

GST/CST&VAT: Tamil Nadu VAT - Where assessee, a dealer in footwear, had charged from customers MRP without indication of sales tax separately in sale bills and showed sale price and tax element separately in account books, it was eligible for deduction of notional tax element from turnover

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HIGH COURT OF MADRAS

State of Tamil Nadu

v.

Bata India Ltd.*

**S. MANIKUMAR
AND R.PONGIAPPAN, JJ.
T.C. (R) NO 80 OF 2017
DECEMBER 20, 2017**

Section [15](#) of the Central Goods and Services Tax Act, 2017/Section 2(r) of the Tamil Nadu General Sales Tax Act, 1959 - Value of supply - Assessment year 1994-95 - Assessee, a dealer in footwear, charged from customers/purchasers maximum retail price without indication of sales tax separately in sales bills - It showed sale price and tax element separately in account books and claimed deduction of notional tax element from turnover - Whether assessee was eligible for deduction of notional tax element from turnover - Held, yes [Paras 9, 10 and 11] [In favour of assessee]

FACTS

- The assessee, a dealer in footwear, in respect of sales to retail customers had charged maximum retail price without indication of sales tax separately in the sale bills.
- However, it showed the sale price and tax separately in the account books and claimed deduction of the notional tax element from the turnover.
- The Assessing Authority held that according to *Explanation 1A* to section 2(r) [as it stood w.e.f. 1-11-1987] of the Tamil Nadu General Sales Tax Act, 1959, any amount collected by the dealer by way of tax under this Act should not be included in the turnover and the amendment restricts in scope to any amount charged separately by way of tax in order to prohibit the dealer for claiming deduction on the consolidated notional amount representing the tax included in the price charged by him on the ground that both seller and buyer were aware of such inclusion of tax on the sale price. But, in instant case, the assessee collected maximum retail price and deducted the tax portion for computing the taxable turnover for the purpose of tax liability. Thus deduction of notional tax element was against the provision of the Act and, therefore, the assessee was not eligible for the notional deduction. He, therefore, disallowed the assessee's claim for deduction of the notional tax element from the turnover.
- The Commissioner (Appeals) dismissed the appeal of the assessee holding that the claim of deduction was not in accordance with *Explanation 1A* to section 2(r).

- The Tribunal allowed the appeal filed by the assessee.
- On revision filed by revenue:

HELD

- In the case of *Radha Krishna Surajmal v. CCT* [1979] 43 STC 203, a similar question arose for consideration before the Patna High Court. Section 7(1)(b) and section 7(2)(a)(ii) of the Bihar Sales Tax Act provided for deduction of the amount of sales tax actually collected as such, if any, along with the sale prices received or receivable in respect of sales of goods. The Court posed the question as to what is the meaning of the expression 'collected as such'. A further question was also posed does it mean that in every sale memo, sales tax realised must be shown separately from the price realised as the value of the goods sold, or, does it mean that even though it is not so indicated in the sale memo, the identity of the sales tax realised on the sale value of the goods can still be ascertained. The Court observed that is the amount shown in the sale memo only the value of the goods sold, or, whether the amount shown includes partly the value of the goods sold and partly sales tax realised on the sale of goods. The idea underlying the use of the expression 'collected as such' obviously seems to be that if there is evidence to indicate that part of the amount in a sale represented the sales tax, it must be said that the sales tax had been collected as such on the said transaction and it had to be allowed as a deduction in computing the taxable turnover. The legal position, therefore, seems to be clear that for claiming deduction in terms of sections 7(1)(b) and 7(2)(a)(ii), all that is necessary is that there must be evidence, not necessarily only the sale memos, to indicate that apart from the sale value of the goods sold, an amount had been collected by way of sales tax as such. If such evidence is available with the dealer and it is found by the department to be a piece of acceptable evidence, the claim must be allowed. [Para 8]
- In the assessee's own case, in Tax Case Revision Nos. 1725 of 2008, 1736 of 2008 and 7 of 2009, dated 4-1-2013, for the assessment years 1991-92, 1993-94 and 1992-93, the assessee showed the price and the tax separately in its account and claimed deduction of the same from the total turnover in accordance with section 2(r) *Explanation* 1A. The Assessing Officer rejected the contentions of the assessee. Both the First Appellate Authority and the Tribunal dismissed the appeals of the assessee. Aggrieved by the same, the assessee filed Tax Case Revision Petitions before the Madras High Court on the following substantial questions of law:
 1. Whether the Tribunal is correct in law in interpreting section 2(r) *Explanation* 1A to hold that the assessee would be entitled to an exclusion of tax element only if it is shown separately in the bill.
 2. Whether the Tribunal is justified in law in affirming the levy of penalty under section 12(3)(b) relating to the assessment year 1993-94 in view of the *Explanation* added to section 12(3)(b), which is clarificatory in nature. [Para 9]
- The High Court answered the substantial question of law in favour of the assessee. [Para 10]
- In view of the aforesaid, there is no manifest illegality in the impugned order of the Tribunal, warranting interference. [Para 11]

