(1984) 07 MAD CK 0034

In the Madras High Court

Case No : Tax Case No''s. 523 to 525 of 1978

The State of Tamil Nadu APPELLANT

Vs

Monotype India Limited RESPONDENT

Date of Decision : 04-07-1984

Acts Referred:

Citation : (1986) 62 STC 434

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader-I CT, for the Appellant; T. Suresh, for King and Partridge, for the Respondent

Judgement

Ramanujam, J.—The common question that arises in all these three tax revision cases is whether the sales of importer printing machine, parts

and accessories on the basis of the actual user''s license and letters of authority produced by customers could be treated as sales in the course of

import. In these cases the Tribunal has found after verification of the records that the assessees accepted orders for import of printing machine,

parts and accessories subject to the condition that the buyers must produce the necessary actual user''s licences and letters and authority in favour

of the assessees, that they forwarded these orders to their head office in London, that all the shipping documents contained the details of the actual

user''s import licence of the buyers, that the forwarding note sent by the U.K. seller specified that the goods were intended to the actual user

referred to in the licence and that the goods were to be delivered to that particular customer on whose behalf the import was made. On these facts

the Tribunal held that there was only one sale which was between the assessee and the actual user on whose behalf the import was made, the assessee being the agents of the foreign principal and that sale is one in the course of import. Thus, the Tribunal has taken the view, on the facts

found by it, that the assessees are not only agents of the foreign seller but also the agents of the actual user on whose behalf and on whose actual

user''s licence the goods have been imported and sold to him. The Tribunal has also applied the decision of the Supreme Court in The Deputy

Commissioner of Agricultural Income Tax and Sales Tax Central Zone, Ernakulam Vs. Kotak and Co., Bombay, etc. etc., and also its own earlier

decision dated 26th November, 1976, in T.A. Nos. 492, 546 and 547 of 1976 and in that view it granted exemption in relation to the disputed

turnover with reference to sales tax, surcharge and additional sales tax. The said view of the Tribunal has been challenged before us by the revenue

in these tax revision cases.

2. We are not inclined to agree with the learned Additional Government Pleader that the Tribunal has erred in its conclusion in these cases. On the

facts found by the Tribunal which have been referred to above, no other conclusion is possible except to say that the assessee have, in importing

the printing machine, parts and accessories, not only acted as the agents of the foreign principal but also as the agents of the actual user on whose

actual user''s licence the import was made. Since the goods had been imported on the basis of the actual user''s licence, they cannot be diverted to

any other source and the assessees are under an obligation to deliver the goods to the actual user on whose licence and letter of authority the

import was made. On these facts the Tribunal is right in applying the decision of the Supreme Court in The Deputy Commissioner of Agricultural

Income Tax and Sales Tax Central Zone, Ernakulam Vs. Kotak and Co., Bombay, etc. etc., . The decision of the Tribunal in T.A. Nos. 492, 546

and 547 of 1976 came up before this Court in revision and this Court in State of Tamil Nadu v. I.B.M. World Trade Corporation [1985] 60 STC

118 : 1984 Tax LR 2894 has affirmed the decision of the Tribunal. Hence, following the decision of the Supreme Court in The Deputy

Commissioner of Agricultural Income Tax and Sales Tax Central Zone, Ernakulam Vs. Kotak and Co., Bombay, etc. etc., and the decision of this

Court in State of Tamil Nadu v. I.B.M. World Trade Corporation [1985] 60 STC 118 : 1984 Tax LR 2894, we hold that the decision of the

Tribunal in these cases is correct. The tax revision cases are therefore dismissed. There will, however, be no order as to costs.

3. Petitions dismissed.

