(1995) 03 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No. 6689 of 1993

T.S.R. and Co. APPELLANT

Vs

District Forest Officer and others RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 22, 3

Citation : (1995) 03 MAD CK 0097

Hon'ble Judges : S.M. Ali Mohamed, J

Bench : Single Bench

Judgement

S.M. Ali Mohammed, J.—The writ petitioner in his affidavit states that he is the sole proprietor of M/s. T.S.R. Company and he is carrying on business in manufacture and sale of sandal talcum powder and face powder as well as soap and states further he is the registered dealer under the Tamil Nadu General Sales Tax Act, 1959. The first respondent issued a tender to be published in the Tamil Nadu Government Gazette dated May 1, 1991, for sale of certain items mentioned in the tender notice. The petitioner was the successful bidder in the auction notice held on June 24, 1991, with reference to basolabukini and saw dust the particulars of which are stated by the 1st and 2nd respondents in the counter in paragraph 4. It is further submitted that the first respondent has collected 8 per cent sales tax and 10 per cent surcharge with regard to the first auction held on June 24, 1991. With reference to the second auction dated September 28, 1992, 8 per cent sales tax, plus 15 per cent surcharge. He further submits that in view of section 3(3) of the Tamil Nadu General Sales Tax Act, the petitioner is liable to pay the sales tax at the concessional rate of 3 per cent during the material time as the petitioner was using the goods purchased from the first respondent in the course of manufacture and the final product, viz., soap falls under Schedule I, entry 37 and talcum powder under Schedule I, entry 51 and once the form XVII prescribed under rule 22 of the Tamil Nadu General Sales Tax Rules, is filed the petitioner is liable to pay only 3 per cent tax and the first respondent is not entitled to collect 8 per cent and therefore, the petitioner is entitled for refund of the excess amount of sales tax paid by the petitioner to the first respondent. As the respondent has collected 8 per cent and has not accepted the contention of the petitioner, the petitioner has approached this Court for a writ of mandamus or any other appropriate writ, direction or order to the 1st respondent abovementioned directing him to refund to the petitioner the sales tax and surcharge of Rs. 61,991 and Rs. 1,13,194 collected in excess of the sums due u/s 3(3) of the Tamil Nadu General Sales Tax Act, 1959, from the petitioner in respect of the auctions conducted on June 24, 1991 and September 28, 1992.

2. A counter-affidavit and an additional affidavit have been filed on behalf of the first and second respondents. It is stated that the Forest Department is not a registered dealer and therefore the Forest Department is not bound to accept form XVII and collect concessional rate. It is stated further in clause 25 of the tender as follows :

"The purchaser should pay to the Forest Department in the lump sum sales tax at the rates in force at the time of confirmation of the sales on the full purchase amount along with the first instalment of the purchase price."

It is stated that the petitioner is bound to pay 8 per cent sales tax and in any event, the commodities purchased by the petitioner do not fall under the First Schedule for the exemption and later in the additional counter, the stand is modified by stating that it is a timber falling under Schedule I, entry 84 and emphasis is made on the Explanation which reads as follows :

"Original entry :

Timber and bamboo

Explanation. - For the purpose of this item, in the case of timber and bamboo purchased by the forest contractors in the auction of forest coups conducted by the Forest Department of the Government, the sale by such contractors of such timber and bamboo in any form or size shall be deemed to be the first sale and the sale by the Forest Department in such auction of forest coups shall not be the first sale."

Entry from March 23, 1987 :

(i) Timber

(ii) Bamboo

Explanation. - For the purpose of this item, in the case of timber and bamboo purchased by the forest contractors in the auction of forest coups conducted by the Forest Department of the Government, the sale by such contractors of such timber and bamboo, in any form or size shall be deemed to be the first sale and the sale by the Forest Department in such auction of forest coupes shall not be deemed to be the first sale."

It is further stated that the District Forest Officer is not a dealer and as such, he does not require to accept form XVII and that the District Forest Officer is not the competent authority to pass orders and grant refund under the Tamil Nadu General Sales Tax Act.

