(2002) 12 MAD CK 0123

Madras High Court

Case No: Tax Case (Reference) No. 27 of 1999

The Commissioner of Income Tax		APPELLANT
	Vs	
A.R.A.S.P.V. and PV.		RESPONDENT

Date of Decision: Dec. 18, 2002

Citation: (2003) 182 CTR 524 : (2003) 263 ITR 616

Hon'ble Judges: N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: T. Ravi Kumar, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.

The assessee is a registered firm carrying on business as a dealer of M/s Hindustan Motors Limited. The assessment year involved is 1985-86 for which the relevant previous year ended on 16.8.1984. The Assessing Officer while framing the assessment for the assessment year 1985-86 has found from the sale bills of the assessee that the assessee firm has been collecting excise duty deposits from the buyers of motor cars and did not bring the amount collected by way of excise duty deposits in the relevant books of account. He found that the assessee had totally collected an amount of Rs. 12,62,438.08 as excise duty deposit during the relevant previous year and remitted a sum of Rs. 9,83,500/- to the Hindustan Motors Limited and retained a sum of Rs. 2,78,938/-. He also found that excise duty deposits were collected at the time of booking of the motor cars by the purchaser and the amounts so collected were used for the purpose of day to day business by the assessee. Accordingly, he brought to tax the sum of Rs. 2,78,938/-.

2. The Commissioner of Income Tax (Appeals), however, took a different view and held that the amounts collected were deposits and not income in nature. He also found that the assessee had furnished the names of the customers from whom the amounts were collected by way of deposits, that the deposits were refundable as and when the requisite certificates were produced and the assessee has given the

reason for not refunding the amounts. Thus, he held that the addition made to the income of the assessee was not sustainable in law. The Commissioner of Income Tax (Appeals) accepted the contention that the differential excise duty amounts were kept with the assessee and it executed indemnity bond in favour of the manufacturer agreeing to refund the amount to the customers as and when they produce evidence showing the registration of the vehicles as taxis. He, therefore, held that the deposit of excise duty represented either refundable to the customer or payable to the manufacturer in case of production of certificate or failure of the customers to produce the necessary certificate respectively and it cannot be treated as part of the trading receipts of the assessee. In this view of the matter, he allowed the appeal preferred by the assessee.

3. The Income Tax Appellate Tribunal, on appeal by the Revenue, accepted the claim of the assessee by following its earlier order for the assessment year 1984-85, held that the differential excise duty deposit was not the income of the assessee and dismissed the appeal preferred by the Revenue. It is also stated that the order of the Income Tax Appellate Tribunal for the earlier assessment year 1984-85, enclosed as part of the statement of the case, was accepted by the Revenue, as in that case, the appeal before the Tribunal arose out of an order of rectification. The Revenue has challenged the order of the Income Tax Appellate Tribunal passed in this case and on the basis of directions of this court, the Tribunal has stated a case and referred the following question of law for our consideration:-

Whether on the facts and in the circumstances of the case, the Appellate Tribunal is correct in law in holding that the amount of excise duty collected by the assessee formed part of the excise duty deposit and it cannot be included in the assessee''s total income?

4. Learned counsel for the Revenue submitted that the amount collected by the assessee really represented excise duty payable by the customeRs. Under the dealer''s agreement, the price payable by the assessee shall be as that established by the Hindustan Motors Limited which inclusive of warehouse charges plus sales tax, if any, and any other taxes, duty or octroi payable to the Central Government or State Government and therefore, according to him the assessee received the amount as part of the trading receipts. Learned counsel further submitted that the assessee has utilised the amount for the purpose of his business and hence the amount received by the assessee really represented his business income. Learned counsel for the Revenue relied on the decision of this Court in Commissioner of Income Tax Vs. Southern Explosives Co., and the decision of the Supreme Court in " The K.C.P. Limited Vs. Commissioner of Income Tax, Bangalore, and submitted that the receipts though called as deposits are really revenue receipts and therefore, the Income Tax Officer was correct in treating the same as part of the trading receipts of the assessee.

