
(2011) 07 MAD CK 0157

In the Madras High Court

Case No : Tax Case Revision No. 965 of 2006

The State of Tamil Nadu

APPELLANT

Vs

Tvl. DeeJay Plastics (P) Ltd.

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Citation : (2011) 187 ECR 170 : (2012) 50 VST 115

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

Bench : Division Bench

Advocate : R. Sivaraman, Special Government Pleader, for the Appellant; V. Srikanth, for the Respondent

Final Decision : Allowed

Judgement

Chitra Venkataraman, J.—This revision is preferred as against the order of the Sales Tax Appellate Tribunal dated 1.11.2000 made in STA

No. 302/99, relating to the assessment year 1993-94, wherein, the Tribunal rejected the State's appeal, holding that the Assessee was entitled to second sale exemption.

2. The Assessee herein carries on business in polythene films and granules. It claimed second sales exemption of plastic granules to the extent of

Rs. 34,36,283/-. The Assessing Officer found that the purchase to the tune of Rs. 25,18,068/- alleged to have been made by Sudarsan

Enterprises, 3, West Mada Street, Thiruvottiyur and S.R. Enterprises, Kumaran Street, Kamaraj Nagar, Madras, were not genuine purchases,

since the dealers were not in existence carrying on business at the addresses given in the A9 returns of the Assessee. It was also contended that the

registration certificates in respect of the above concerns were also cancelled by

the concerned registering authority. In the circumstances, the claim of exemption was disallowed. Adding 10% gross profit, the sale value was estimated.

3. On a notice issued by the Assessing Officer, the Assessee contended that the purchases were made from one Brij Khandelwal, C/o.M/s.

Electro Polymers, 702, Shivalaya, ""A"" Block, Commander-in-Chief Road, Chennai - 600 105 and all the materials were delivered by him along

with the invoices by lorry at their godowns. Further, the Assessee had made payments to the seller only by Account Payee cheques and they were

encashed through the bankers, The Kumbakonam City Union Bank Ltd., 706, Mount Road, Chennai-6. In a detailed order of assessment made,

the Assessing Officer pointed out that going by the admission of the Assessee under objections dated 8.8.1995 that the purchases were made from

Brij Khandelwal, it was clear that the purchases were not made from the dealers, Sudarsan Enterprises and S.R. Enterprises, who were earlier

shown as the local dealers from whom the said purchases were effected. The Assessee filed the second objection dated 8.8.1995. The Assessing

Officer pointed out that the Assessee had not produced the relevant documentary evidence to prove that the purchases were effected from the said

Brij Khandelwal of Egmore. A verification of the Bank accounts given by the Assessee also did not show any information about who operated the

accounts, as the said account was closed as early as 8.9.1995. As regards the Central Bank of India account which was maintained by one S.

Kumar, introduced by Brij Khandelwal, who was operating the account, the statement of accounts was signed by one Rajendra Kumar, Managing

Director of the Assessee firm. Another statement of account for the period 15.4.1993 to 20.11.1993 was signed by S. Kumar, Proprietor of

Sudarsan Enterprises. It was also signed by the Managing Director of the Assessee company. A stamped receipt dated 26.4.1993 was signed by

one Ram in the capacity of Proprietor of Sudarsan Enterprises for the receipt of a sum of Rs. 1,00,000/- from the Assessee company. It is stated

that the said person viz., Ram, had also signed Invoice No. 22 dated 12.10.1993 of S.R. Enterprises and the other fictitious dealer. Thus, the

invoice issued by Sudarsan Enterprises as well as S.R. Enterprises were written by one and the same person, but under different names found at

the bottom of the sale invoice.

4. It was also pointed out that Invoice No. 5 dated 27.8.1993 of S.R. Enterprises carried the initials B.K., referring to the name of Brij

Khandelwal. It was also pointed out, on verification made at both the places of business of S.R. Enterprises and Sudarsan Enterprises, that there

was no such person carrying on business in the name and style spoken to.

