

(2011) 09 MAD CK 0134

Madras High Court

Case No: Tax Case (Appeal) No"s. 1218 and 1242 of 2006

M/s.Sundaram Industries
Limited 211, South Veli Street
Madurai-625 001

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision: Sept. 19, 2011

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 2, 3B

Hon'ble Judges: M. Jaichandren, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: C. Venkatraman, for the Appellant; R. Sivaraman Special Government Pleader (Taxes), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The assessee is on revision as against the order of the Tribunal, raising the following substantial question of law:

Whether, in the facts and circumstances of the case and in law, the orders passed by the Sales Tax Appellate Tribunal suffers from errors of law apparent on the face of the record, since, the Sales Tax Appellate Tribunal failed to follow and apply the principles stated by the Kerala High Court in the decision reported in (1994) 94 STC 396 (Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam vs. N. Lekshmana Reddiar) and Madras High Court in (1986) 63 STC 411 (Bombay Burmah Trading Corporation Ltd. Vs. The State of Tamil Nadu).

2. The assessment years relate to the years 1989-1990 and 1990-1991. The assessee a company engaged in retreading of tyres on a works contract basis. In respect of the works undertaken, the assessee quoted a consolidated amount, which they

claimed as inclusive of tax. In the return made, since the assessee had not separately maintained accounts as regards the amount referable towards transfer of property in goods and labour charges, the assessee apportioned 70% of the amount as per the statute, as taxable turnover. The Officer viewed that since the assessee had charged a lumpsum amount and no separate amount was noted in the bills towards collection of sales tax and that the tax was only notionally stated so in the accounts, the entire turnover at 70% was to be assessed to tax. The Assessing Officer rejected the contention of the assessee that there was a clear mention in the invoice to the effect that the sale price is inclusive of sales tax and that the claim was allowable as per the direction of the Kerala High Court reported in 1994 (94) STC 396 (Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam vs. N. Lekshmana Reddiar). The Assessing Officer, however, pointed out that since the transactions involved in the execution of the works contract are deemed sales, provisions relating to sales are equally applicable to deemed sales and when the tax on the sales are not separately shown as not included in the sale price, the petitioners were liable to pay tax.

3. As per Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, any amount charged by a dealer by way of tax separately without including the same in the price of goods bought or sold shall be excluded from the turnover. Since the assessee had not collected the tax separately from the purchasers, the mere fact that they had been shown separately in the accounts could not be a justifiable ground for granting exclusion.

4. The assessee filed an appeal before the Appellate Assistant Commissioner, wherein it failed. Hence, further appeal was filed before the Tribunal. As far as the said contention is concerned, the Tribunal once again rejected the case of the assessee. Thus, the assessee is now before us on revision.

5. Learned counsel appearing for the assessee, pointing out to the definition of "turnover" u/s 2(r) of the Tamilnadu General Sales Tax Act, 1959, submitted that the assessee had specifically mentioned about the tax portion on 70% of the agreed amount, thereby indicated that the tax collected was not part of the turnover. As such, there could be no levy of tax on the tax collected. In other words, the assessee contended that the tax on the turnover of 70% of the contract merited exclusion from the turnover. Consequently, the question of the Assessing Officer placing reliance on Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, does not arise. He insisted that going by the decision of the Kerala High Court, the tax collected could be discerned easily as evidenced by the accounts. The authorities concerned committed serious error in ignoring the books maintained by the assessee indicating separately, the tax shown therein. Consequently, he sought for setting aside the order.

6. Per contra, learned Standing Counsel appearing for the Revenue pointed out that the amendment brought to Explanation (1-A) to Section 2(r) of the Tamil Nadu

General Sales Tax Act, 1959, allows deduction only if the tax element is shown separately without including the same in the price of the goods. Thus whenever the assessee collected a consolidated amount which included the tax, the question of bifurcating them for the purpose of invoking Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, does not arise.

7. Referring to the objects and reasons to the amendment brought to Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959 from 1st January 1987, he pointed out that the said explanation is available only where the amount charged for by the dealer by way of tax is shown separately without including the same in the price of goods bought or sold. Thus when the assessee collected a consolidated amount inclusive of tax and the tax collected cannot, in any manner, be pointed out with precision to the price of the goods and thus the tax forms part of the price charged for, the question of invoking Explanation (1-A) does not arise. In the light of the provision that stands today and on the fact that the assessee had quoted a consolidated amount, the mere bifurcating of the same in the books of accounts would not satisfy the provisions of the Act.

8. In this context, learned Standing Counsel appearing for the Revenue placed reliance on the unreported decision made in W.P.No.37025 of 2002, dated 1.4.2004, which distinguishes the case from the decision of this Court reported in 1994 (94) STC 396 (Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) Ernakulam vs. N. Lekshmana Reddiar) that a mere mentioning of the break-up figure on the back side of the bill for an administrative convenience would not satisfy the provisions of the Act.