CASE REVIEW

Radha Krishna Surajmal v. CCT [1979] 43 STC 203 (Patna) (para 8) and Tax Revision Nos. 1725 of 2008, 1736 of 2008 and 7 of 2009, dated 4-1-2013 (para 11) *followed*.

CASES REFERRED TO

Modern Food Industries (India) Ltd. v. The Register [W.P. 37025 of 2002, dated 1-4-2004] (para 6), *Radha Krishna Surajmal v. CCT* [1979] 43 STC 203 (Patna) (para 8) and *Garware Nylons Ltd. v. State of Tamil Nadu* [T.C. (R) No. 1928 of 2006, dated 8-6-2012] (para 10).

S. Kanmani Annamalai, Special Govt. Pleader (Taxes) *for the Petitioner*.

ORDER

S. Manikumar, J. - The instant Tax Case Revision is filed against the order made in T.A.No.523 of 2002 dated 25.04.2013, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2. Short facts leading to Tax Case Revision are that Tvl. Bata India Ltd., Chennai, are dealers in footwear and assessee on the file of the Assistant Commissioner (CT) Zore IX, Chennai. They were assessed for a total and taxable turnover of Rs. 60,76,04,867/- and Rs. 57,80,44,531/- respectively, for the assessment year 1994-95 under Tamil Nadu General Sales Tax Act, 1959. The Assessing Authority, at the time of checking the accounts, found that the dealer has charged sales tax separately in the wholesale/depot sale, ADC sales and repair bill, but in respect of sales to retail customers, the retail price has been charged without indication of sales tax separately, in the sale bills. Though they bifurcated sales tax, Surcharge, Additional Surcharge totally in the retail sales statement with tax element separately, the taxable turnover was arrived at notionally by adopting the formula. According to explanation (1A) to Section 2(r) (Act 78 to 1987 with effect from 01.11.1987) of Tamil Nadu General Sales Tax Act, 1959, any amount collected by the dealer by way of tax under this Act should not be included in the turnover and the amendment restricts in scope to any amount charged separately by way of tax in order to prohibit the dealers for claiming deduction on the consolidated notional amount representing the tax included in the price charged by him on the ground that both seller and buyer were aware of such inclusion of tax on the sale price. But in so far as the assessee is concerned, they collected on lumpsum i.e. Maximum retail price and deducted the tax portion for computing the taxable turnover for the purpose of tax liability. Thus, according to the assessing officer, deduction of notional tax element was against the provision of the Act and therefore, the assessee was not eligible for the notional deduction. Therefore, the deduction claimed by the dealer on the notional value of the tax from the aggregate of sale prices was brought to assessment apart from tax, Surcharge, Additional Surcharge along with penalty under Section 12(3)(b) of the Tamil Nadu General Sales Tax Act, 1959 by the respondent in his order dated 24.02.2000.

