(1973) 07 MAD CK 0059

In the Madras High Court

Case No : Tax Case No. 66 of 1970 (Revision No. 48 of 1970)

Universal Radiators APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 17-07-1973

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 36

Citation : (1974) 33 STC 341

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : C. Venkataraman, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramanujam, J.—The dispute in this case relates to the turnover of Rs. 1,02,250. As regards this turnover, the assessee''s contention before the assessing authority as well as before the Appellate Assistant Commissioner was that it really represented works contracts and not transactions of sale. But both the assessing authority as well as the Appellate Assistant Commissioner rejected the assessee''s contention and held that the turnover represented actual sales of oil-coolers and in that view, subjected the same to tax under the Tamil Nadu General Sales Tax Act. Against the order of the Appellate Assistant Commissioner, the assessee filed an appeal before the Sales Tax Appellate Tribunal. In the memorandum of grounds before the Tribunal the assessee raised the only question whether the transactions were works contracts or not. Later, at the time of the bearing of the appeal by the Tribunal, the assessee filed an application for leave to file additional grounds. The additional ground raised was to the effect that even if the turnover could be taken to represent contracts of sale, the assessee having procured C forms from the purchasing dealers after the decision of the Appellate Assistant Commissioner holding the transactions to be sales and filed the same before the Tribunal, he was entitled to the benefit of the concessional rate of tax. The Tribunal, however, without going into the merits of the additional grounds, held that the application for leave to raise additional grounds was filed beyond the time fixed for filing an appeal and, therefore, could not be entertained. On the question whether the transactions were works contracts or actual sales, the Tribunal held that they were actual sales of oil coolers effected by the assessee.

2. The learned counsel for the assessee mainly contends before us that the Tribunal is not justified in rejecting the application for leave to file additional grounds as belated and that in the circumstances of the case, the application should have been entertained and the additional grounds considered by the Tribunal on merits. We are of the view that the order of the Tribunal is erroneous in so far as it rejected the application for leave to raise additional grounds on the ground that it was barred by time. It is not in dispute that the additional ground raised related only to the turnover which was the subject-matter of the appeal pending before the Tribunal. It is not as if the assessee sought to bring in a new or fresh turnover for attack by raising an additional ground. In this case there is no question of the assessee filing an application to raise additional grounds within the period of limitation prescribed under the Act. The limitation prescribed u/s 36 of the Act is only for filing appeals before the Tribunal and that cannot be invoked in cases where the assessee seeks to raise additional grounds in respect of the turnover which has already been questioned by him by filing an appeal in time. The order of the Tribunal in this respect has therefore to be set aside.

3. The learned counsel for the assessee did not question the order of the Tribunal holding that the transactions are not works contracts, but actual sales. Now that we have held that the application for raising additional grounds should be entertained and the additional ground considered by the Tribunal, we remit the matter to the Tribunal for consideration of the C forms referred to in the additional grounds and to decide the question whether the assessee is entitled to a concessional rate of tax in view of the C forms produced. It is open to the assessee to raise such of those grounds as are open to him in respect of the turnover in dispute, except the question of works contracts, which has been conceded before us.

4. The tax case is allowed. There will be no order as to costs.