9. It is seen from the order of the Assessing Officer that the assessee admitted that they had quoted a consolidated amount towards labour as well as goods. In the absence of separate accounts maintained, the assessee adopted a safer statutory formula to offer 70% of the amount collected as taxable turnover u/s 3-B of the Tamil Nadu General Sales Tax Act, 1959. By adopting the said formula, the assessee offered Rs.6,20,63,196/- as the turnover, in which the assessee had also included the tax. The tax thus collected on the said turnover is split up as is evident from the books of accounts. In considering the said claim that the assessee had shown it separately in the accounts, the Officer concerned pointed out that even though the works contract transactions could not be equated to direct sales, yet, the fact that the assessee had offered the price inclusive of tax, really showed that the consideration agreed was a sum total inclusive of tax. With no specific value assigned as referable to consideration relating to materials and labour charges, the question of deducting tax as referable to material value as per Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, does not arise.

10. Further, the Assessing Officer pointed out that all that the assessee had done in this case was to show that the tax element was shown in the accounts just by way of an adjusting entry, which does not satisfy the provisions of the Act. The Appellate

Authority and the Tribunal confirmed the said view of the Assessing Officer and pointed out that when the assessee had collected a consolidated amount which is inclusive of tax and the charges collected from the customers thus revealed that there was no bifurcation of labour and materials, it was but difficult to identify the tax collected by the assessee, vis-a-vis the material value.

11. Section 2(r) and Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, reads as follows:

Section 2(r): "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, and rubber (natural rubber, latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Explanation 1 ...

Explanation (1-A)-Any amount charged by a dealer by way of tax separately without including the same in the price of the goods bought or sold shall not be included in the turnover.

12. A reading of the above-said definition shows that "turnover" means the total amount for which the goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the manner referred to in clause (n). As far as Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959 is concerned, where an amount charged by the dealer by way of tax is separately shown and not included in the price of the goods bought or sold, the same shall not be included in the turnover. In the present case, admittedly, the assessee had charged a consolidated amount for the execution of the works contract. The indivisible contract showed no bifurcation as regards labour and materials. Even in the accounts, the assessee did not have the details on the cost of the materials used to have a deduction of the labour charges from the consolidated price charged. The consolidated amount charged is stated to include the tax element. Even for claiming deduction on the labour charges, the assessee adopted the statutory percentage only. In the above circumstances, on a consolidated sum thus charged, it is difficult to accept the claim of the assessee that the adjustment entries given in the accounts have to be taken as tax charged separately. In the decision reported in [India Meters Limited Vs. State of Tamil Nadu](#), following the earlier decisions of the Apex Court, the Apex Court held as follows:

It is no doubt true that rule 6(c) of the Rules permits deduction of the cost on freight while determining the taxable turnover. However, that provision must be read in the

context of definition of "turnover" as also the definition of "sale" in sections 2(r) and 2(n) respectively of the Act. "Turnover" is defined in the Act, inter alia, to mean "the aggregate amount for which goods are bought or sold or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n)

The Apex Court further pointed out that "even if freight and insurance charges are shown separately in the Bill and added to the price of the goods, the character of payment would remain the same. Since freight and insurance charges represent expenditure incurred by the dealer in making the goods available to the purchaser at the place of sale, they would constitute an addition to the cost of the goods to the dealer and would clearly be a component of the price to the purchaser. The amount of freight and insurance charges would be payable by the purchaser not under any statutory or other liability but as part of the consideration for the sale of the goods and would therefore, form part of the sale price.

13. The above-said citation is referred to only for the purpose of showing that any amount charged for and included in the sale price or the consideration would really make up for the turnover for the purpose of consideration of the tax liability under the Act. In so considering the question as to whether the tax element charged is part of the consideration or not would ultimately depend on how the parties to the transaction have dealt with what is to constitute a consideration for the sale of goods.

14. When the parties to the contract have agreed on a consolidated price inclusive of tax, it is clear that irrespective of how they make up the bill or the accounts, the entire consideration will be the turnover, and in which event, the question of application of Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959, does not arise. In the above-said aspect, this Court, in the unreported decision in W.P.No.37025 of 2002, by order dated 1.4.2004, clearly held that how an assessee makes up its bill or accounts, would not be of any assistance to the assessee for the purpose of claiming any deduction by the application of Explanation (1-A) to Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959. This Court pointed out that the mere fact that the assessee had given the break-up figure on the back side of the bill for administrative convenience, by itself, would not be a ground for granting the relief.

15. As far as the present case is concerned, it stands almost on similar terms as that of an unreported decision. Except for the fact that the turnover is a works contract turnover, hence deemed sale, and the divisibility of the consideration is worked out statutorily as u/s 3-B of the Tamil Nadu General Sales Tax Act, 1959, we do not find any variation from the unreported decision. While in the decided case, the break-up of the consideration and the tax thereon was shown on the back of the bill, in the case on hand, the splitting up is shown under various heads in the books of accounts of the assessee. That apart, there is hardly any material to find, on which portion of the consideration, the assessee really collected the tax payable under the

Act. In the light of the above, we do not agree with the submissions of the learned counsel for the assessee that the mere fact of distribution under different heads in the amounts would qualify for deduction under the Act, or for that matter, no tax would be charged. In the light of the above, we have no hesitation in confirming the order of the Tribunal. The Tax case Appeals stand dismissed. No costs.