3. Aggrieved against the order, the dealer filed an appeal before the Deputy Commissioner (CT) (Appeal), Chennai, who in turn, after hearing both sides, dismissed the appeal, holding that the claim of deduction as tax portion of sale price was not in accordance with the explanation (1A) to Section 2(r) of Tamil Nadu General Sales Tax Act, 1959 and also confirmed the penalty levied under Section 12(3)(b) of the Act in his order in A.P.No.223/2000 dated 28.12.2001.

4. Aggrieved against the order of the first appellate authority, the dealer filed a second appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai and the Tribunal allowed the appeal filed by the dealer, in its common order in TA.523/2002 etc. dated 25.04.2013.

5. Aggrieved against the abovesaid order, State, has filed the instant Tax Case Revision, on the following substantial questions of law:

- "(1) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that it is not necessary to show the sale price separately in the invoice and that is sufficient if it is shown separately in the books of account?
- (2) Whether on the facts and in the circumstances of the case Tribunal was right in law in holding that the explaining the scope of (1-A) of Section 2(r) if the sale price is shown in the books of accounts it is sufficient to get deduction amounts even though the sale invoice contains lump sum amount inclusive of tax without charging the tax elements separately?
- (3) Whether on the facts and in the circumstances of the case the Tribunal was right in not following the order of this Hon'ble Court in Tax Case (Revision) No.1218 and 1242 of 2006 dated 19.09.2011 and W.P.No.37025 of 2002 dated 01.04.2004"

6. Supporting the prayer sought for, Mr. S. Kanmani Annamalai, learned Special Govt. Pleader (Taxes), submitted that the Tribunal has erred in law in allowing the appeal on the turnover representing sales tax collection which was not shown separately in the sale bills; that the Tribunal failed to consider that the sales amount in lump sum inclusive of tax without charging the tax elements separately does not come within the purview of explanation (1-A) of Section 2(r); that the Tribunal has failed to consider that without showing the tax element separately in the invoice it is shown in the books of accounts; that the Tribunal erred in interpreting explanation (1-A) to Section 2(r) to state that if the tax is shown in the accounts of the assessee, it is sufficient compliance of the section; that the Tribunal has erred in understanding the legislative intendment in making an amendment to section 2(r) by Act 78/1986 with effect from 01.01.1987, that the Tribunal has failed to consider that it is the duty of the selling dealer to show the value of the goods and the rate of tax separately in the invoice; that the Tribunal ought to have held that if the invoice contains lump sum as in the present case, then it would not be possible for any purchaser to know the tax elements of the said goods; that the Tribunal has failed to consider that explanation 1A to 2(r) clearly stipulates that any amount charged by a dealer, by way of tax should be shown separately, without including the same in the price of the goods. That the Tribunal ought to have appreciated the words without including the same, in the price of the goods bought or sold is very crucial, that turnover of Rs. 3,20,24,634 ought to have been included in the taxable turnover, that the Tribunal erred in not appreciating the decision of the Hon'ble Division Bench in W.P.37025 of 2002 dated 01.04.2004 in the case of *Modern Food Industries (India) Ltd. v. the Register* [W.P. 37025 of 2002, dated 1-4-2004], wherein the Hon'ble Division Bench held that the explanation 1-A to section 2(r) would apply. The figure was given on the back side of the bill, for administrative convenience, because there may be a likelihood that the entries on the back side of the bill were made subsequently. In the present case, it is clear that in the invoice copy, it was shown as lump, sum and only in the accounts it was shown separately; the Tribunal ought to have followed the decision of the Division Bench of this Hon'ble Court in Tax Case (Appeal) No.1218 and 1242 of 2006 dated 19.09.2011 wherein, this Hon'ble Court, after considering the provisions of explanation 1A to section 2(r) held that the lump sum amount charged by the assessee, in the invoice attracts explanation 1-A of section 2(r); that the Tribunal has failed to consider that SLP has been filed by the State, before the Hon'ble Supreme Court against the orders passed in T.C. No.868 of 2006 etc. dated 04.01.2013, for the same assessee involving the same issue and that the Tribunal has erred in deleting the penalty levied under Section 12(3)(b) of the TNGST Act.

