(1976) 09 MAD CK 0008

In the Madras High Court

Case No : T.C. No. 24 of 1972 (Revision No. 12 of 1972)

The State of Tamil Nadu APPELLANT

Vs

Saraswathy Kurwath Damodaran RESPONDENT

Date of Decision : 09-09-1976

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 38

Citation : (1977) 39 STC 542

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : K.S. Bakthavathsalam, the Additional Government Pleader, for the Appellant; K. Ramgopal, for the Respondent

Final Decision : Allowed

Judgement

Ismail, J.—The State of Tamil Nadu has preferred this tax revision petition u/s 38 of Tamil Nadu Act No. 1 of 1959 against the order of the

Sales Tax Appellate Tribunal dated 19th January, 1971. The predecessor-in-interest of the respondent herein was dealing in sea-foods in Kerala.

Under the export promotion scheme he obtained an import licence for import of paper and paper boards in respect of the export of sea-foods

made by him. He utilised that licence by importing paper and paper boards and sold the same to Basanth Paper House, Madras. The turnover with

reference to this transaction was Rs. 49,358.57 and sales tax was assessed at 2ï¿½ per cent thereof. The dealer preferred an appeal to the

Appellate Assistant Commissioner and the Appellate Assistant Commissioner dismissed the appeal. When the respondent preferred a further

appeal to the Sales Tax Appellate Tribunal, the Tribunal allowed the appeal. The Tribunal held that the late Kurwath Damodaran being a dealer in sea-foods cannot have any intention to carry on business in paper and paper boards and he had to sell such goods as he obtained under an import

licence and that being a solitary transaction and as Kurwath Damodaran was not a dealer in paper and paper boards, the transaction in question

cannot be stated to be a sale in the course of business of Kurwath Damodaran and under those circumstances the transaction not being a sale in

the course of business was not taxable under the Act. It is the correctness of this decision of the Tribunal that is challenged by the State.

2. A perusal of the order of the Tribunal shows that on behalf of the respondent only three points were urged before the Tribunal. One was that the

sale in question is in the course of import and hence not liable to sales tax under the Tamil Nadu General Sales Tax Act, 1959. The second was

that the sale in question was an outside State sale and, therefore, not liable to tax under the Tamil Nadu Act. The third was that the assessee was

not a dealer in paper and it is an isolated transaction and so it cannot be considered as a sale in the course of his business. The Tribunal held

against the dealer on the first two grounds and only with regard to the third ground it accepted the case of the respondent. Consequently, the

question that arises for consideration in this tax revision petition is whether the conclusion of the Tribunal on the third point urged on behalf of the

respondent is correct or not. This in turn will depend upon the definition of the terms ""dealer"" and ""business"" under the Tamil Nadu Act. Section

2(d) defines the expression ""business"" as follows :

2. (d) ''business'' includes-

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade,

commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such

trade, commerce, manufacture, adventure or concern ; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern.

3. The term ""dealer"" is defined in Section 2(g) as follows :

''dealer'' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash,

or for deferred payment, or for commission, remuneration or other valuable consideration and includes-

(i) a local authority, company, Hindu undivided family, firm or other association of persons which carries on such business ;

(ii) a casual trader ;

(iii) a commission agent, a broker or a del credere agent, or an auctioneer or any other mercantile agent, by whatever name called, who carries on

the business of buying, selling, supplying or distributing goods on behalf of any principal ;

(iv) every local branch of a firm or company situated outside the State.

Explanation (1).-A society (including a co-operative society), club or firm or an association which, whether or not in the course of business, buys,

sells, supplies or distributes goods from or to its members for cash, or for deferred payment, or for commission, remuneration or other valuable

consideration, shall be deemed to be a dealer for the purposes of this Act;

Explanation (2).-The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute

goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed

to be a dealer for the purposes of this Act.

4. It may be seen that this definition of the term ""business"" introduced into the Act by an amendment of 1964 is very wide. The first part of the

definition of the term ""business"" refers to any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or

manufacture. But the second part of this definition refers to any transaction in connection with, or incidental or ancillary to, such trade, commerce,

manufacture, adventure or concern; the word ""such"" referring back to the trade, commerce or manufacture or any adventure or concern mentioned

in the first part. In this case, the import licence obtained by the dealer was a direct result of export of sea-foods and the sale of paper and paper

boards so imported was thus intimately connected with his business in sea-foods. The Tribunal was certainly wrong in stating that the late Kurwath

Damodaran, being a dealer in sea-foods, cannot have any intention to carry on business in paper and paper boards. As a matter of fact, the paper

and paper boards imported by him could not have been used as a raw material in any other business activity he was carrying on and, consequently, even at the time when he imported the paper and paper boards against the import licence he did so with the intention of selling the paper and paper

boards so imported. Consequently, there can be no doubt whatever that he intended to sell paper and paper boards imported against the import

licence. The only other question that arises for consideration is whether this transaction, viz., the sale of imported paper and paper boards to

Basanth Paper House, Madras, can be said to be a transaction connected with or incidental or ancillary to the trade, commerce, manufacture,

adventure or concern mentioned in the first part of the definition and, in this case, the business in sea-foods which the late Kurwath Damodaran

was admittedly carrying on. We are clearly of the opinion that having regard to the fact that the import of paper and paper boards is directly

referable to and as a matter of fact was dependent upon, the export of sea-foods in which the late Kurwath Damodaran was dealing, the sale of

paper and paper boards was a transaction in connection with or incidental or ancillary to the business in sea-foods which the late Kurwath

Damodaran was carrying on. This view of ours derives support from the decisions of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell

Oil Storage and Distributing Co. of India Ltd. and Another, and The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant

Commercial Taxation Officer and Another, .

5. The learned counsel for the respondent contended before us that the definition of the term ""total turnover"" occurring in Section 2(g) of the Tamil

Nadu Act requires a person to have a place of business in the State for attracting the liability to tax and, in this case, the late Kurwath Damodaran

did not have a place of business in the State when he sold the paper and paper boards in Tamil Nadu State and, consequently, he cannot be held

liable to sales tax on the turnover relating to the sale of paper and paper boards in the State. It is not necessary for us to consider the correctness

or otherwise of this contention, because such a contention was not advanced before the Tribunal and the Tribunal, therefore, had no occasion to

consider the same. It is not as if the question is a pure question of law because this will involve an investigation into as to whether the late Kurwath

Damodaran had a place of business in Tamil Nadu State or not. Under these circumstances, the tax revision petition is allowed and the order of the

Tribunal is set aside and the assessment on the turnover of Rs. 49,358.57 at 2ï¿½ per cent made by the assessing authority as confirmed by the

appellate authority is restored. There will be no order as to costs.

