Pearl Sacks (P) Limited Vs The State of Tamil Nadu

Court: Madras High Court

Date of Decision: Nov. 27, 2013

Citation: (2014) 69 VST 519

Hon'ble Judges: T.S. Sivagnanam, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: N. Inbarajan, for the Appellant; Manokaran Sundaram, Addl. Govt. Pleader (Taxes), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.
The assessee is on Tax Case (Appeals) as against the order of the Joint Commissioner (SMR), Commercial

Taxes, Chennai, dated 12.09.2005, passed in Ref. No. M1/22729/94 (CST) (SMR No. 299/97). In T.C. (R). Nos. 1955 and 1959 of 2008, the

assessment years under consideration are 1987-88 both under Central Sales Tax Act and Tamil nadu General Sales Tax Act; in T.C. (R). No.

1956 of 2008, the assessment year under consideration is 1985-86 under Central Sales Tax Act; in T.C. (R). No. 1957 of 2008, the assessment

year under consideration is 1984-85 under Central Sales Tax Act; in T.C. (R). No. 1958 of 2008, the assessment year under consideration is

1983-84 under Central Sales Tax Act; in T.C. (R). No. 1960 of 2008, the assessment year under consideration is 1986-87 under the Tamil Nadu

General Sales Tax Act; in T.C. (R). No. 1961 of 2008, the assessment year under consideration is 1985-86 under the Tamil Nadu General Sales

Tax Act; in T.C. (R). No. 1962 of 2008, the assessment year under consideration is 1984-85 under the Tamil Nadu General Sales Tax Act; in

T.C. (R). No. 1963 of 2008, the assessment year under consideration is 1983-84 under the Tamil Nadu General Sales Tax Act; in T.C. (R). No.

1964 of 2008, the assessment year under consideration is 1986-87 under the Central Sales Tax Act.

2. The assessee herein is a manufacture of H.D.P.E., Woven Fabrics. It has its head office at Chennai and factory at Pondicherry. Orders were

received by the assessee both in the head office as well as in its Pondicherry office for supply of H.D.P.E., Woven Fabrics. As far as the present

case is concerned, we find that the assessee"s office received orders from E.I.D., Parry (India) Limited, Madras, Shaw-Wallace, Madras, Kothari

Madras Limited, Madras, Coramandel Campacs, Madras and Andhra Fertilizers, Andhra Pradesh etc., for supply of H.D.P.E., Sacks with

imprinting on laminate H.D.P.E., sacks with imprinting of the respective logos therein. In pursuance of the orders thus received, the factory at

Pondicherry manufactured the required type of laminated H.D.P.E., fabrics and despatched the same to Tamil Nadu to give the shapes of the

sacks as per requirement of the parties and to have the logos imprinted thereof. M/s. Satya Laminates, Chennai, received the fabrics for lamination

purposes and the said concern placed orders by Pearl Sacks Pvt., Limited, Pondicherry. After the job work was done, the said M/s. Satya

Laminates sent the laminated fabrics to the stitching units at M/s. Poly Prist, Chennai for stitching and printing purposes. The finished products

namely, laminated H.D.P.E. Sacks were delivered or supplied to various buyers as per the instructions of the assessee at Chennai and despatched

to various destinations of the parties outside the State.

3. It is stated that the assessee is an unregistered dealer. Contending that the transactions were not assessable under the provisions of the Tamil

Nadu General Sales Tax Act and that the appropriation had taken place at Pondicherry itself, the assessee filed its objections to the proposal

made by the Assessing Officer under the Tamil Nadu General Sales Tax Act. While making proposal for determining the taxable turnover on the

best of judgment assessment basis, penalty was also proposed to be levied under the provisions of the Tamil Nadu General Sales Tax. The

assessee did not dispute the fact as regards the manufacturing activity done at Pondicherry as well as on the orders reserved with local office too.

According to the assessee, the fabrics manufactured according to the specifications moved from Pondicherry and after lamination and printing, they

were sent back to the Pondicherry office from where they moved to the ultimate buyers of Tamil Nadu. Thus, the assessee contended that there

was no liability under the provisions of the Tamil Nadu General Sales Tax Act and that the nature of the transactions were inter-State sales falling

under the provisions of the Central Sales Tax Act. In support of the contentions, the assessee placed copies of the contract that it had executed

with various parties.

