
(1986) 07 MAD CK 0023
In the Madras High Court
Case No : Second Appeal No. 319 of 1985

Universal Match Works

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 11-07-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2), 8(2A)

Citation : (1987) 67 STC 132

Hon'ble Judges : M.A. Sathar Sayeed, J

Bench : Single Bench

Advocate : K.A. Jabbar, for the Appellant; R. Lokapria, for the Respondent

Judgement

M.A. Sathar Sayeed, J.—Aggrieved by the judgment and decree in A.S. No. 137 of 1982 on the file of the District Court, Tirunelveli, the

defendant has filed the above second appeal.

2. The facts of the case are as follows :

The appellant is a manufacturer and dealer in matches. They sold matches and in the course of inter-State trade and commerce, sales tax under the

Central Sales Tax Act (74 of 1956) was levied on the sale of matches and the amount so levied was paid by the appellant under protest.

Subsequently, the appellant herein filed W.P. Nos. 2703 to 2706 of 1967 (W.P. No. 2705 of 1967 Universal Match Works, Kovilpatti v.

Commissioner of Commercial Taxes, Board of Revenue, Madras-5) for the issue of a writ of mandamus directing the Commissioner of

Commercial Taxes, Board of Revenue, Madras to refund to the appellant the amounts so paid by them which was collected towards tax. These

writ petitions along with other petitions came up before Veeraswami and

Ramaprasada Rao, JJ., on 30th January, 1968. The Bench of this Court observed that the petitioners will be entitled to refund of the proportionate tax only on furnishing security therefore in each case to the satisfaction of the assessing officer. Thereafter, the appellant along with others filed several writ miscellaneous petitions seeking an order of cancellation of security to be furnished by the appellant pursuant to the orders in the writ petitions. Veeraswami, C.J. and Gokulakrishnan, J., by an order dated 29th July, 1969, observed as follows :

Security was directed as a safeguard to the Revenue, but only in the event of the Revenue, filing an appeal in the Supreme Court. As a matter of fact no such appeal has been filed. The order of this Court had, therefore, become final. Pursuant to that order, we are told that the assessment had been revised in part. On that basis, the assessee has got a refund of a portion of the tax referable to excise duty added in the taxable turnover on furnishing security therefor. It is stated that since then Ordinance No. 4 of 1969 has come into force and the security should not be cancelled.

We fail to see any substance in this contention because the security as we have already mentioned was ordered for a specific purpose, viz., to enable the Revenue to file an appeal and thus safeguard the Revenue. The passing of the Ordinance was not in contemplation at the time the order for security was made. In the circumstances, the security is cancelled.

Subsequently, the refund of tax claimed by the appellant in the writ petition was ordered by the respondent. Thereafter, Central Act 28 of 1959 came into force which was led the respondent herein to file O.S. No. 38 of 1976 against the appellant for recovery of a sum of Rs. 16,956.22

together with interest. It was contended by the respondent, after narrating the events that have taken place, that they are entitled to claim the refund

made to the appellant. The appellant contended before the trial court that the civil court has no jurisdiction to entertain the suit relating to the sales

tax matters and that the court is barred from entertaining the said suit in view of the judgment of the Supreme Court in Comorin Match Industries

Limited v. Kovilpatti and Others [S.L.P. (Civil) Nos. 2013-2023 of 1973, etc.]. It was further averred by the appellant (defendant) that the

respondent herein has no right to question the judgment of the Supreme Court except to the extent to which any new statute empowers the

respondent to do so. Central Act 28 of 1969 has no concern nor in any manner deals with the judgment striking down section 8(2) and (2A) of the

Central Sales Tax Act. The validation provisions of Central Act 28 of 1969, viz., section 10 thereof, do not touch that portion of the judgment

which quashed the assessment orders on the basis of the invalidity of section 8(2) and (2A) of the Central Sales Tax Act. In view of the judgment

of the Supreme Court in SLP (Civil) Nos. 2013-2023 of 1973 dated 21st February, 1974, the suit has to be dismissed. It was also averred that

the suit is barred by res judicata.

3. No oral evidence was adduced by the parties. On the basis of the exhibits filed, the trial court dismissed the suit filed by the respondent herein.

This has led the respondent to prefer A.S. No. 137 of 1982 before the District Court, Tirunelveli. The learned II Additional District Judge,

Tirunelveli allowed the appeal against which the above second appeal is filed by the defendant/appellant herein.

4. I have heard the argument of the learned counsel for the appellant and the Government Pleader. The question for consideration is, whether the

respondent herein is entitled to recover the amounts refunded to the appellant. The main contention of the respondent is that Ordinance No. 4 of

1969 was made into Central Act 28 of 1969 validating the levy made including the levy on Central excise duty portion and that Central Act 28 of

1969 came into force on 30th August, 1969 with retrospective effect, and in view of the amended provisions of Act 28 of 1969, the respondent

herein is entitled to claim refund amount of Rs. 11,000 and odd which was refunded to the appellant.

5. It must be noted that in W.P. Nos. 2703 to 2706 of 1967, the order was passed on 30th January, 1968 holding that the appellant is entitled to

refund of the proportionate tax only on furnishing security therefore to the satisfaction of the assessing officer. Since the appellant herein was

aggrieved by the order directing them to furnish security, they filed several writ miscellaneous petitions in the said writ petitions and by an order

dated 29th July, 1969, a Bench of this Court has observed that the Revenue will file an appeal in view of the passing of Ordinance No. 4 of 1969

and in the circumstances the security is cancelled. This order was passed by the Bench of this Court on 29th July, 1969 and no appeal has been

filed by the State (respondent). Thereafter, a Bench of this Court by an order dated 23rd April, 1971, has observed that the orders of this Court

have become final since no appeals were filed by the State against the proportionate refund of tax. In other words, the orders of this Court in the

writ petitions and writ miscellaneous petitions mentioned above have become final. In fact, we find under exhibit B. 3 it was observed that

inasmuch as the orders of this Court have become final, since no appeals had been filed at a higher forum, the proportionate tax collected has to be

refunded. This decision of the High Court was rendered after the enactment of the Central Act 28 of 1969, and after perusing exhibit B. 2 and B. 2

counters filed by the State. As stated above, this Court has held that the proportionate tax collected has to be refunded. In view of exhibit B. 3

orders of this Court, the claim of the respondent for the refund of the tax paid to the appellant is not maintainable since it was not agitated at a

higher forum. The observations and the findings of the lower appellate court that the assessment was validated and that the appellant is bound to

repay the amount to the respondent are not based on facts in view of the orders of this Court in exhibit B. 3. Under the circumstances, since the

respondent has not filed an appeal against the orders of this Court, the refund claimed by the respondent is not maintainable and the judgment and

decree of the lower appellate court have to be set aside and they are accordingly set aside. The second appeal is allowed, but there will be no

order as to costs.

6. Appeal allowed.