunal, who concurred with the view of the

Appellate Assistant Commissioner, thereby, disallowed the Revenue's appeal. Aggrieved by this, the Revenue is on revision before this Court.

6. It is seen from the facts herein that the Assessee effected high sea sales by

endorsing the document of title to the goods as follows:

Sl. Bill of Lading Date Name of the party to whom endorsed

No.

1. 930-830-618 5.5.92 M/s. Micro Labs Ltd., 92, SIPCOT Industrial Complex Hosur

2. 242 22.12.92 M/s. Sri Sai Baba Pharmaceuticals Private Limited, Guindy, Chennai 32

7. The details as regards high sea sales by endorsing the documents of title to the goods to the ultimate buyer who cleared the goods before the ship crossed the custom frontier are as below:

Sl. Name of the Purchaser Inv. No. and Date Sale Value Date of area crossing No.

The custom station

1. M/s. Micro Labs Ltd Hosur 01/K Company/ Rs.788314/- 25.6.92 92-93 dt.26.5.92

2. M/s. Sri Sai Baba 03/K/Company/ Rs.462500/- 15.3.93 Pharmaceuticals Pvt Ltd., 92-93, dt.19.2.93 Guindy Chennai - 32

8. Going by the above said facts, it is clear that in respect of first purchaser, viz., M/s. Micro Labs Limited, the Bill of Lading dated 5.5.92 was

endorsed on 26.05.1992 and in the case of second purchaser, the bill of lading dated 22.12.1992 was endorsed in favour of the another purchaser

by name M/S. Sri Sai Baba Pharmaceuticals Private Limited on 19.02.1993. There is no dispute as far as these dates are concerned that the

Assessee had Bill of Lading endorsed in favour of the ultimate importers.

9. The only ground on which the Revenue seeks to disallow the claim of exemption is that the Bill of Entry furnished by the Assessee and the one available with the Customs Department were at variance with each other, particularly as regards the name. As far as this contention is concerned,

the first Appellate Authority pointed out that when the Bill of Lading endorsement was made even before the goods crossed the Customs Station,

the sale thus concluded therein, on the mere contention of the Assessing Officer

that the Bill of Entry had the Assessee's name and the customs duty was paid only on the imported value and not on the high seas value, were without any merit.

10. Given the fact that the Bill of Lading is the document of title and admittedly it carried the name of the ultimate buyer and that there was no

denial of the fact that the Assessee had transferred the goods before it crossed the Customs Station, rightly the said authority granted relief in

favour of the Assessee. As rightly pointed out, the only ground on which the claim was rejected was the difference in the name found in the Bill of

Entry available with the Assessee and the one with the Customs Authorities. It is of relevance to note herein that the Bill of Lading dated

05.05.1992 was endorsed in favour of the first purchaser M/S. Micro Labs Limited, Hosur; invoices dated 26.05.1992 and the date of crossing

the Customs Station was given as 25.06.1992. On the said details available as regards the Bill of Lading and the invoices raised in favour of the

ultimate buyer, we have no hesitation in holding that with the title to the goods thus endorsed even before it crossed the Customs Station, the claim

of the Assessee could not be denied just based on the Bill of Entry which is admittedly not a document of title. As regards the second Bill of

Lading dated 22.12.1992 and the invoices of the ultimate purchaser dated 19.2.1993, even herein too, even before the date of crossing the

Customs Station on 15.03.1993, the Bill of Lading was endorsed in favour of the purchaser. We do not find that the Revenue could successfully

canvass its case based on the entries on the name found in the Bill of Entry.

11. It may be of relevance to note that the Bill of Entry is never treated as a document of title under the Customs Act. u/s 46 of the Customs Act -

Entry of goods on importation - the importer has to file Bill of Entry before the proper officer, which may be for home consumption or for ware

housing. Only on filing the Bill of Entry for home consumption that the goods are allowed to be cleared after the payment of required customs duty.

Importer"" is defined u/s 2(26), which reads as follows:

2(26) ""Importer"", in relation to any goods at any time between their importation and the time when they are cleared for home consumption,

includes any owner or any person holding himself out to be the importer

12. In the light of the said definition and read in the background of Sections 46

and 47 of the Customs Act, we do not think that the Revenue can successfully canvass its case based on entries in the Bill of Entry. In the absence of any details as to whether the said entries relate to the one in the Bill of Entry for home consumption or any Bill of Entry for warehousing, the Revenue's revision merits to be dismissed.

13. In the circumstances, the Tax Case (Revision) is dismissed.

No costs.