4. The Assessing Officer pointed out on a perusal of the letters dated 05.11.1985 and 27.01.1986 of the E.I.D. Parry (India), Limited that it gave

the description of fabric materials to be used, the bag size, tolerance, strength and branding, the quotations included the total price of the tax to be

supplied by the assessee. Thus, the Assessing Officer pointed out that there was no separate contract for lamination, colouring, branding and

stitching, as contended by the assessee and thus, in the absence of any separate contract, one and only conclusion was that the contract was only

for supply of the laminated sacks and thus, the appropriation had taken place within the State; thus the sale was governed by Section 4(2)(c) of the

Central Sales Tax Act assessable under the provisions of the TNGST Act. In the light of the facts thus found, the assessee being an unregistered

dealer and having willfully failed to submit the returns and attempted to avoid or evade the tax, penalty was called for u/s 12(3) of the Tamil Nadu

General Sales Tax Act.

5. Aggrieved by this, the assessee went on appeal before the Appellate Assistant Commissioner (CT), who allowed the appeal of the assessee by

placing reliance on the decisions in the cases of Larsen and Toubra Ltd., Madras and Others Vs. Joint Commercial Tax Officer, Madras and

Others, and Indian Wood Products Co. Ltd. Vs. Sales Tax Officer, New Delhi and Others, .

6. The First Appellate Authority viewed that the appropriation having taken place on the manufactured product with particular specifications of

H.D.P.E., Fabric in Pondicherry itself, the appropriate authority would be the Pondicherry State to levy tax on the inter-State sales. In this

circumstances, the First Appellate Authority accepted the arguments of the assessee and thus, set aside the order of assessment.

7. Finding the order as prejudicial to the interest of the Revenue, the Joint Commissioner issued suo-moto revisional proceedings u/s 34 of the

Tamil Nadu General Sales Tax Act, taking the view that even though the orders were placed at Pondicherry office and the factory at Pondicherry,

yet the registered office being at Chennai, and the branch office orders could only be treated as the orders placed with the head office only, as per

the decision Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others, .Further, the Revisional Authority

viewed that the entire orders were not placed at Pondicherry office and some orders were placed at Registered office at Chennai; He further

viewed that the Pondicherry factory had only despatched HDPE Woven fabric at Chennai; the stitching of HDPE Woven fabrics as per the orders

placed by the parties, were done only at Chennai. The delivery challan for the finished HDPE sacks were prepared by the stitching unit for

consigning the same through the various parties. Thus, viewed from this, the Revisional Authority held that Tamil Nadu State was the only State

competent to levy Sales Tax. Thus, the Joint Commissioner proposed to restore the assessment order. This was objected to by the assessee

contending that the fabric itself being manufactured according to the specifications of the parties, appropriation had only taken place at Pondicherry

itself. Consequently, cutting into the required size as per specification could not be viewed as appropriation taking place inside Tamil Nadu. The

assessee further pointed out that the respective parties had placed orders for supply of Sacks on the specified laminated sheets, HDPE sheets and

fabrics at that time, the goods were sent to Madras for lamination and stitching, the same were done only at the request of the customers on the

earmarked fabric. Consequently, the Tamil Nadu Authorities have no jurisdiction to levy Tax under the provisions of the Tamil Nadu General Sales

Tax Act and there was no question of levy of penalty too.

8. In considering the said contention, the Revisional Authority pointed out to the orders placed by the customers on the assessee that they were

only for the supply of H.D.P.E., sacks at the required strength and size; that the assessee did not dispute the fact that out of the fabrics sent alone,

the sacks were manufactured according to specifications of the assessee''s customers. Considering the contract being one for supply of sacks, the

Revisional Authority came to the conclusion that Section 4(2)(b) of the Central Sales Tax Act stood attracted, fabrics were brought into Tamil

Nadu from Pondicherry and were converted into sacks laminated at branded only in Tamil Nadu. Thus, sacks manufactured to the specifications

were delivered to the parties in Tamil Nadu and to the customers at various places outside the Tamil Nadu. In the light of the above, the Revisional

Authority set aside the view of the Appellate Assistant Commissioner and thus restored the order of assessment. Aggrieved by this, the present

appeal by the assessee.

9. Learned counsel appearing for the assessee reiterated the contentions taken before the hierarchy of authorities contending that when on the

admitted fact that the H.D.P.E., fabric manufactured to the specifications had moved from Pondicherry, a mere aspect of the stitching would not

bring the appropriation theory to the advantage of the Revenue. Referring to the orders placed by the assessee''s customers, he submitted that

going by the technical specification, every H.D.P.E., fabric sent, is earmarked for a particular customer for the specific purpose of making sacks

for packing urea, textiles, fertilizers, chemicals as the case may be. He pointed out the specifications were different, the strength of the brand were

also different. Thus, the question of diverting one material to another was almost impossible and the mere aspect of stitching and lamination would

not change the quality and specification of fabrics ordered by the customers. Consequently, the view of the Joint Commissioner was totally

erroneous.