5. Mr. P.P.S. Janardhana Raja, learned counsel for the assessee, on the other hand, submitted that the amounts received by the assessee represented only deposits as there was an obligation on the part of the assessee to refund the amount to the customer on production of the necessary evidence that the vehicles purchased were registered as taxi and therefore, the amount collected by the assessee was only a deposit and not income of the assessee. Learned counsel further submitted that the assessee has collected the amount to ensure that the assessee is not burdened with the liability in case of failure of the purchaser of the vehile to produce necessary certificate to show that the vehicle was registered as a taxi. He, therefore, submitted that the money was collected only as an abundant caution to protect the interest of the assessee in case of failure on the part of the customer to produce necessary certificate and the intention of the assessee was not to treat the amount received as part of the trading receipts. Learned counsel relied on the decision of the Supreme Court in " The K.C.P. Limited Vs. Commissioner of Income Tax, Bangalore, and the decision of the Supreme Court in " Commissioner of Income Tax, U.P.-II, Lucknow Vs. Bazpur Co-operative Sugar Factory Ltd., Bazpur, Distt. Nainital, .

6. We have carefully considered the submissions of the learned counsel for the Revenue and the learned counsel for the assessee. It is clear that the assessee had collected the amounts in a sum of Rs. 12,62,438.08 as deposits and remitted only a sum of Rs. 9,83,500/- to the Hindustan Motors Limited and retained with it the balance amount of Rs. 2.78,938/- as excise duty deposit which is the subject matter of consideration in the Tax Case. Under Clause 4(a) of the Dealer''s Agreement entered into by the assessee with the Hindustan Motors Limited, the price payable by the dealer for the motor vehicles shall be that as established by the company and current at the time of delivery of the motor vehicles plus sales tax and any other taxes duty or octroi payable to the Central or State Governments and also loading and other charges as established by the company from time to time. The assessee had collected the excise duty payable by the Hindustan Motors Limited to the Central Government and the excise duty so collected no doubt would form part of the price of the motor vehicle. The effective rate of duty for the motor vehicle is prescribed in the Notification No. 68/83-C.E., dated 1.3.1983, as amended by Notification No. 256/83-C.E., dated 1.10.1983. Under the said Notification issued by the Central Government, the concession in the levy of Excise duty was granted for the motor vehicle registered and solely used as a taxi, on the manufacturer furnishing to the Assistant Collector of Central Excise a certificate from the State Transport Authority within three months from the date of clearance of the motor vehicle by the manufacturer after payment of duty that the motor vehicle has been registered for use only as a taxi. The condition precedent for claiming concession in the levy of excise duty in the case of a sale of a motor car as a taxi is that the manufacturer should produce the necessary certificate from the State Transport Authority concerned that the motor vehicle was registered for use only as a taxi within three months from the date of clearance of the motor vehicle. If such

certificate is not produced, the manufacturer is liable to pay the excise duty at the normal prescribed rate for the manufacture of the motor vehicle. In so far as the assessee is concerned, the assessee is a dealer of the motor vehicle and it is found on evidence that the assessee had collected not only the price of the motor vehicle, but also the entire normal excise duty payable on a motor car and remitted the excise duty at concessional rate to Hindustan Motors Limited and retained the balance amount as deposit and gave an indemnity to remit the balance if the purchaser fails to produce the necessary certificate within a period of three months. We are of the view, that the assessee had collected the amount as part of its trading receipt as the amount was collected for meeting ultimately the duty liability of the manufacturer. The reason for the collection of the amount towards excise duty was to meet the statutory liability of the manufacturer and not as a deposit simpliciter. If the purchaser of the assessee did not produce the necessary certificate within the requisite period, the assessee has to make over the amount collected to the manufacturer, who in turn has to pay to the Government by way of excise duty. It is no doubt true that the assessee may have to refund the amount to the customer, if the customer produces the necessary certificate from the Regional Transport Authority concerned to the effect that the vehicle purchased was registered as a taxi. But, however, at the time of collection of the amount, the assessee had collected the money as part of its trading receipt and the contingency that the assessee may have to refund subsequently the amount on the production of the necessary certificate from the customer does not mean that even at the time of collection of the amount there was a liability attached to the amount collected by the assessee. The liability to refund the amount will arise only on production of the necessary certificate from the Regional Transport Authority concerned and without production of the same, the assessee is not obliged to return the money to the customer. We are of the view that the intention of the assessee in collecting the amount was towards the excise duty levy, though it has agreed to return the amount to the purchaser in case the purchaser produces the necessary proof for the registration of the vehicle as a taxi and that too within the prescribed period. It is clear that if the purchaser of the vehicle does not produce the necessary certificate, within the prescribed time limit, the assessee is obliged to transfer the money to the Hindustan Motors, who in turn will pay the Excise duty and in such a situation, the amount collected , it cannot be disputed, would form part of the price though the assessee would be entitled to the deduction of the amount on the transfer of money to Hindustan Motors. It is inconceivable that the character of receipt would change depending upon the contingency of the purchaser handing over the necessary documents and the assessee returning the money to the purchaser. Hence, we hold that the assessee had collected the amount as part of its trading receipts, as we earlier observed, the amount was collected for ultimately meeting the statutory liability. We are of the view that the ratio of the decision of this court in Commissioner of Income Tax Vs. Southern Explosives Co., would apply to the facts of the case and the following principles laid down therein would govern the facts of

this case as well.

