
(2011) 37 VST 420

Madras High Court

Case No: Writ Petition No. 11601 of 2001

State of Tamil Nadu

APPELLANT

Vs

Craigmore Plantations
(India) Pvt. Limited and
Another

RESPONDENT

Date of Decision: Nov. 5, 2009

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 16

Citation: (2011) 37 VST 420

Hon'ble Judges: M.M. Sundresh, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: Haja Nazirudeen, Special Government Pleader, for the Appellant; N. Inbarajan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Raviraja Pandian J.

1. This writ petition is filed against the order dated October 5, 1999 in C. T. A. No. 25 of 1994 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore.

2. The facts :

(i) The assessee, Tvl. The Protein Products of India Limited, engaged in the manufacture of ossein at their factory at Sandvanallah (Ootacamund). For the assessment year 1973-74, the assessing officer finally determined the total and taxable turnover of the assessee at Rs. Nil. Subsequently it was found that the turnover in a sum of Rs. 31,96,736 relating to despatch of ossein to Cochin was to fulfill the orders placed by Tvl.

Rallis (India) Limited (hereinafter briefly referred to as RIL), Bombay and hence not eligible for exemption from tax as branch transfer. After due formality, a revised assessment order was passed disallowing the exemption from tax on the above said turnover and levying tax at the rate of 10 per cent as outright inter-State sales in the absence of C form, by an order dated May 7, 1980.

(ii) The appeal carried on by the assessee in A. P. No. CST. 88/80 was allowed by the first appellate authority, the Appellate Assistant Commissioner, by his proceedings dated October 13, 1980 on the premise that the revision of assessment made is barred by limitation prescribed for revising the order of original assessment u/s 16 of the Tamil Nadu General Sales Tax Act, 1959. The Joint Commissioner, by invoking his suo motu power restored the order passed by the assessing officer after setting aside the order of the Appellate Assistant Commissioner by his order dated August 20, 1982.

(iii) The assessee carried the matter by way of tax case before this court. This court, by an order dated September 9, 1991 in T. C No. 1030 of 1982 *Rallis India Limited v. Deputy Commercial Tax Officer*, while declaring that the revision of assessment made by the assessing officer was not hit by limitation prescribed under the Act, remanded the case back to the Appellate Assistant Commissioner to consider the case afresh relating to the year 1973-74 and dispose of the same on the merits in the light of the law laid down by the Division Bench of this court in the decision in *Rallis India Limited v. State of Tamil Nadu* reported in (1994) 92 STC 325.

(iv) On remittal, the first appellate authority again confirmed the order of the assessment on the premise that there are some factual differences between *Rallis India Limited's* case reported in (1994) 92 STC 325 (Mad) and the facts of the present case.

(v) Once again, the assessee carried the matter on further appeal to the Tribunal. The Tribunal, by reason of the impugned order, granted the relief as sought for, by following the decision of this court in *Rallis India Limited v. State of Tamil Nadu* (1994) 92 STC 325.

3. The correctness of the same is now canvassed in this writ petition by the Department on the ground that the variance of fact pointed out by the Appellate Assistant Commissioner has been just like that eschewed by the Tribunal and followed the Division Bench judgment in *Rallis India Limited v. State of Tamil Nadu* reported in 1994 92 STC 325 in a mechanical fashion. It was further contended that the precedent cannot be applied without discussing the fact. A single variance in a fact and one additional factor in a particular case makes lot of difference between the cited case and the case on hand, which is a well-settled principle of law. That has not been considered by the Tribunal.

4. On the other hand, the learned counsel appearing for the assessee submitted that there cannot be any exception to the proposition of law put forth by the Government Pleader. But the fact remains that the assessee is one and the same and the activity of

the assessee is one and there is no change. What was the activity for the periods 1974-75 and 1975-76 was the activity of the assessee for the relevant assessment year 1973-74 also, which aspect has been very elaborately considered by the Tribunal, which followed the judgment of this court in Rallis India Limited's case (1994) 92 STC 325.