10. We do not agree with the said submissions made by the learned counsel for the assessee. It is not denied by the assessee herein that the orders

placed by the parties were for stitched sacks with the logo imprinted thereon. On this sole aspect itself, the assessee"s case merits to be rejected

by us. It is no doubt true that the H.D.P.E., fabrics itself was manufactured at Pondicherry, and as already pointed out when the agreement is not

for just the fabric, but for sale of sacks of the specific description, we fail to understand how mere movement of the fabric from place outside the

State would lead to an appropriation to this case, to apply the theory of appropriation u/s 3 of the Central Sales Tax Act, which reads as under:-

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce:- A sale or purchase of goods shall be

deemed to take place in the course of inter-State trade or commerce if the sale or purchase:-

(a) occasions the movement of goods from one State to another (b) is effected by a transfer of title to the goods during their movement from one

State to another.

Explanation 1:- Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purpose of clause

(b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2:- Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods

from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

11. Going by the said provision, it is clear that an appropriation for the purposes of an inter-State sale would be completed, only in respect of

goods, which are earmarked for a particular customer. Here the admitted fact is that the customers had placed orders for supply of H.D.P.E.,

sacks and not H.D.P.E., fabric. Even though, the fabric might have been manufactured to the specifications, yet given the fact that the contract is

not for the fabric as such, but for stitched sacks on a specified shape, and the compliance of the contract itself arose only in Tamil Nadu, we fail to

understand that the mere despatch of fabric, which incidentally might have fitted in with colour or the textiles would not by itself result in

appropriation to the contract placed by the customer. In these circumstances, on the admitted fact that the fabrics sent from Pondicherry assumed

its final shape only in Tamil Nadu in the form of a sack of a particular size laminated and with logo of the particular customer imprinted thereon, we

have no hesitation in confirming the order of the Joint Commissioner.

12. So far as the levy of penalty is concerned, it is not denied by the assessee that it was an unregistered dealer throughout the period under

consideration. Consequently, there was no filing of return disclosing the turnover assessable under the provisions of the Central Sales Tax Act. It is

not denied by the assessee that it had received orders from its branch office outside the State as well as in its office at Tamil Nadu, where the

registered office is located. Leaving aside for the movement that the order placed in the branch officer is an order on the Head office, the fact

remains that even for claiming exemption under the provisions of the Act that the transactions are inter-State sale, the assessee ought to have

registered itself under the provisions of the Act. The assessment itself was made only based on the information gathered by the department, but for

this, the entire transaction would have gone outside the assessment. In the background of this fact, the question of levy of penalty in this case

assumes significance.

13. Learned counsel appearing for the assessee submitted that the entire assessment rested on the turnover available in the books of accounts.

Consequently, the question of levy of penalty in this case did not arise. We do not agree with this line of reasoning for admittedly the assessee had

not registered itself under the provisions of the Act or Central Sales Tax Act. They had not reported the turnover also even as by way of exempted

turnover under the Act or Central Sales Tax Act. On the entire turnover, the assessment in respect of all these years thus came to be made as the

best of judgment assessment, the turnover for which were drawn from the books of accounts.

14. The mere fact that the turnover were culled out from the books of accounts by itself does not mean the assessment is not a best of judgment

assessment. The material based on which the best of judgment thus made being the account books, we do not find any justifiable grounds to

accept the plea of the assessee that the assessment is one based on books and hence not the best of judgment assessment.

15. Considering the facts stated above that the transaction is a of local sale, in the background of the admitted fact that the order placed by

customers were for supply of sacks of specified description, we hold that the facts herein certainly attract the provisions u/s 12(3) of the Central

Sales Tax Act. However taking note of the circumstances which led to the assessee taking a plea as regards the appropriation which, however,

stand rejected by us, we feel a lenient view merited to be taken in this case. Thus, instead of the maximum penalty, the levy of penalty at 50%

would meet the ends of justice. In these circumstances, we direct the Assessing Officer to restrict the penalty levied 50% alone on the tax sought to

be rated. With this modification, the Tax Case (Revisions) stand disposed of. No costs.