5. Thus, going by the various documents available and the statement of accounts and receipts, the Commercial Tax Officer found that the

documents were in respect of two fictitious firms and that a third person had used the registration number of S.R. Enterprises and Sudarsan

Enterprises and there were no materials to show about the existence of Brij Khandelwal as the seller of the goods. Even though transfer of goods

were effected and that the goods were stated to have been purchased from Brij Khandelwal, the Officer found that there was no corroborative

materials in writing, connecting Brij Khandelwal directly to the transaction. In the circumstances, there being no material to substantiate that there

was transfer of goods taking place, the Officer held that the Assessee was not entitled to exemption on second sales of plastic granules, as they

were procured from some unknown source. As regards the transaction with the Bank, the Officer pointed out that the account maintained with the

said City Union Bank by Sudarsan Enterprises was closed. A verification of the account in the Central Bank of India reveals that the cheque

payment for and on behalf of S.R. Enterprises was withdrawn immediately. Going by the materials thus available, the assessment was made. Apart

from that, penalty was also levied on the Assessee.

6. On appeal before the Appellate Assistant Commissioner, the Appellate Authority pointed out that at the time of hearing the appeal, the

Assessee produced copies of purchase bills for the purchase of plastic granules from the registered dealers, and in which, the registration certificate

under the Tamil Nadu General Sales Tax Act as well as the Central Sales Tax Act, were noted.

7. The Appellate Authority pointed out that the Assessee produced the ledger account of purchase details, in which they had paid the balance to

the anterior seller through account payee cheques. The Appellate Assistant Commissioner referred to the finding of the Commercial Tax Officer

that the registration certificate of S.R. Enterprises was cancelled. He further observed that the Assessee had produced the materials to show that it had purchased from dealers who were existent and the purchases were made earlier to the cancellation of registration. Further, since the Department's representative could not produce the recorded evidence as regards the cancellation of the registration certificates of Sudarsan Enterprises and S.R. Enterprises, the assessment was set aside. As against the said order, the Revenue went on appeal before the Tribunal. In a very cryptic order, the Tribunal pointed out that the Revenue did not bring in any material to counter the finding of the Appellate Assistant Commissioner as regards the non-existence of the vendor and the cancellation of the registration certificate with reference to the impugned transaction. In the circumstances, following the decision of the Tamil Nadu Taxation Special Tribunal in TCA 815/97 dated 29.9.1999 on identical facts, the Revenue's appeal was dismissed, thereby the Appellate Authority's order was affirmed. Aggrieved by the same, the Revenue is on revision before this Court.

8. Learned Special Government Pleader (Taxes) appearing for the Revenue pointed out that when the very existence of the concern from which the Assessee had purchased the taxable goods in respect of which the second sale exemption was claimed is in serious doubt and when the Assessee had not cleared that doubt, on the facts stated in the assessment order, the Tribunal as well as the Appellate Assistant Commissioner committed a serious error in holding that the Assessee had produced registration certificates and the invoices to substantiate about the anterior taxable sale from existing persons. He pointed out that when the claim of the Assessee that the payments were made through account payee cheques were found to be unacceptable by reason of the admission of the Assessee that they had made purchases from Brij Khandelwal, whereas the invoices were made in the name of Sudarsan Enterprises and S.R. Enterprises, the view of the Tribunal lacks any material evidence; consequently, the order of the Tribunal has to be set aside.

9. Per contra, learned Counsel appearing for the Assessee, supporting the order of the Tribunal, pointed out the fact that the Assessee had purchased goods from Brij Khandelwal who was carrying on business in

Commander in Chief Road, Chennai, and had produced the materials, particularly in the form of invoices and that the goods were transported through lorry from the go down. In the absence of any material to discredit the sales by Brij Khandelwal, and with the burden of proof discharged by the Assessee that the anterior sale was a taxable sale, the benefit of second sale exemption could not be denied to the Assessee.

10. Heard learned Counsel appearing on both sides and perused the material placed on record.

11. As already pointed out in the preceding paragraphs, the Assessee claimed that it had purchased plastic granules from Brij Khandelwal. It is admitted by the Assessee that the purchases were under the name of Sudarsan Enterprises and S.R. Enterprises. As rightly contended by the learned Special Government Pleader (Taxes), there is absolutely no material to link Brij Khandelwal with Sudarsan Enterprises and S.R.

