(2012) 09 MAD CK 0242

In the Madras High Court

Case No : Tax Case (Revision) No. 1693 of 2008

Tvl. Aspick Engineering (P) Ltd. D-5, Industrial Estate, Guindy Chennai- 600032 — APPELLANT

Vs

The State of Tamil Nadu — RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2013) 62 VST 216

Hon'ble Judges : K. Ravichandrabaabu, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Srikanth, for the Appellant; Manoharan Sundaram, Government Advocate, for the Respondent

Judgement

Chitra Venkataraman, J.—The assessee is on appeal as against the order of the Tribunal relating to the assessment year 1989-90, raising the following substantial questions of law :

1. Whether in facts and circumstances of the case and in law, the Tribunal ought to have held that the transaction represents inter state sales only and not local sales since the contract provided for movement of goods from Tamil Nadu to the work site of the buyer at Warora?

2. Whether in facts and circumstances of the case and in law, the Tribunal was justified in confirming the tax liability on the turnover of Rs. 2,37,646/- since the assessing authority had not given any reasons for imposing the tax liability on the aforesaid turnover and the turnover was also not considered by the Appellate Assistant Commissioner?

It is seen from the narration of facts in the orders of the authorities below that the assessee herein effected sale to Vijayashree Colata Limited, Warora and claimed the sale as an inter-State sale. The Assessing Officer, however, viewed the sale as a local sale, on the ground that the purchaser had taken delivery inside the State; thus assessable under the provisions of the Tamil Nadu General

Sales Tax Act.

2. Aggrieved by this, the assessee went on appeal before the Appellate Assistant Commissioner. Applying the decision reported in [1967] 19 STC 35 (The State of Mysore Vs. Guduthur Thimmappa and Son and another), the First Appellate Authority held that the assessment was rightly made under the provisions of the Tamil Nadu General Sales Tax Act. The assessee went on further appeal before the Sales Tax Appellate Tribunal, which rejected the assessee''s case, on the ground that the price was ex-godown; that the purchaser had taken delivery and moved the goods inter-State at its own cost. Thus, the sale was only a local sale. The Tribunal further pointed out that the goods were insured by the buyers themselves and the sellers were relieved of the liability after the delivery. Thus, applying the decision reported in [1983] 54 STC 12 (S.K. Shanmugavelu and Another Vs. State of Tamil Nadu), the Tribunal rejected the assessee''s case. Aggrieved by the said order, the assessee is on revision before this Court.

3. Learned counsel appearing for the assessee pointed out that even though there was no written agreement between the parties as to the terms of sale, yet, the invoice and the conduct of the parties reveal that the sale was an inter-State sale and the movement and the sale were intimately linked to each other, that the same could not be separated for the purpose of treating the sale as a local sale. Admitting the fact that the buyers had insured the goods, the payment being an ex-godown price and the movement of goods by the buyer, learned counsel pointed out that these were matters of contract, which, in any event, cannot be a decisive factor on the character of the sale. Given the fact that the parties had contemplated movement of goods pursuant to the contract of sale, the transactions were liable to be assessed only under the Central Sales Tax Act. In this regard, he placed reliance on the decisions reported in [1979] 43 STC 457 (Union of India Vs. Khosla & Co. Ltd. (S.C.)), [1986] 63 STC 391 (Vinay Cotton Waste Company Vs. The State of Tamil Nadu) and [1993] 90 STC 1 (Co-operative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu) and submitted that the decision relied on by the First Appellate Authority reported in [1967] 19 STC 35 (The State of Mysore Vs. Guduthur Thimmappa and Son and another) is a distinguishable one and that the issues raised therein were totally different.

4. Per contra, learned Government Advocate supported the order of the Tribunal and pointed out to the decision reported in [1983] 54 STC 12 (S.K. Shanmugavelu and Another Vs. State of Tamil Nadu), only to contend that when the purchaser had taken over the goods, arranged for transport as well as insured the goods, the inference is that it was only a local sale.