5. We have heard the argument of the learned counsel and perused the materials available on record.

6. As far as the factum that the Appellate Assistant Commissioner on remand by this court has confirmed the order of the assessing authority, there is no dispute. The one and only point that has been stated by the Appellate Assistant Commissioner for taking a deviation from the ratio laid down by the Division Bench judgment in Rallis India Limited v. State of Tamil Nadu reported in (1994) 92 STC 325 (Mad) is that there are materials to hold that the goods were not despatched as and when produced in the factory at Ootaghamund from August 2, 1973 to March 8, 1974. The assessee has despatched 426.180 tonnes of Ossein to Cochin in order to fulfil the consistent supply of goods to RIL, who in turn had exported the goods out of the territory of India. There was no privity of contract between the assessee and RIL. Though the order of RIL is dated September 17, 1993, the assessee was aware of the requirement of 340 tonnes of ossein by RIL in view of the confirmation of the foreign buyers and the cause of the movement of goods from Ootaghamund to Cochin was to fulfil that purpose. The export was occasioned by the contract of sale between RIL and the foreign buyer and not by the contract of sale between the assessee and the RIL. The assessee was under no contractual obligation to the foreign buyer either directly or indirectly. The rights of the assessee were against RIL. There was also no principal and agent relationship between the assessee and the RIL. In view of the above factum, the Appellate Assistant Commissioner has concluded that there is a link for the movement of goods from the factory of the assessee to Cochin and hence the factual position of despatch of goods cannot be compared with that of the factual jurisdiction privilege for the assessment years 1974-75 and 1975-76.

7. This factual issue has been considered by the highest fact-finding authority, the Tribunal. Before the Tribunal, all relevant documents were placed. On consideration of those documents, the Tribunal discussed the issue as follows :

7.... the counsel for the appellants argued the matter and placed on record the set of documents giving particulars of the date of despatch of ossein from April 1, 1973 to March 31, 1974. The set of documents filed before us which is also available in the file No. CTA 25/94 from which it is seen that there was an opening stock of 1.97 tonnes. On the following dates, the goods were despatched on August 2, 1973 (195 bags), August 6, 1973 (175 bags), August 7, 1973 (225 bags), August 8, 1973 (200 bags), August 15, 1973 (180 bags), August 17, 1973 (210 bags), August 18, 1973 (173 bags), August 20, 1973 (175 bags), August 22, 1973 (175 bags), August 27, 1973 (150 bags), August 28, 1973 (150 bags), August 29, 1973 (150 bags), September 1, 1973 (150 bags), September 3, 1973 (150 bags), September 7, 1973 (150 bags), September 11, 1973 (150

bags), September 11, 1973 (170 bags), September 11, 1973 (169 bags). In all a total of 3,275 bags were sent to the branch of the assessee and held there as stock against which 1168 bags were supplied on September 12, 1973. Subsequently, similar accumulation of despatches of sale had been effected as under :

15.09.1973 (667 bags)

19.08.1973 (1340 bags)

28.09.1973 (834 bags)

10.12.1973 (2500 bags)

31.01.1974 (2000 bags)

20.03.1974 (3686 bags)

Thus regular despatch of goods manufactured in the normal course of their business activity was sent and even as on the date of closure of financial year, there was a balance held as stock. In such circumstances whether the learned Appellate Assistant Commissioner was right in concluding that in the context of the movement of goods from the State of Tamil Nadu to Cochin in order to fulfil the contract of supply of 100 tonnes of ossein in total is justified in distinguishing the fact for the years 1974-75 and 1975-76 as not identical to the issue for the year 1973-74. While sustaining the assessment for the year 1973-74, he concluded that there is a link with the factual position of despatch of goods. When we examined the contentions of the senior counsel it was not disputed by the Department that the appellant-company had a branch at Cochin which is also registered under the KGST (sic) Act, that the goods manufactured, namely, ossein, the appellant has no place of storage except in Cochin, that the despatches from Ooty to Cochin are regular as and when the goods are produced and the despatches are not relatable to any purchase order. The modus operandi of the transfer of goods from Ooty to Cochin was also not in dispute and the goods are not earmarked for any particular person. From a perusal of the documents it is clear that the production or despatch of goods commenced as stated above from August 2, 1973 to March 8, 1974 on a regular basis and kept as a stock at Cochin. From out of the stock kept therein, the goods were sold to Rallis India Limited who are the exporters of ossein to other countries. The orders referred to by the assessing authority is as under :

Particulars of sales to Rallies India Limited, Bombay during 1973-74.

