
(1995) 02 MAD CK 0039

In the Madras High Court

Case No : Tax Case No. 1154 of 1983 (Revision No. 448 of 1983)

Universal Agencies

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 4, 5

Citation : (1995) 02 MAD CK 0039

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

1. The assessee, M/s. Universal Agencies, is a dealer in petroleum products. The assessee was originally assessed on a taxable turnover of Rs.

23,61,797.30 and Rs. 1,26,582.80 respectively for the assessment year 1978-79. Subsequently the assessing officer found that the assessee had

purchased packing materials to an extent of Rs. 1,05,812.82 in the year. The petroleum products were sold for Rs. 22,24,579. Since it is second

sales, the sale turnover of the petroleum products is not taxable in the hands of the assessee. The assessing officer considered that since the sale

value included the value of the packing material, the sale turnover of the containers is liable to tax. The assessing officer estimated the value of the

packing material at Rs. 1 lakh and disallowed the exemption on this turnover and assessed it at 4 per cent. This was confirmed by the Appellate

Assistant Commissioner on appeal. Aggrieved, the assessee filed second appeal before the Tribunal. The Tribunal also relying upon various

decisions, confirmed the order passed by the Appellate Assistant Commissioner. It is against that order, the present revision has been preferred by

the assessee.

2. Learned counsel appearing for the assessee submitted that in view of the provisions contained in rule 6(cc)(ii) of the Tamil Nadu General Sales

Tax Rules irrespective of the fact whether the sale price of the container is stated separately in the bills or included in the total sale price of the

petroleum products, the assessee is entitled to exemption of the sale turnover of the container. According to the learned counsel for the assessee,

the decision reported in Ramco Cement Distribution Co. (P.) Ltd. Vs. The State of Tamil Nadu, and the decision of the Supreme Court in 1993

88 STC 151 (Ramco Cement Distribution Co. Pvt. Ltd. v. State of Tamil Nadu) are applicable to the facts of the present case. It was submitted

that in the abovesaid two decisions, there was no mention about rule 6(cc)(ii) of the Tamil Nadu General Sales Tax Rules. In other words,

according to the learned counsel, the abovesaid provision was not considered either by this Court or by the Supreme Court in the abovesaid two

decisions. Therefore, it was submitted that in view of the plain reading of rule 6(cc)(ii) inasmuch as the petroleum products was not taxable in the

hands of the assessee as the second sales, the sale turnover of container should also be not available to tax. Learned counsel further pointed out

that the goods involved in the decision of the Supreme Court cited supra, was cement which is a controlled commodity and the dealer in cement

cannot sell the cement more than the price fixed by the Cement Control Order. Therefore, the decision rendered by the Supreme Court in 1993 88

STC 151 (Ramco Cement Distribution Co. Pvt. Ltd. v. State of Tamil Nadu) is applicable only on the facts available in that case. Hence the

decision of the Supreme Court cannot be made applicable to the facts arising in this case which are totally different. Learned counsel further

pointed out that in 1993 88 STC 151 (Ramco Cement Distribution Co. Pvt. Ltd. v. State of Tamil Nadu), the Supreme Court was concerned with

rule 6(c) which is equivalent to rule 6(cc)(i) and therefore, the said decision cannot be made applicable to a case where interpretation of rule 6(cc)

(ii) is involved. For all these reasons, it was submitted that the assessee is entitled to exemption with regard to the sale turnover of the containers in

view of the provisions contained in rule 7(cc)(ii) of the Tamil Nadu General Sales Tax Rules.

3. On the other hand, learned Additional Government Pleader (Taxes), while supporting the order passed by the Tribunal, contended that in view

of the decision of the Supreme Court in 1993 88 STC 151 in the case of Ramco Cement, the assessee is liable to pay tax even on the container

when the sale price of the container was not shown separately in the sale bill. The learned Additional Government Pleader (Taxes) further relied

upon another decision of the Supreme Court in 1989 74 STC 379 (Raj Sheel v. State of Andhra Pradesh) in order to contend that whether the

packing material was sold separately or there was no sale of the actual packing materials, depends upon the facts of each case and in the present

case, inasmuch as the petroleum products was sold along with the container, the sale turnover of the container is also taxable. It was further

submitted that the packing material is of significant value in relation to the value of the contents and it would imply that there was intention to sell the

packing material also. It was further submitted that in a case where the packing material is an independent commodity and the packing material as

well as the contents, is sold independently, the packing material is liable to be taxed on its own footing. It was further pointed out that in Ramco

Cement Distribution Co. (P.) Ltd. Vs. The State of Tamil Nadu, it was held that when the packing charges are charged by the dealer separately

without including such amount in the price of the goods sold, there will be no difficulty in arriving at the conclusion that the charges for packing

material will have to be deducted from the total turnover of a dealer under rule 6(cc) of the Rules when such charges are shown separately. This

finding of the Madras High Court in 1982 51 STC 171 [Ramco Cement Distribution Co. (P.) Ltd. v. State of Tamil Nadu] was reversed by the

Supreme Court in 1993 88 STC 151 (Ramco Cement Distribution Co. Pvt. Ltd. v. State of Tamil Nadu). Under such circumstances, it was

submitted that the assessee is not entitled to claim exemption with regard to the sale turnover of the container. For all these reasons, it was

submitted that the order passed by the Tribunal was correct in levying tax on the sale turnover of the packing material, viz., the containers in the

present case.

