(1984) 07 MAD CK 0018

In the Madras High Court

Case No : Tax Case No. 337 of 1978 (Appeal No. 30 of 1978)

Transformer and Switchgear Ltd. APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 24-07-1984

Acts Referred:

Citation : (1986) 62 STC 445

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : N. Inbarajan, for C. S. Chandrasekara Sastry, C. Venkataraman and C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader-I (CT), for the Respondent

Judgement

Ramanujam, J.—This is an appeal filed by the assessee against the orders of the Board of Revenue suo motu revising the order of the

Appellate Assistant Commissioner in respect of an assessment made under the Tamil Nadu General Sales Tax Act, 1959, for the assessment year

1972-73. The assessee in this case reported a total and taxable turnover of Rs. 1,15,98,554.28 and Rs. 7,16,667.24, respectively, for the

assessment year 1972-73 under the Tamil Nadu General Sales Tax Act. The assessing authority, by his order dated 15th April, 1974, determined

the total and taxable turnover at Rs. 1,38,08,678.18 and Rs. 13,20,879.24, respectively. In passing such an assessment order, he rejected the

assessee''s claim for exemption in respect of Rs. 4,04,420 on the ground that they represent export sales. The assessee took the matter in appeal

before the Appellate Assistant Commissioner contending that the denial of benefit of exemption of Rs. 4,04,420 by the assessing authority was

erroneous. The Appellate Assistant Commissioner, however, after going through the nature of the transactions particularly with reference to the

terms of the agency agreement between the assessee and one Kothandaraman & Co., held that the assessee has exported the goods to Ceylon

through its agent, Kothandaraman & Co., that there being only one sale, which is by the assessee to the foreign buyer, the turnover of Rs.

4,04,420 is entitled to exemption as claimed by the assessee. The Board of Revenue revised this finding in exercise of its suo motu revisional

powers, holding that the turnover of Rs. 4,04,420 represents sales effect by the assessee to Kothandaraman & Co. and the fact that

Kothandaraman & Co. had later exported the goods to Ceylon will not invest the earlier transaction of purchase as an export sale. The Board of

Revenue in coming to that conclusion took into account the circumstance that Kothandaraman & Co. had paid 90 per cent of the estimated value

of the goods to the assessee, which indicates that there should be a sale by the assessee to the so-called agent, Kothandaraman & Co. In that

view, the Board of Revenue has set aside the order of the Appellate Assistant Commissioner and restored the order of the assessing authority on

the said turnover in question. The order of the Board of Revenue has been challenged in this appeal by the assessee.

2. According to the assessee, the turnover disputed related to the sale of transformers to the Ceylon Electricity Board by Kothandaraman & Co.,

selling agent of the assessee. The assessee has produced an agency agreement dated 18th December, 1969, entered into between the assessee

and the agent, Kothandaraman & Co. As per that agreement, as a selling agent, Kothandaraman & Co. is entitled to receive only a commission of

5 per cent on the sales effected by it on behalf of the assessee. The same agency agreement also provides under clause 8 that the agent should pay

90 per cent of the estimated value of the goods as advance to the assessee after the despatch of the goods and the balance of 10 per cent will be

payable to the assessee when realised from the foreign customer by the agent. The agency agreement also provides other restrictions on the agent.

Thus, the substance of the contract between the assessee and Kothandaraman & Co. is that the latter has to export the goods on behalf of the

assessee as its agent and they are entitled to a commission of 5 per cent on the sales, for the work done by them. Merely because the agent has advanced 90 per cent of the estimated value as advance, immediately after despatch of the goods, it will not make the transaction as one of sale

between the assessee and Kothandaraman & Co. It is no doubt true that in the invoices raised by Kothandaraman & Co. in favour of the foreign

buyer, no mention is made about the principal, that is, the assessee. This aspect of the matter has been relied on by the Board of Revenue and also

by the learned Government Pleader before us in support of the view that there should be deemed to be two sales, one by the assessee to the

agent, viz., Kothandaraman & Co. and another sale by Kothandaraman & Co. in favour of the foreign buyer. It is also pointed out by the learned

Government Pleader that there is no privity between the foreign buyer and the assessee and the privity is between Kothandaraman & Co. and the

foreign buyer. Therefore, for all purposes, Kothandaraman & Co. should be taken to have sold the goods to the foreign buyer and they could have

done so only after they purchased the goods from the assessee. But the view taken by the Board of Revenue that since the foreign buyer has no

privity with the assessee, there cannot be only one sale by the assessee to the foreign buyer, cannot now be legally sustained in view of the

subsequent decision of this Court in State of Tamil Nadu v. Rafeeq Ahmed & Co. [1983] 52 STC 281. In that case, an identical point was put

forward. It was contended that since there is no privity between the foreign buyer and the local seller, who has exported the goods though the

medium of an agent and the agent has transacted with the foreign buyer in his own name, there should be deemed to be two sales, one from the

assessee to the agent and the other from the agent to the foreign buyer. This contention was specifically considered and rejected by a Division

Bench of this Court in the aid decision. The Bench has referred to, with approval, the three earlier decisions of this Court in State of Tamil Nadu v.

A. Shafeeq Ahmed [1979] 44 STC 263 (Appendix), Hajee Abdul Khalique Sahib & Co. v. State of Tamil Nadu [1979] 44 STC 261 and Akhtar

& Co. v. State of Tamil Nadu [1981] 47 STC 62, in all of which, a common principle had been laid down that where an assessee enters into an

export sale through the medium of an agent and this mode of transaction is evidenced by record, the fact that foreign buyers are unaware of the

circumstance, would not detract from the fact that the sales are really those of the assessee. According to the learned Judges in that case, the nondisclosure of the principal by the agent in his transaction does not have any effect on the real nature of the contract between the agent and the other

contracting party and therefore the fact that the agent has not disclosed the name of the principal in dealing with the foreign buyer, will not make

him an independent dealer with reference to the goods exported. Having regard to the said decision of this Court, which has been rendered

subsequent to the order of the Board of Revenue, its order has to be set aside the order passed by the Appellate Assistant Commissioner should

be restored. There will be an order accordingly. There will be no order as to costs.

3. Ordered accordingly.