Buyers Order No. and Date	Quantity Invoice Description and Date	Months selling (Rate)	Remarks
1. Org/14, dt. 19.1.79	0406 29/24.73	02/04/71.93	
2. Org/14, dt. 19.1.79	050701/25.9.73 ossein	2200/51.53	
	060702/25.9.73 ossein		
3. Org/14, dt. 19.1.79	06010 30/25.9.73	16/02/49.53	
4. Org/14, dt. 19.1.79	05020 33/31.10.73	30/03/45.02	
5. Org/14, dt. 19.1.79	06020 34/31.10.73	21/05/04.23	
6. Org/14, dt. 19.1.79	0600 35/31.1.73	30/03/39.13	
7. 2/dt.10.8.73	06037/10.12.73 ossein	1928/29.80	
8. 2/dt.10.8.73	05037/10.12.73 ossein	2882/49.75	
9. 2/dt.10.8.73	06001/16.12.73 gelatine	1872/09.75	
10. 2/dt.10.8.73	060038/31.1.74 ossein	3858/54.74	
11. 1A/dt.15.1.74	060389/26.3.74	23/03/61.04	
		31,96,736.04	

The comparison of the orders placed by Rallis India Limited, Bombay, to the Cochin Branch or to the appellant's factory at Ooty does not make any link between the despatches regularly carried out by the appellant's factory. For example in the month of August 13 despatches were effected, in September 22 despatches were made, in October 5 despatches were made, in November 14 despatches were made, in December 4 despatches were made, in January 11 despatches were made, in February 5 despatches were made and in March 5 despatches were made. Thus there is no consistency or link between the export made by Rallis India Limited and the despatches of goods carried out by the appellant's company. The set of facts held for the "year", from the foregoing analysis is the similar one as decided by the High Court of Madras in (1994) 92 STC 325 in the case of Rallis India Limited v. State of Tamil Nadu which is as under (in pages 325-326 of 92 STC) :

Certain turnover of the dealer representing the value of ossein transferred from its Uthagamandalam factory to its Cochin office was brought to tax as representing inter-State sales, treating the movement of goods as having been occasioned by purchase orders received from RIL, Bombay, the dealer having filed C forms in respect of the transfers under protest. The assessment was confirmed by the Appellate Assistant Commissioner, and on further appeal, by the Tribunal. On a revision petition :

Held, allowing the revision petition, (i) that the charts filed by the dealer before the Appellate Assistant Commissioner showing the dates of despatch and quantities despatched from Uthagamandalam to Cochin and the date of shipment from Cochin pursuant to export orders received from RIL, Bombay, showed that irrespective of orders from RIL, Bombay, goods were being despatched from Uthagamandalam to Cochin regularly for the purpose of storing in the godowns in Cochin. The fact that there was no facility for storing goods at Uthagamandalam was not disputed. Therefore, at most it could be said against the dealer that it was moving the goods to Cochin in the sure hope of getting orders from RIL, Bombay or from foreign buyers. Moreover, the goods were earmarked for export only at Cochin and at any point of time stocks were available at Cochin. The movement of goods from one State to another was not occasioned by sale, and amounted to stock transfer only, not liable to tax; and

(ii) the fact that C forms were made available would not raise a presumption that the transfers were made in pursuance of orders received from RIL, Bombay.

In view of that decision which is fairly relatable only to the appellants, the observation of the learned Appellate Assistant Commissioner stating that the facts for the year 1973-74 are different from the one for the years 1974-75 and 1975-76 is not right in our considered opinion.

8. For the foregoing reasons, as the ultimate fact-finding authority, after a detailed discussion about the activity of the assessee, viz., production and despatch of the produced goods periodically and systemically to Cochin, where the produced goods have

been kept as a stock for the purpose of sale and sold to RIL for the purpose of exporting the goods, held that *Rallis India Limited v. State of Tamil Nadu* (1994) 92 STC 325 is squarely applicable to the case on hand, we are of the view that the Department has not made out any case to interfere with the well-considered order of the Tribunal. Apart from that, as the assessment year is 1973-74, which is more than three decades old, at this point of time, of course, we find no merit to interfere with the order, we also not inclined to interfere on the ground of laches also. The writ petition is dismissed. No costs.