7. Heard the learned Special Government Pleader (Taxes) and perused the materials available on record.

8. In *Radha Krishna Surajmal v. CCT* [1979] 43 STC 203 (Patna), a similar question arose for consideration. Section 7(1)(b) and Section 7(2)(a)(ii) of the Bihar Sales Tax Act (Act 19 of 1959) provided for deduction of the amount of sales tax actually collected as such, if any, along with the sale prices received or receivable in respect of sales of goods. The court posed the question as to what is the meaning of the expression "collected as such". A further question was also posed thus:

Does it mean that in every sale memo, sales tax realised must be shown separately from the price realised as the value of the goods sold, or, does it mean that even though it is not so indicated in the sale memo, the identity of the sales tax realised on the sale value of the goods can still be ascertained ?

The court observed thus:

Is the amount shown in the sale memo only the value of the goods sold, or, whether the amount shown includes partly the value of the goods sold and partly sales tax realised on the sale of goods. The idea underlying the use of the expression "collected as such" obviously seems to be that if there is evidence to indicate that part of the amount in a sale represented the sales tax, it must be said that the sales tax had been collected as such on the said transaction and it has to be allowed as a deduction in computing the taxable turnover.

"The Court held that the legal position, therefore, seems to be clear that for claiming deduction in terms of section 7(1)(b) and 7(2)(a)(ii) of the Act, all that is necessary is that there must be evidence, not necessarily only the sale memos, to indicate that apart from the sale value of the goods sold, an amount had been collected by way of sales tax as such. If such evidence is available with the dealer, and it is found by the department to be a piece of acceptable evidence, the claim must be allowed."

9. In the very assessee's case on hand, in Tax Case Revision Nos.1725 of 2008, 1736 of 2008 and 7 of 2009 dated 04.01.2013, for the assessment year 1991-92, 1993-94 and 1992-93, assessee showed the price and the tax separately, in its account and claimed deduction of the same from the total turnover, in accordance with Section 2(r) explanation 1-A of the Tamil Nadu General Sales Tax Act. The Assessing Officer, revised the assessment, at the instance of the revenue wing officials and rejected the contentions of the assessee. Appeals filed before the Deputy Commissioner (CT), were dismissed. Being aggrieved, assessee, filed a further appeal, before the Tamil Nadu Sales Tax Appellate Tribunal, which also dismissed the appeals.

Aggrieved by the same, Tvl.Bata India Limited, filed Tax Case Revision Petitions, before this Court on the following substantial questions of law:—

- "1. Whether the Tribunal is correct in law in interpreting Section 2(r) Explanation 1-A of the TNGST to hold that the assessee would be entitled to an exclusion of tax element only if it is shown separately in the bill ?
2. Whether the Tribunal is justified in law in affirming the levy of penalty u/s.12(3)(b) relating to the assessment year 93-94 in view of the explanation added to Section 12(3)(b), which is clarificatory in nature "

10. After considering the statutory provisions, rival contentions and similar orders passed in T.C.(R).No.1928 of 2006, in the case of *Garware Nylons Ltd. v. State of Tamil Nadu* [T.C. (R) No. 1928 of 2006, dated 8-6-2012] rep. by the Commercial Tax Officer, Triplicane Assessment Circle, by order dated 08.06.2012, answered the substantial question of law raised therein, in favour of the assessee/ Tvl.Bata India Limited.

11. Decisions stated supra, more particularly, common order in Tax Case Revision Nos.1725 of 2008, 1736 of 2008 and 7 of 2009 dated 04.01.2013, in the matter of the very same assessee, is squarely

applicable to the case on hand. There is no manifest illegality in the impugned order of the Tribunal, warranting interference. All the substantial questions of law are answered against the Revenue.

12. Tax Case Revision is dismissed. No costs.

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*In favour of assessee.