

(2013) 06 MAD CK 0269

Madras High Court

Case No: Tax Case (Revision) No. 334 of 2011

State of Tamil Nadu

APPELLANT

Vs

Plastic Craft Industries

RESPONDENT

Date of Decision: June 5, 2013

Citation: (2013) 66 VST 62

Hon'ble Judges: K.B.K. Vasuki, J; Chitra Venkataraman, J

Bench: Division Bench

Advocate: Manoharan Sundaram, for the Appellant; S. Ramanathan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.

The Revenue is on revision as against the order of the Sales Tax Appellate Tribunal relating to the assessment year 1986-87, raising the following question of law:

Whether, in the facts and circumstances of the case, the Tribunal is legally correct in having held that excise duty not levied at the time of the sale transaction cannot be postponed subsequently which is contrary to the decision reported in [Mohan Breweries and Distilleries Ltd., etc. Vs. Commercial Tax Officer, Madras and others](#),

It is seen from the papers placed before this court that the assessee herein is a manufacturer of plastic components. On the impression that the activity did not attract excise duty provisions, the assessee did not include the duty component in the sale consideration. However, subsequently, there was an inspection by the Central excise authorities on October 22, 1986. The assessee got the licence under the Central excise provisions on October 27, 1986. During the period from October 22, 1986 to October 27, 1986, there were no sales. Based on the proceedings from the Central excise authorities for the past transaction, the assessee is stated to have paid the excise duty. The case of the assessee is that as on the date of sale, since there was no excise duty paid by him, the question of including all duty element into the cost for the purpose of payment of sales tax did not arise, hence, they did not

collect any sales tax on the excise duty component in the sale consideration. However, the sales tax authority proposed to add excise duty of Rs. 24,42,049 to the taxable turnover and demanded tax thereon. The assessing officer viewed that non-collection of excise duty from the purchasers was not material in the light of the decision in the case of [McDowell and Co. Ltd. Vs. Commercial Tax Officer](#), and thus, confirmed the proposal.

2. Since the appeal filed before the Appellate Assistant Commissioner failed, the assessee went on further appeal before the Sales Tax Appellate Tribunal in T.A. No. 1015 of 1999. Under order dated March 28, 2001, the Sales Tax Appellate Tribunal pointed out that when the sale took place, only the invoice amount was collected from the customers; the element of excise duty as a liability was not there at the time of sale to be included in the price of the goods sold; subsequently, excise duty for the disputed period was paid consequent on the claim made by the Excise Department. Thus, if the liability to excise duty has been subsequently paid under the stated circumstances and if duty payment had been passed on to the purchaser as by way of additional invoice, then, certainly, the same would be included in the taxable turnover of the dealer; however, since the facts stated therein were not clear enough to show as to whether the excise duty paid subsequently was passed on to the purchaser for the disputed period or not, the assessing officer was directed to verify as to what was the sale price till October 1986 and what was the sale price after October 1986. The assessing officer was also directed to verify as to whether the payment of excise duty of Rs. 8,90,250 was passed on to the customer by raising any debit note or not.

3. Rejecting the plea of the Revenue and placing reliance on the decision in the case of [McDowell and Co. Ltd. Vs. Commercial Tax Officer](#), and the decision in the case of [Mohan Breweries and Distilleries Ltd., etc. Vs. Commercial Tax Officer, Madras and others](#), , the Sales Tax Appellate Tribunal pointed out that as on the date of sale, evidently, there was no excise duty liability passed on to the customer and tax was collected only on the invoice amount. The liability itself was made only subsequent to the transaction of sale. In the circumstances, on the directions referred to above, the Sales Tax Appellate Tribunal directed the assessing officer to verify and come to the conclusion as to whether the excise duty payable was passed on to the customers.

4. The Sales Tax Appellate Tribunal's order dated March 28, 2001 was not in any manner challenged either by the assessee or by the Revenue; admittedly, the Revenue took further proceedings dated May 31, 1988, only to reconfirm its earlier view and demanded tax thereon.