3. Mr. Chandran, learned counsel for the petitioner submitted that as per section 2(g). Explanation (2), the first respondent is a dealer by the deeming provision and does not come under the definition of section 2(m), registered dealer, as the Government departments are exempt from registering themselves as a dealer and in this connection the learned counsel referred to section 22 of the Tamil Nadu General Sales Tax Act wherein the Explanation states that the State Government shall be deemed to be the registered dealer, and submitted that the contention of the first respondent that he is not a registered dealer, that therefore he is not bound to accept form XVII and allow the petitioner to pay concessional rate is untenable. He, further submitted that the petitioner complies with the provision of section 3(3) of the Tamil Nadu General Sales Tax Act as he has purchased the goods from the first respondent and he has utilised the same for the manufacture of the final products, viz., soap and talcum powder and both soap and talcum powder are found in Schedule I, entry 37 and entry 51 respectively. The learned counsel further submitted that the first respondent being a department of the State Government was bound by the provisions of the Tamil Nadu General Sales Tax Act and he was bound to accept the form XVII and allow the petitioner to pay the concessional rate of sales tax at the rate of 3 per cent. He further submitted that the clause 25 of the tender condition has to be read, subject to the Tamil Nadu General Sales Tax Act. On the other hand, Mr. Kannappa Rajendran, appearing on behalf of the first and second respondents, vehemently contended that the first respondent, the Forest Department, is not a registered dealer under the Tamil Nadu General Sales Tax Act and therefore, he was not bound to receive form XVII and allow the petitioner to pay sales tax at a concessional rate. The petitioner was governed by the terms and conditions of the tender and in particular, condition 25 says that the purchaser should pay to the Forest Department in the lump sum sales tax at the rate in force at the time confirmation of the sale on the full purchase amount along with the first instalment of the purchase price. He further submitted that the product purchased by the petitioner, viz., that saw dust and basolabukini are not found in the First Schedule to the Act and therefore the petitioner is not entitled for concessional rate of tax. He further submitted that in any event, the first and second respondents acted only as collecting agents and they have paid the entire amount collected from the petitioner to the third respondent, the State of Tamil Nadu represented by Commercial Tax Department.

4. No counter-affidavit has been filed on behalf of the third respondent.

5. I have carefully considered the contentions of the learned counsel for the petitioner and the respondents. In the instant case, it is clear that the petitioner is a businessman engaged in the manufacture and sale of sandal talcum powder

and soap and he is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959. It is also admitted that the petitioner took part in the auction tender on June 24, 1991 and September 28, 1992, with reference to the items saw dust and basolabukini and he was the successful bidder. It is also the admitted fact that the petitioner paid the sales tax at an enhanced rate at 8 per cent under protest as the first respondent failed to accept the form XVII filed by the petitioner and the first respondent returned the forms stating that he is not a registered dealer. Section 3(3) of the Tamil Nadu General Sales Tax Act, 1959, reads as follows :

"3(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the tax payable by a dealer in respect of sale of any goods, other than consumables, to another for use by the latter, in the manufacture inside the State for sale by him of any goods mentioned in the First Schedule, other than those falling under items 70(c) and 107 of the said Schedule, shall be at the rate of only three per cent on the turnover relating to such sale."

A reading of the above provision shows that the tax paid by the dealer in respect of sale of any goods other than consumables to another for use by the latter, in the manufacture inside the State for sale by him of any goods mentioned in the First Schedule other Schedule other than those falling under items 70(c) and 107 shall be at the rate of only three per cent on turnover relating to such sale, Consumable goods have been defined in Explanation, which reads as follows :

"Explanation. - For the purposes of this sub-section, ''consumables'' means fuels, welding electrodes, welding rods, abrasives, carbide tip tools and lubricating oils."