Enterprises. It is one thing to say that the Assessee is an existing dealer on the file of the Revenue, carrying on business in goods, in which event, the subsequent registration and cancellation or purchase from unregistered dealers, as such, may not stand in the way of grant of an exemption.

However, it is totally a different matter for consideration that when there was absolutely no material to substantiate that the materials were

purchased from existing persons and that there was, in fact, a sale and a transfer of property of goods, the burden that the sale from existing

persons did take place, ought to have been discharged by the Assessee. There is no gainsaying in the contention of the Assessee that a mere

reference to the name of the seller would result in the discharge of the onus and that it was for the Revenue to prove that there was no sale.

12. A perusal of the order of assessment clearly pointed out the contradictions in the contention of the Assessee that Brij Khandelwal was the

actual seller. If that be so, there is no explanation why the amounts, in fact, were paid to two other dealers viz., Sudarsan Enterprises and S.R.

Enterprises. Even therein, the Assessing Officer pointed out to the presence of another name, Ram, who is stated to have signed on behalf of

Sudarsan Enterprises and S.R. Enterprises. The Bank details which are referred to in the order of the Assessing Officer also show the withdrawal

of the amount immediately and that the account was maintained in the name of

S. Kumar.

13. Whatever might have been the correctness or otherwise as regards the existence of S.R. Enterprises and Sudarsan Enterprises, when the Assessee himself had come forward to admit that the sales were by one Brij Khandelwal, the mere fact that the Assessee had produced invoices from the said Brij Khandelwal, would not discharge the burden of proof that there was, in fact, a sale of goods from an existing dealer in goods, resulting in the transfer of property of goods. The invoices and the names given, including the address, do not discharge the Assessee from substantiating the contention that there was a sale by Brij Khandelwal to result in transfer of property in goods. In the absence of any material to support the case of the Assessee, particularly to prove the link between Brij Khandelwal and the other two firms in whose names the invoices had been raised, we do not find any justification in accepting the case of the Assessee to grant exemption, as had been done by the Tribunal and the Appellate Assistant Commissioner. As already pointed out, the Appellate Assistant Commissioner proceeded to accept the case of the Assessee solely on the ground that the invoices produced through S.R. Enterprises and Sudarsan Enterprises carried the registration number and that the purchases were made much prior to the cancellation of the registration certificate. The Tribunal also held so. With the burden of proof on the issue not discharged by the Assessee as to the sale of goods in his favour, on the admitted case that it was only Brij Khandelwal who had had the transaction with the Assessee, the Tribunal as well as the Appellate Assistant Commissioner misdirected themselves in deciding the case in favour of the Assessee by holding that the registration of S.R. Enterprises and Sudarsan Enterprises was cancelled only subsequent to the sales and hence, the claim for exemption could not be rejected.

14. As already pointed out, when the link between the seller and the alleged seller had not been proved, the case of the Revenue cannot be slightly dismissed. We are aware of the fact that by holding so, we are disturbing the findings of the Tribunal and in a revision where question of law alone is involved, normally this Court would not disturb the findings as given by two authorities. However, when the findings are without any material and there is perversity writ large on the face of it, we have no hesitation in accepting

the case of the Revenue, more so in the context of the detailed discussion by the Assessing Officer, pointing out to the infirmities in the stand of the Assessee. In the circumstances, the order of the Tribunal is set aside and the assessment order is restored.

15. As regards the levy of penalty in this case, it is no doubt true that the Assessee had not discharged the burden as regards his claim on exemption. But then, considering the law on the levy of penalty that the degree of proof required for the purpose of levy of penalty is more than what is normally required for making the assessment and that in this case, the assessment had been upheld by this Court on the ground that the Assessee had not discharged the burden of proof as regards the purchase from an existing dealer, the same line of reasoning cannot be accepted for the purpose of upholding the levy of penalty. Hence, the benefit of doubt herein for levy of penalty has to be considered as a vital factor in sustaining the order of the Tribunal in cancelling the penalty.

16. In the circumstances, we agree with the order of the Tribunal only as regards the levy of penalty. As regards the assessment, we set aside the Tribunal's order. In the result, the Tax Case Revision stands allowed.