(2009) 01 MAD CK 0232

In the Madras High Court

Case No : T.C. (R) No. 1096 of 1990

The State of Tamil Nadu APPELLANT

Vs

Tvl. Macwin Explosives and Accessories (P) Ltd. RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:
Central Sales Tax Act, 1956 — Section 20, 6A(2), 9(2)

Citation : (2010) 33 VST 19

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : Haja Nazirudeen, Spl. Govt. Pleader, for the Appellant; R.L. Ramani for B. Raveendran, for the Respondent

Judgement

K.K. Sasidharan, J.—This tax case has been remanded by the Hon''ble Supreme Court of India to examine the issues involved in the matter

afresh in the light of the decision of the Supreme Court in Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, , with liberty to the parties to

implead other States if found necessary and with a further observation that in the event of creation of another forum by a Parliamentary Act, it

would be open to the parties to approach the said forum.

Factual matrix:

2. The respondent is an Assessee on the file of the Deputy Commercial Officer, Hosur and having its registered Head Office and factory at Hosur

with branch outside the State like Dhanbad and Nagpur. With respect to the assessment year 1986-87, the respondent [hereinafter referred to as

''the assessee''] reported a total and taxable turnover of Rs. 72,16,968/- and Rs. 38,81,255/-. The Assessing Officer determined the total and

taxable turnover at Rs. 87,13,767/- and levied a penalty of Rs. 7,24,777/- on the ground that the turnover of Rs. 48,31,850/- was not correctly

brought into account representing inter-State sales. The said Assessment Order was challenged by the assessee before the Appellate Assistant

Commissioner.

3. Before the Appellate Authority, the assessee contended that the sales turnover to the tune of Rs. 48,31,850/- only represented ''stock transfer''

to its branches for open market sale and therefore, the said turnover was not exigible to tax. It was their further contention that the sales transaction

of inter-State sale to the tune of Rs. 38,81,917/- was required to be assessed at a concessional rate as the assessee had filed the necessary ""C

Forms for the said transaction. The assessee also challenged the levy of penalty on the ground that computation of penalty at 150% of the tax due

on the taxable turnover at Rs. 48,31,850/- was not sustainable as they have brought the turnover into the account and claimed exemption in

respect of the said turnover by treating the same as ''stock transfer'' to its branch for open market sale.

4. The Appellate Assistant Commissioner disposed of the appeal, whereby he directed the Assessing Officer to verify the ""C"" Forms involving

turnover of Rs. 38,81,817/- and to grant appropriate relief to the assessee after such verification. The Appellate Assistant Commissioner also gave

a finding that the transaction relating to the turnover of Rs. 48,31,850/- were only inter-State sales and not ''stock transfer'' to its branches for open

market sales and as such, the Appellate Authority was of the opinion that the Assessing Officer was justified in imposing penalty. Accordingly, the

appeal was partly allowed and partly dismissed as per order dated 01.12.1988.

5. The order of the Appellate Authority was taken up before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal set aside the imposition

of penalty and gave a factual finding that the transaction involved in the matter represented only ''stock transfer'' to the branches of the assessee for

open market sale and it was not inter-State sale.

6. The order of the Tamil Nadu Sales Tax Appellate Tribunal [Additional Bench, Coimbatore] was challenged by the State of Tamil Nadu in T.C.

No. 1096/1990. The primary question raised in the tax case was as to whether the transaction involved in the matter represented only stock

transfer to the branches of the assessee for open market sale or an inter-State sale.

7. The tax case was disposed of by this Court as per Judgment dated 02.12.1997 by deciding the issue in favour of the Revenue and against the

assessee. The Division Bench was of the opinion that the goods were moved from the State of Tamil Nadu to Dhanbad and Nagpur pursuant to an

incident of contract of sale and eventually, the sale was completed there and as such, it goes without saying that the transaction represented only

inter-State sales, exigible to tax at the appropriate rate and not stock transfer to branches for open market sale, thereby not exigible to tax. While

setting aside the decision of the Tribunal with regard to nature of sale transaction, the Division Bench was pleased to confirm the order of the

Tribunal with regard to penalty, as the Division Bench was of the opinion that it was not the case of the department that the assessee failed to

disclose the entirety of the transactions in its accounts.

8. The Judgment dated 02.12.1997 in T.C. No. 1096/1990 was challenged by the petitioner before the Hon''ble Supreme Court in Civil Appeal

No. 943/2001.