5. The appeal before the first appellate authority was rejected and therefore, the assessee went on further appeal before the Sales Tax Appellate Tribunal in T.A. No. 493 of 2003.

6. The Sales Tax Appellate Tribunal by order in T.A. No. 493 of 2003 dated November 1, 2007, held that when the Revenue had not established its case and when the contention of the assessee was that he had not collected the amount even after the payment or included it as a sale consideration, the question of asking the assessee to prove the negative aspect would not arise. In the circumstances, the Sales Tax Appellate Tribunal pointed out that it was not the case of the assessee that they collected the amount as part of the sale consideration, thus, referring to the earlier order of the Tribunal, the assessee's appeal was allowed. Hence, the present tax case revision by the Revenue.

7. We do not find merit in the contentions of the Revenue that irrespective of whether duty element had been passed over or not, the turnover was necessarily to include the excise duty element.

8. The learned Government Advocate placed reliance on the decision reported in the case of [Mohan Breweries and Distilleries Ltd., etc. Vs. Commercial Tax Officer, Madras and others](#), in this regard and submitted that even in the case of postponing the liability on excise duty component, the apex court had held that excise duty was includible in the turnover of the assessee.

9. We reject this argument particularly on the factual findings of the Sales Tax Appellate Tribunal. Evidently, there is no definition of the term "sale consideration" or "sale price" in the Tamil Nadu General Sales Tax Act. Section 2(r) defines "turnover" as follows:

"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.

10. Section 2(h) of the Central Sales Tax Act, 1956, defines "sale price" as under:

"sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

11. Thus the turnover for purposes of assessment includes the aggregate amount for which the goods are bought or sold or disposed of in any of the ways referred in

the definition of "sale". When the contemplation of the Act is to include the totality of the consideration alone and in the price charged in the invoice as a sale consideration did not include any sum, it being not the amount for which the goods are bought or sold, cannot be brought in within the definition of "sale". Thus taking the abovesaid definition into consideration that what is charged as consideration alone could be considered as turnover, one can say that in the present case, the price, at which goods are bought or sold would be the turnover for the purpose of assessment. Admittedly, the assessee was not registered under the Central excise provisions at the time when he effected sales of the manufactured items, who, got registered only on October 27, 1986. The assessee paid the excise duty for the manufactured items alone for the relevant assessment year, i.e., on November 7, 1988, November 19, 1987 and October 30, 1991. It is seen that the assessee had also challenged the payment of excise duty. Whatever be the merits of those proceedings, the fact is as on the date of sale, all that the petitioner had collected as sale consideration alone would be the turnover for the purpose of assessment and when the Tribunal on the first round of litigation has clearly pointed out that the assessing officer was to verify the sale price till October 1986 and after October 1986 and further to find out whether the assessee had passed on the duty paid as part of the sale consideration and when no efforts were taken on this aspect, we do not find any justifiable ground to accept the plea of the Revenue to set aside the order of the Tribunal. As already seen in the preceding paragraph, in the first round of litigation, the Sales Tax Appellate Tribunal found that no evidence was available subsequent to the payment of the excise duty, whether the portion of such payment has been passed over to the customer as a part of the consideration. The disputed tax cannot be passed over to the taxable turnover. Hence, we do not find any merit in the present tax case revision as against the order in T.A. No. 493 of 2003 dated November 1, 2007 when a finality attached to the order dated March 28, 2001 in T.A. No. 1015 of 1999 has not been challenged either by the Revenue or by the assessee. Hence, the same stands dismissed. We do not find any justification in the reliance placed on by the Revenue in the decision of the apex court reported in [Mohan Breweries and Distilleries Ltd., etc. Vs. Commercial Tax Officer, Madras and others,](#) since the said decision has no relevance to the facts of the present case and the issues are totally different. Consequently, the order of the Sales Tax Appellate Tribunal passed in T.A. No. 493 of 2003 dated November 1, 2007 stands confirmed and the tax case revision stands dismissed. No costs.