4. We have considered the rival submissions. We have already set out the facts in detail. According to the assessee, who is selling petroleum

products in containers, the sale value of the containers are not taxable, in view of the provisions contained in rule 6(cc)(ii) of the Tamil Nadu

General Sales Tax Rules, since the petroleum product sale is a second sale in the hands of the assessee. Thus, the sale turnover of petroleum

products in the hands of the assessee being a second sale cannot be taxed inasmuch as petroleum products are taxable at single point. According

to the department, even though the sale turnover of petroleum products is not taxable in the hands of the assessee, it being a second sale, the sale

value of the container is taxable.

5. The Tamil Nadu General Sales Tax Rules, thus, states that the tax or taxes u/s 3, 4 or 5 shall be levied on the taxable turnover of the dealer. In

determining the taxable turnover the amounts specified in the following clauses shall subject to the conditions specified therein, be deducted from

the total turnover of a dealer :

(a)

(b)

(c)

(cc) all amounts falling under the head charges for packing, that is to say, cost of packing materials and cost of labour,

(i)

(ii) whether or not such amounts are specified and charged for by the dealer separately, in respect of the goods not liable to tax at the hands of the

assessee.

6. Therefore, according to the learned counsel appearing for the assessee whether the sale turnover of the container is included in the sale value of

the petroleum products or not, the sale value of the container is exempted under rule 6(cc)(ii) of the Tamil Nadu General Sales Tax Rules.

7. Reliance was placed upon a decision reported in Ramco Cement Distribution Co. (P.) Ltd. v. State of Tamil Nadu 1982 51 STC 171.

According to the facts arising in the case, the assessees sold cement, the sale and distribution of which were subject to the Cement Control Order,

1967, and the regulations made thereunder, to various customers. The goods were despatched on ""freight to pay"" basis. They allowed deduction in

their invoices to the extent of the actual freight payable up to the railway station of the customer's place. The questions were whether they could

claim deduction in respect of the freight charges, packing charges collected and

excise duty on packing materials from the total turnover liable to tax under the Central Sales Tax Act, 1956, the Tamil Nadu General Sales Tax Act, 1959 and the Tamil Nadu Additional Sales Tax Act, 1970.

While answering these questions, this Court held as under :

that (i) the provisions of the Cement Control Order, 1967, had an overriding effect not only on the terms of the contract between the parties as

regards the sale of cement, but also on the definition of "sale price" quoted in section 2(h) of the Central Act. In other words, under the provisions

of the Cement Control Order, it was the producer who was liable to pay freight though he might be able to recover it from the purchaser as part of

the price. It would be so, notwithstanding the second part of the definition of "sale price" in section 2(h) of the Central Act. By virtue of the

provisions of the Cement Control Order, freight formed part of the sale price quoted within the meaning of the first part of the definition. Hence it

was unnecessary to invoke the second part of the definition at all. Therefore freight formed part of the sale price under the Central Sales Tax Act

and was also liable to be included in the sale price for the purposes of the assessee's liability to sales tax.

This decision of the Madras High Court was affirmed by the Supreme Court in *Ramco Cement Distribution Co. Pvt. Ltd. v. State of Tamil Nadu*

and *State of Tamil Nadu v. Dalmia Cement (Bharat) Ltd.* 1993 88 STC 151. A careful reading of the abovesaid decision would go to show that

the Supreme Court in the abovesaid case was concerned with rule 6(cc)(i) of the Tamil Nadu General Sales Tax Rules.

8. In the abovesaid decision, the Supreme Court held that the packing charges and excise duty on packing materials cannot be deducted under rule

6(cc) of the Tamil Nadu General Sales Tax Rules, 1959, in computing the taxable turnover for the purposes of the Tamil Nadu General Sales Tax

Act, 1959 and the Tamil Nadu Additional Sales Tax Act, 1970, for the reasons that the words "without including them in the sale price of the

goods sold" make it clear that such charges are not to be deducted unless the prerequisite for their deduction, namely, that these charges should

not have been included in the price of the goods sold, is satisfied, and such charges have been included in the Control Order as part of the price of

the goods sold.

