
(1977) 10 MAD CK 0043

In the Madras High Court

Case No : Tax Case No"s. 473 and 481 of 1974

The State of Tamil Nadu

APPELLANT

Vs

Shaw Wallace and Company

RESPONDENT

Date of Decision : 07-10-1977

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 22

Citation : (1979) 43 STC 48

Hon'ble Judges : P. Govindan Nair, C.J;Varadarajan, J

Bench : Division Bench

Advocate : K. Venkataswami, Additional Government Pleader, for the Appellant;
C. Natarajan, for the Respondent

Judgement

P. Govindan Nair, C.J.—These two tax revisions taken by the revenue deal with the sales tax assessments respectively for the years 1970-71 and 1969-70 on the same assessee. We shall give below a tabulated statement in respect of the assessments in both the cases :

2. The points taken before us in regard to these two tax revision cases, which are common to these cases are: (i) that the Sales Tax Appellate Tribunal erred in law in allowing the assessee to urge for the first time before it that the sales tax said to have been collected by the assessee along with the price, though without bifurcating the two, should be omitted in determining the turnover on which tax can be imposed ; and (ii) that in so far as the invoice or bills or the other documents did not indicate separately the tax payable and the price payable for the goods sold, the total amount must be taken to be the price of the goods sold and no deduction can be made therefrom.

3. The question whether any point should be allowed to be taken before the Tribunal for the first time, though it had not been raised before the lower authorities, is a matter of judicial discretion which the Tribunal or the second appellate authority will have to determine itself. Even if the discretion exercised is such that we cannot agree with that discretion, had we to exercise our own

discretion in the matter, that would not give rise to an erroneous decision on a point of law which can be made the subject-matter of revision under the provisions of the Sales Tax Act which could enable the revenue to come up before this Court in revision. Section 38 says that the order of the Tribunal may be revised if it is erroneous in law or if it had failed to decide any question of law. Neither the one nor the other happened in this case and, therefore, we negative the first contention.

4. The second aspect raises a more difficult question. Counsel relied on the decision of the Supreme Court in *Delhi Cloth & General Mills Co. Ltd. v. Commissioner of Sales Tax* [1971] 28 S.T.C. 331. This decision turned on the provisions of the Madhya Pradesh Sales Tax Act. Their Lordships have themselves pointed out that the conclusion that they reached that in the case of a total amount consisting of the price of the goods and perhaps the tax payable on the same which are collected together as a single sum, it must be taken that the whole amount paid represented the price of the goods sold is subject to the exception that when provision is contained in the statute enabling the assessee to collect sales tax, the question may be different. In other words, the decision proceeds on the basis that tax as such which is imposed on the seller in the case of sales cannot be passed on from the dealer to the purchaser unless statutory provision is made enabling to collect an amount by way of tax. Even so, when there is a provision in the statute enabling the assessee to collect the tax, it cannot be said that what has been collected is part of the price of the goods. In the Tamil Nadu General Sales Tax Act, there is a provision in Section 22(1), which as it stood at the relevant time, is in these terms :

No person who is not a registered dealer shall collect any amount by way of tax under this Act; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed.

5. No provision in the Act is brought to our notice which had to be complied with before a tax is collected and there are no provisions in the rules which had imposed conditions subject to which the collection must be made. Reference was made to the Board's standing order. This can only have the effect of an administrative direction by the taxing authorities and cannot affect the rights of the dealer emanating from the provisions of the Act. At any rate the standing order will not amount to rules prescribed. The decision of the Tribunal has referred to the price fixation which fixation clearly indicated that the price fixed is not only the price of the goods but the tax that was payable on that price. It is, therefore, clear that what was collected represented not merely the price of the goods but also the tax payable on the same, and the quantum of tax payable is also clearly discernible. In these circumstances, we see no grounds to interfere in revision with the order of the Tribunal on this point as well.

6. An additional point arises in T. C. No. 481 of 1974. The additional point relates to the sum of Rs. 39,595, which represented the sale of zinc sulphate. Exemption was granted by the Tribunal on this turnover by relying on item 21 of the First

Schedule holding that the sale in question was not first sale, the tax being single point tax. The question is whether on the wording of item 21, which deals with chemical fertilisers, the view taken by the Tribunal is correct or not. Item 21 deals with chemical fertilisers and starts with the words "that is to say" and then specifies 15 items of chemicals and then proceeds to add in item 16 "any mixture of one or more of the articles mentioned in items (1) to (15) and one or more of the organic manures". Two views are possible on this description, namely, (i) that it is an exhaustive enumeration of the chemicals that would fall under that item ; and (ii) that it is illustrative of the chemicals that would fall under that item and, in that view, may drag into its net, items similar which are not specifically mentioned.

7. The matter is now set at rest by the decision of the Supreme Court in *State of Tamil Nadu v. Pyare Lal Malhotra* [1976] 37 S.T.C. 319, which has been relied on by this Court in the decision in *Deputy Commissioner of Commercial Taxes, Tiruchirappalli v. Sowrirajan* [1977] 40 S.T.C. 359, that item 21 is more like a definition which states that chemical fertilisers mean, so and so and so and so. In that view, the exemption granted by the Tribunal regarding the turnover of Rs. 39,595 for the year 1969-70 with which we are concerned in T. C. No. 481 of 1974 cannot be justified. We, therefore, direct that the turnover would be fixed for that year by adding back the sum of Rs. 39,595.

8. We dispose of the tax revision cases in the above terms and direct the parties to bear their costs.