9. The Hon''ble Supreme Court considered the effect of Section 6-A(2) of the Central Sales Tax Act with respect to the movement of goods in

Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, and held that by reason of Section 6-A(2) of the Central Sales Tax Act, 1956, a legal

fiction has been created for the purpose of Central Sales Tax Act to the effect that where the movement of goods takes place otherwise than as a

result of sale, the transaction would not be an inter-State sale. The Supreme Court also held that initial burden of proof is always on the dealer to

show that the movement of goods was occasioned by reason of transfer of such goods other than by reason of sale and on a declaration made by

a dealer to the said effect, an enquiry has to be made by the Assessing Authority for the purpose of passing an order and for arriving at a

satisfaction that the movement of goods was occasioned otherwise than as a result of sale. According to the Hon''ble Supreme Court, whenever

such an order is passed by the Assessing Authority, a legal fiction is created and by means of such a legal fiction, if it is determined that the

transaction in question is not an inter-State sale, then it amounts to a transfer of stock. It was further observed that once such a legal fiction was drawn, the same would continue to have its effect not only by making an order of assessment in terms of the State Law, but also for the purpose of

invoking the powers of assessment contained in Section 9(2) of the Central Sales Tax Act.

10. The Civil Appeal No. 943/2001 was also taken up with the Ashok Leyland Ltd. Case cited supra and without deciding the factual dispute

involved in the matter, the Hon''ble Supreme Court remanded the matter to this Court for fresh consideration in the light of the decision rendered in

Ashok Leyland Ltd. case.

11. While remanding the matter to this Court for fresh consideration, the Hon''ble Supreme Court also observed that in the event of creation of a

particular Forum to decide the matter between two States by way of a Parliamentary Act, it would be open to the parties to approach the said

Forum.

12. The decision of the Supreme Court was made on 07.01.2004 and it appears that the Central Sales Tax Appellate Authority was constituted in

the meantime. Since the petitioner failed to move the Statutory Authority [hereinafter referred as the Appellate Authority], the assessee preferred

an appeal purportedly u/s 20 of the Central Sales Tax Act. The Appellate Authority considered the maintainability of the appeal. The Appellate

Authority was of the view that the order of the Taxation Tribunal was in favour of the assessee and it was only the petitioner who moved the High

Court assailing the said order. The Appellate Authority also observed that the alleged inaction on the part of the State to move the High court to

re-examine the matter does not confer jurisdiction on the Appellate Authority to assume the role of the High Court.

13. Ultimately, the appeal preferred by the assessee was rejected as not maintainable.

14. The Central Sales Tax Appellate Authority has been constituted as a Forum to decide the dispute relating to Central Sales Tax. The said

Authority has got jurisdiction throughout India and its order is binding on all the Central Sales Tax Authorities. Admittedly, in the present matter,

interest of other States are also involved and it is the case of the Assessee that they have already paid tax in the State of Bihar and Maharashtra.

Therefore, in the event of this Court taking up the matter, necessarily, other

States have also to be impleaded as parties and any direction issued by

this Court would affect the interest of other States also. It was only in that context that the Hon''ble Supreme Court while remanding the matter,

observed that in the event of creation of another Forum by a Parliamentary Act, it would be open to the parties to approach the said Forum. Now

that the Central Sales Tax Authority has been created with jurisdiction throughout India, we are of the opinion that the matter has to be decided

only by the said Authority.

15. While considering the Appeal preferred by the assessee, the Central Sales Tax Appellate Authority was of the view that the direction of the

Hon''ble Supreme Court was only to the High Court to consider the matter afresh in the light of the Judgment in Ashok Leyland Ltd. Case and as

such, the parties cannot confer jurisdiction on a Tribunal when it does not have the same. However, we are of the view that since the order of this

Court dated 02.12.1997 in T.C. No. 1096/1990 has already been set aside by the Hon''ble Supreme Court in Civil Appeal No. 943/2001, by

directing this Court to decide the issue afresh, virtually, the order of the Tribunal is restored and it is only the said order which is to be considered

afresh in accordance with the decision of the Supreme Court in Ashok Leyland Ltd. Case. Therefore, when there is a statutory authority now

functioning with jurisdiction to decide the issue relating to cases under the Central Sales Tax Act and as the matter involves other states also, it is

the said Authority who alone has got jurisdiction to decide the issue. Therefore, we are of the considered view that the matter has to be decided on

merits by the Central Sales Tax Appellate Authority.

16. The learned Special Government Pleader appearing on behalf of the petitioner also submitted that the Sales Tax Department is taking emergent

steps to file an appeal before the Central Sales Tax Appellate Authority. In such circumstances, we are of the view that interest of justice would be

sub-served by granting liberty to the petitioner to file statutory appeal before the Central Sales Tax Appellate Authority.

17. In the result, the tax case is disposed of by granting liberty to the petitioner to file an appeal before the Central Sales Tax Appellate Authority,

New Delhi against the order dated 20.09.1989 in Appeal No. 133/89 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional

Bench), Coimbatore Bench and in the event of filing such an appeal within a period of eight weeks from the date of receipt of a copy of this order,

we request the Tribunal to entertain the appeal and decide the same on merits as expeditiously as possible. The Tax Case is disposed of subject to

the above direction. No costs.