"The true character of the receipt must be judged with reference to the reasons for the collection and the liability for meeting which the collection was made. When the liability is a statutory liability, which the assessee was required to meet and for meeting which it was by the statutes or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. By calling a portion of the amount as deposit, it cannot be said that the assessee had constituted itself as a trustee, and therefore, the amounts received were not required to be regarded as part of its trading receipt. Had the assessee been unsuccessful in its claim that his goods were not to be treated as chemicals there is no doubt that the amounts though collected as deposit, would have been paid over to the State Government as the amounts had been collected for payment to the State Government as sales tax in the event of the goods being treated as chemicals".

7. As far as the decision of the Supreme Court in " The K.C.P. Limited Vs. Commissioner of Income Tax, Bangalore, is concerned, the decision of the Supreme Court supports the case of the Revenue as the assessee has collected the amount as part of the price of the motor car though the assessee had undertaken to return the amount to the customer on production of the necessary certificate. Learned counsel for the assessee relied upon the following observations of the Supreme Court in the decision in The K.C.P. Limited Vs. Commissioner of Income Tax, Bangalore, in support of his case:-

"Thus the receipt of the amount by the assessee was clearly associated with a libility to refund the amount, which liability was ascertainable and quantified. Such is not the case at hand",.

We are of the view that the above observation of the Supreme court does not apply to the facts of the case, as the assessee had the right to receive the excise duty and the amount collected was not associated with the liability to refund the amount. The money was required to be refunded only on production within the prescribed period the necessary certificate from the Regional Transport Authority concerned. The fact that the collected amounts were separately entered in the back side of the bill is not material as regards the character of the receipt as a trading receipt. The Supreme Court has emphasised that it is the true nature and quality of the receipt that would be decisive and not the way in which the assessee had made up its accounts or the way under which the amount is described or accounted for would be conclusive.

8. As far as the decision of this Court in " Commissioner of Income Tax Vs. Madurai Soft Drinks (P.) Ltd., is concerned, the decision is distinguishable as the amount was received as a deposit simpliciter and refundable after the bottles were returned. In that case, the intention of the assessee in collecting the amount was to treat the deposit not as part of the sale consideration of the bottles sold. However, on the facts of this case, the amounts were collected as part of the sale consideration of the

vehicles and the assessee was obliged to return the money in the event of the production of necessary certificate by the purchaser. The submission that the assessee had furnished the names of the customers from whom the amounts were collected as deposit does not appeal to us as the question whether it is a trading receipt or not has to be judged at the time of the receipt of the amount. So also the label given or the nomenclature of the amount collected is not of any relevance. No doubt, the object of the assessee in collecting the differential excise duty was to safeguard itself in the event of the failure of the customer to produce necessary certificate and even assuming that the assessee entertained such a motive, when the assessee had collected the amount as part of Excise duty it is liable to be treated as income of the assessee. It is no doubt true that there is force in the submission of Mr. Janardhana Raja, learned counsel that the effective rate of excise duty on the motor car purchased for the use as a taxi is the concessional rate, and whatever is collected over and above the concessional rate would be deposit and would not form part of excise duty. However, the levy of excise duty at concessional rate is dependent on the production of necessary certificate from the Regional Transport Officer, and the assessee collected the differential amount, as part of the price of the vehicle sold to the customer. Though the counsel for assessee submitted that to insulate against the possible liability, in the event the purchaser of the car had failed to produce the necessary certificate within the prescribed period and also failed to pay the balance amount, the deposit was collected, we are of the view that the amount was collected as part of the sale price of the vehicle. The fact that it was collected at the time of sale with an undertaking to return the amount subject to fulfilment of certain condition would not change the nature of the receipt. We, therefore, hold that the Tribunal was not correct in holding that the differential excise duty collected by the assessee cannot be included as part of the assessee''s income. Accordingly, we answer the question of law referred to us in the negative, against the assessee and in favour of the Revenue. However, in the circumstances of the case, there will be no order as to costs.