5. Heard learned counsel appearing for both sides and perused the material placed on record.

6. It is not denied by the assessee that the transactions are not governed by a written agreement. The terms of the agreement between the parties are evident only by the despatch details, indicative of the understanding between the parties.

Given the fact that an agreement need not be in writing, the one and only ground on which the claim of inter-State sale could be considered is the factum of movement of goods pursuant to the contract of sale.

7. In the decision reported in [1974] 34 STC 535 (Commissioner of Commercial Taxes, Bihar Vs. Bhag Singh Milkha Singh), it was pointed out that the obligation to take goods outside the State may be either an express covenant or an implied one under the contract by a mutual understanding and it is not necessary that in all cases, there must be direct evidence showing certain obligations. The obligation could be inferred from circumstantial evidence also. In the decision reported in Oil India Ltd. Vs. The Superintendent of Taxes and Others, he Apex Court pointed out that for a transaction, to be an inter-State sale, there must be a movement of goods occasioned by the said sale from one State to another. No matter in which State the property in the goods passes, the movement of goods occasioned by the sale from one State to another would make a sale as one in the nature of inter-State sale. The Apex Court also pointed out that it is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement and it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce, that the covenant regarding inter-State must be specified in the contract itself. It observed that it would be enough if the movement was in pursuance of and incidental to the contract of sale Oil India Ltd. Vs. The Superintendent of Taxes and Others, that it was held in a number of cases by the Supreme Court that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale, then the sale is an inter-State sale. The said decision was applied in the decision reported in [1979] 43 STC 457 (Union of India Vs. Khosla & Co. Ltd. (S.C.)), holding as follows :

If a contract of sale contains a stipulation for such movement, the sale would, of course, be an inter-State sale. But it can also be an inter-State sale, even if the contract of sale does not itself provide for the movement of goods from one State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract.

8. In [1993] 90 STC 1 (Co-operative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu), the Supreme Court observed that the movement of goods was an incident of sale or purchase; amounted to an inter-State sale or purchase and it is not necessary that the contract of sale has to expressly provide for the movement of goods; it was sufficient that the movement of goods is implicit in the sale. Thus, in the background of the settled position of law, if the sale effected by the assessee and the movement thereon are inextricably and intimately connected with each other, then the one and only inference that would flow from the same is that, it is an inter-State sale. Thus, the criteria for considering the transaction as an inter-State sale or not, is the movement of goods intimately connected with the sale. The fact that the purchaser had borne the insurance charges or the

seller had borne the insurance charges or that the purchaser had moved the goods at their own cost would not be a decisive factor for the purpose of determining the nature of sale as inter-State sale or not.

9. In the decision reported in [1967] 19 STC 35 (The State of Mysore Vs. Guduthur Thimmappa and Son and another), the question therein was not as to whether the sale was an inter-State sale or not, but who was to be assessed on the sale of cotton in the State. The assessee therein sold cotton in bales to dealers who were residents outside the State of Tamil Nadu, who had consigned the goods by rail from a railway station in Madras in their own names. The Supreme Court pointed out that the movement of goods from Madras area to places outside the State was not the result of any covenant or incident of the contract and the contract of sale was completely carried through within the Madras area itself, in which area, the price was received by the respondents and the cotton bales were delivered to the buyers. The movement of the cotton bales outside the State was by the buyers themselves after property in them had passed to them, so that these sales were not sales in the course of inter-State trade. The decision reported in [1967] 19 STC 35 (The State of Mysore Vs. Guduthur Thimmappa and Son and another) has no relevance to the facts of the case herein. The issue raised in the said decision is a totally different issue. When we look at the facts herein, it is clear that the sale and the movement were intimately connected, that the movement of goods is a consequence of sale.

In the background of the facts herein, we hold that the Tribunal and the other authorities had misdirected themselves in placing emphasis on the transport and insurance made by the purchaser as indicators of the sale being a local sale. With the movement and the sale inextricably connected, we have no hesitation in allowing the Tax Case, thereby setting aside the order of the Tribunal. No costs.