In the instant case, it is clear that the petitioner is a dealer registered under the Tamil Nadu General Sales Tax Act and he is manufacturer of soap and talcum powder and the manufacture is carried on inside the State of Tamil Nadu and for the commodities purchased by him for manufacture he is entitled to concessional rate at the rate of 3 per cent provided the final products fall in any one of the items mentioned in Schedule I. In the case of the petitioner, two final products, namely, soap falls under Schedule I, entry 37 and talcum powder under Schedule I, entry 51 and therefore the petitioner is entitled to the benefit given u/s 3(3) of the Act as he has purchased goods from the first respondent, viz., saw dust, and basolabukini as raw materials for the manufacture of the final products, soap and talcum powder. I am unable to accept the contention of the 1st and 2nd respondents that the goods mentioned in section 3, sub-section (3) must find a place in the First Schedule. A reading of section 3(3) shows that only the final product produced by the manufacturer under any one of the entry under the First Schedule is liable to pay 3 per cent. In the instant case as already stated, the final product of the petitioner, soap comes under entry 37 and talcum powder under entry 51 of the First Schedule and he is entitled to the concessional rate of tax at the rate of 3 per cent under the provisions of section 3(3) of the Act. I am unable to accept the contentions of the learned counsel for the respondents that the first respondent - Forest Department is not a dealer. In this connection, it is interesting to note the definition of the dealer given u/s 2(g) which reads as follows :

"Section 2(g) : ''dealer'' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes -

(i) a local authority, company, Hindu undivided family, firm or other association of persons which carries on such business;

(ii) a causal trader;

(iii) a commission agent, a broker or a del credere agent, or an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(iv) every local branch of a firm or company situated outside the State;

(v) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(vi) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(vii) a person engaged in the business of delivery of goods on hire purchase or any system of payment by instalments;

(viii) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(ix) a person engaged in the business of supplying by way of, or as part of any service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;"

As per Explanation (2) to section 2(g), the Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act. Section 22(1) reads as follows :

"No person who is not a registered dealer shall collect any amount by way of tax or purporting to be by way of tax under this Act; and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the rules made thereunder :

Provided that nothing in this sub-section shall apply to the collection of an amount by a registered dealer, towards the amount of tax already suffered under this Act, in respect of goods, the sale or purchase price of which is controlled by any law in force.

Explanation. - For the purposes of this sub-section, any State Government or the Central Government shall be deemed to be a registered dealer."

In view of the above provisions of the Tamil Nadu General Sales Tax Act, it is clear that the first respondent is a dealer by virtue of the deeming provisions and he is permitted to collect tax be virtue of section 22(1) and as such, as a dealer, he is bound to collect form XVII submitted by the petitioner for the purpose of paying sales tax at the concessional rate of 3 per cent as per section 3(3) of the Tamil Nadu General Sales Tax Act and the contentions of the learned counsel for the first and second respondents are erroneous and unsustainable in law and therefore, I reject the same. I also reject the contention of the learned counsel for the respondents 1 and 2 to the effect that the petitioner is bound by clause 25 of the conditions of the tender. The 1st respondent is a deemed dealer and he is bound by the provisions of the Tamil Nadu General Sales Tax Act and clause 25 has to be read subject to all the provisions of the Tamil Nadu General Sales Tax Act, 1959, in force during the material time when the auction took place. In view of the above, the writ petition is allowed. As the first and the second respondents have taken the stand that have collected from the petitioner, the sales tax as collecting agents of the third respondent, third respondent shall return the excess amount of sales tax collected by the first respondent in excess of the provisions contained in section 3(3) of the Act. As the first respondent has returned the form XVII submitted by the petitioner, the petitioner is directed to re-submit the form XVII to the first respondent and the first respondent in turn shall forward the said forms to the third respondent and the third respondent shall refund the excess amount of sales tax collected in accordance with law. The petitioner shall submit the form XVII to the first respondent, within a period of two weeks from the date of the receipt of the order. The first respondent shall forward the forms, within two weeks from the receipt of the forms to the third respondent and thereafter, the third respondent shall pass final orders, within a period of four weeks. The third respondent shall return the amount of sales tax collected in excess of the provisions contained in section 3(3) of the Tamil Nadu General Sales Tax Act, 1959, to the petitioner. Upon the facts and circumstances of the case, there shall be no order as to costs.

6. Writ petition allowed.