
(1978) 01 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 4884 of 1975 and T.C. (Revision) No's. 216, 217, 218 and 219 of 1977

Trac Industries and Components Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 03-01-1978

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1979) 43 STC 120

Hon'ble Judges : Ramanujam, J;Mohan, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; K. Venkataswami, Additional Government Pleader for 1st respondent in W.P. No. 4884 of 1975 and in T.C. Nos. 216 to 219 of 1977 and R. Subramanian, for King and Partridge for 2nd respondent in W.P. No. 4884 of 1975, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—T. C. (R.) Nos. 216 to 219 of 1977 have been filed by the same petitioner. The petitioner is a public limited company,

manufacturing trac pins, bolts, nuts and chains which are used as undercarriage parts for crawler tractors and other crawler equipments. For the

assessment years 1968-69 to 1970-71, the original assessments were made treating the items manufactured by the petitioner-company as multi-

point goods and assessing them at 3 per cent. Subsequently, it was felt by the revenue that the items manufactured and sold by the petitioner-

company fell under entry 55 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. Hence revision of the assessments for the years

1968-69 to 1970-71 were made u/s 16 of the Act and the turnover of sales of all the items manufactured by the petitioner-company was brought

under single point tax. For the assessment years 1972-73 and 1973-74 original assessments themselves were made on the basis that the items

manufactured and sold by the petitioner-company are liable to single point tax at 9 per cent. Aggrieved by the said order, the petitioner-company

preferred appeals before the Appellate Assistant Commissioner. In these appeals, the Appellate Assistant Commissioner gave relief to the

petitioner by reducing the rate of tax from 9 per cent to 7 per cent for sales effected prior to 26th February, 1970, on which date the rate of levy

of 7 per cent was increased to 9 per cent.

2. The petitioner thereafter preferred appeals before the Sales Tax Appellate Tribunal in respect of the assessment years 1968-69, 1969-70,

1970-71 and 1972-73. By a common order dated 30th January, 1976, the Tribunal held that the items manufactured by the petitioner-company

are primarily intended for use as components for crawler tractors and that, therefore, they have been rightly assessed at single point under entry 55

of the First Schedule. In that view, the appeals were dismissed. It is against this common order covering the four assessment years, the above tax

revision cases have been filed.

3. During the pendency of the appeals before the Tribunal, the Tribunal granted stay of the collection of the disputed tax on condition that the tax is

to be paid in six equal monthly instalments commencing from 3rd October, 1975. The petitioner did not pay even the first instalment as per the

conditional order of stay. Therefore, a notice in form B6 was issued to the petitioner by the authorities for collection of the tax. At that stage, the

petitioner has come forward with W. P. No. 4884 of 1975 for a writ of prohibition prohibiting the first respondent from recovering the sales tax

due by it in respect of the said assessment years on the ground that the sales tax liability cannot be enforced against the petitioner-company in view

of Section 4 of the Tamil Nadu Relief Undertaking (Special Provisions) Act, 1969 (Tamil Nadu Act 21 of 1969), read with the notification issued

by the Government in G. O. Ms. No. 860, Industries, dated 24th May, 1972.

4. Learned counsel for the petitioner contends that the assessment of the items manufactured and sold by the company at single point under entry

55 of the First Schedule cannot be sustained and that the items are to be taxed only at multi-point.

5. The Tribunal has actually found that the items manufactured and sold by the petitioner-company are mainly intended for use as components for tractors, bulldozers, etc. The Tribunal has also held that though the petitioner has made a claim that the items manufactured by them can also be used for other purposes, it has not been established, and that the alleged sales by the company to one R. M. T. Drill Private Limited, relied on by the petitioner to establish that the items manufactured by it can also be used as components for drilling machines, formed an insignificant part of the total sales made by it and that, therefore, the predominant use to which the items manufactured by the petitioner had been put to is as component of tractors and bulldozers. The Tribunal also referred to the various literature and brochures distributed by the company to show that the items manufactured by the company are mainly intended for use as components for tractors and bulldozers.

6. It has not been disputed before us that the items manufactured and sold by the company can be used as components for tractors and bulldozers.

But what is said is that they are not intended exclusively for use as components for tractors and bulldozers, for they can also be used for other

purposes such as components of drilling machines. But, as already stated, the sales of the items as components of drilling machines have not been

shown to be of any considerable magnitude. If the main use for the items is as components of tractors and bulldozers, the fact that these items

could be really used for some other purpose will not make it any the less a part of a tractor or part of a bulldozer. As a matter of fact, in a recent

decision reported in *State of Tamil Nadu v. Sha Maggajee Saremal & Bros.* [1976] 38 S.T.C. 118, it has been held that the spare parts of

agricultural tractors, even if they have been sold as spare parts for diesel engines, could still fall under entry 55 of the First Schedule and taxed at

single point as spare parts for tractors. As already stated, the predominant user of the items manufactured and sold by the petitioner-company is

for use as components for tractors and bulldozers. This will squarely bring the items under entry 55 of the First Schedule. We have, therefore, to

agree with the view taken by the Tribunal. Hence these revision cases are dismissed. No costs.

7. As regards the relief claimed in the writ petition, it is seen that the notification issued by the State Government u/s 4 of the Tamil Nadu Relief

Undertaking (Special Provisions) Act, 1969, in G. O. Ms. No. 860, Industries, dated 24th May, 1972, has suspended the operation of all

contracts, assurance of party agreements, settlements, awards, standing orders or other instruments in force to which the said relief undertaking is a

party, or which may be applicable to the said relief undertaking immediately before 25th May, 1972. We do not see how this notification will get

attracted on the facts of this case. That notification, in our view, gives relief to the relief undertaking from the obligations it has entered into with

third parties prior to 25th May, 1972. The said notification will not enable the petitioner-company to claim relief as against a statutory tax liability.

Therefore, the liability towards sales tax cannot be said to have been suspended by virtue of the said notification. The petitioner is, therefore, not

entitled to any relief in the writ petition. The writ petition is, therefore, dismissed. There will, however, be no order as to costs.