9. Rule 6(cc)(ii) stated that whether or not such amounts are specified and charged for by the dealer separately, in respect of the goods not liable

to tax at the hands of the assessee are exempted under rule 6(cc). According to the facts arising in Ramco Cement Distribution Co. Pvt. Ltd. case

1993 88 STC 151 SC, the cement was sold in bags in accordance with the Cement Control Order and the price fixed thereunder. Therefore

considering the provisions contained in the Cement Control Order, the Supreme Court held that the charges for packing materials when not

included in the sale bill separately, are liable to be taxed along with the cement. According to the facts arising in the present case, the petroleum

products are not taxable in the hands of the assessee, since it is a second sale. In so far as the packing materials are concerned, under rule 6(cc)(ii)

whether or not such amounts are specified and charged for by the dealer separately in respect of the goods not liable to tax at the hands of the

assessee are not liable to be taxed. Therefore, the decision rendered by the Supreme Court in Ramco Cement Distribution Co. Pvt. Ltd. case

[1993] 88 STC 151, will not be applicable to the facts arising in the present case.

10. Reliance was also placed upon the decision reported in State of Tamil Nadu v. V. V. Vanniaperumal & Co. 1990 76 STC 203 FB.

According to the facts arising in that case, the respondent, a dealer in gingelly oil and oil cakes, purchased oil in barrels, polythene cases and also in

16kg. sealed tins. These 16kg. tins of oil were in turn sold to customers who were charged separately for the oil and the tins. On reference, a Full

Bench of this Court held that what was sold was ""tin of oil"", and not oil alone. The bargain of sale was for ""tin of oil"", and the goods sold were

composite goods. Thus the total turnover including the price of the tins and of the oil was taxable, the fact that they were charged separately in the

bills was immaterial, the packing charges were deductible only when packing was done subsequent to the sale. According to the facts arising in the

abovesaid decision, the sale value of both oil and tin was taxable. Thus the assessee in that case sold both oil and the tin. Hence this Court came to

the conclusion that what was sold was a composite goods. But according to the facts arising in the present case, petroleum product was not

taxable in the hands of the assessee. Therefore, it cannot be said that there is a composite sale in the present case. Accordingly, the abovesaid Full

Bench decision of this Court also will not be applicable to the facts arising in the present case.

11. Attention was also drawn to the decision of the Supreme Court in *Raj Sheel v. State of Andhra Pradesh* 1989 74 STC 379. According to the

facts arising in that decision, the appellants in some of the appeals are manufacturers or dealers in beer, the appellants in the other appeals are

manufacturers of or dealers in cement. The beer is sold in bottles packed in cartons. The cement is sold in gunnies. Section 5 of the Andhra

Pradesh General Sales Tax Act provides for the levy of sales tax on the turnover of goods at the rates specified in that provision. The appellants

challenged the assessments made in relation to the period before July 8, 1983. According to the said Act, the goods are subject to tax at the rate

of 5 paise in the rupee at the point of first sale in the State. The appellants also challenged the application of the rate proposed, pursuant to section

6-C in show cause notices issued by the concerned authority. While considering this aspect, the Supreme Court held as under :

It is, therefore, perfectly plain that the issue as to whether the packing material has been sold or merely transferred without consideration depends

on the contract between the parties. The fact that the packing material is of insignificant value in relation to the value of the contents may imply that

there was no intention to sell the packing material. In a case where the packing material is an independent commodity and the packing material as

well as the contents are sold independently, the packing material is liable to tax on its own footing.

Whether a transaction for sale of packing material is an independent transaction will depend upon several factors, some of them being : (1) the

packing material is a commodity having its own identity and is separately classified; (2) there is no change, chemical or physical, in the packing

either at the time of packing or at the time of using the contents; (3) the packing is capable of being reused after the contents have been consumed;

(4) the packing is used for convenience of transport and the quantity of the goods as such is not dependent on packing; (5) the mere fact that the

consideration for the packing is merged with the consideration for the product would not make the sale of packing an integrated part of the sale of

the product.

In this decision also, the Supreme Court is not concerned with the provision like rule 6(cc)(ii) of the Tamil Nadu General Sales Tax Rules. The

Supreme Court pointed out in that decision that in a case, where packing material is an independent commodity and the packing materials as well

as the contents are sold independently, the packing material is liable to tax on its own footing. It further pointed out the mere fact that the

consideration for the product would not make the sale of packing an integrated part of the sale for the product. But a plain reading of rule 6(cc)(ii)

would go to show that the exemption is available on the sale value of packing materials whether or not such amounts are specified and charged for

by the dealer separately in respect of the goods not liable to tax at the hands of the assessee.

12. In view of the fact that the Supreme Court was not concerned with the contents in rule 6(cc)(ii) of the Tamil Nadu General Sales Tax Rules,

the said decision would not render any assistance to the department to contend that the sale value of the containers in the present case is taxable.

Thus, considering the facts arising in this case, on a plain reading of the provisions contained in rule 6(cc)(ii) of the Tamil Nadu General Sales Tax

Rules will hold that the assessee is entitled to exemption of tax on the sale turnover of the containers, in which, petroleum product was sold.

Accordingly, the order passed by the Tribunal stands set aside and the revision filed by the assessee stands allowed. No costs.

13. Petition allowed.