

Premier Electro-mechanical Fabricators Vs. the State of Madras

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Court : Chennai

Decided On : Oct-17-1967

Reported in : [1968]22STC269(Mad)

Judge : Veeraswami and ;Ramaprasada Rao, JJ.

Appeal No. : Tax Case No. 162 of 1966 and Appeal No. 4

Appellant : Premier Electro-mechanical Fabricators

Respondent : The State of Madras

Advocate for Def. : The Special Government Pleader

Advocate for Pet/Ap. : C.S. Chandrasekhara Sastri, Adv.

Judgement :

Veeraswami, J.

1. The turnover in dispute in this tax case filed by the assessee in a sum of Rs. 10,120.75 relates to sales of frames, nuts, tubes, rollers, wheels, etc. The assessee claimed the benefit of Section 3(3), which provides for a concessional rate of one per cent. He produced a declaration in Form XVII, which has been prescribed in terms of the proviso to Sub-section (3) of Section 3. There is no dispute as to the factum or truth of the certificate of this declaration. The assessing authority disallowed the claim on the ground that the sale bills did not show the

name and details of the machinery. Nevertheless, he assessed the goods at three per cent, treating them as falling within entry 23 of the First Schedule to the Madras General Sales Tax Act, 1959. He also considered that there was no proof that the component parts were used in the same form without any further processing. The Appellate Assistant Commissioner, however, took a different view and held that the turnover was eligible for the concessional rate. In exercise of its suo motu powers of revision, the Board of Revenue upset that order and restored that of the first authority. The reasoning of the Board of Revenue, we are bound to say, is far from satisfactory. It appears to have wholly misapprehended the scope of Sub-section (3) and the proviso thereto. It propounded the question for its consideration as whether the goods sold by the dealer as such had been used as component parts as contemplated in Section 3(3). It went further and, on investigation, found that the goods supplied by the assessee underwent physical changes such as drilling of holes, sizing of thickness etc. This approach, again, exhibits a misdirection on the part of the Board.

2. What Section 3(3) enacts is that, notwithstanding what is contained in Sub-section (2), a dealer is entitled to the concessional rate as a matter of right, provided he satisfies the requisites of that sub-section. The requisites are threefold :

(1) The goods, which are the subject-matter of sale, should be those mentioned in the First Schedule,

(2) the sale must be to another dealer and

(3) the goods sold should be for the use by the purchaser as component parts of any other goods mentioned in the First Schedule, which he intends to manufacture inside the State for sale. If these requisites are satisfied, the lower rate of tax under Sub-section

(3) will apply. So far as the first requisite is concerned, the assessing officer himself has treated the goods sold as falling within the First Schedule. It was only on that basis he charged three per cent. There is no dispute about the second requisite being satisfied; for the purchaser is undoubtedly a dealer. The

misapprehension of the department is particularly in respect of the third requisite. The assessee satisfies the requisite, if he complies with the proviso, and he is not called upon, beyond production of a declaration in Form XVII, to show that the declaration has been given effect to. It is true that, in order to satisfy the third requisite, the goods sold should be for use by a purchasing dealer as component parts of some other goods to be manufactured. But the manner in which the seller has to satisfy the requisite is as provided in the proviso to the sub-section; namely, production of the declaration in the prescribed form. Once that is done, there is no further obligation on the part of the selling dealer and he will automatically be entitled to the concessional rate. If the declaration turns out to be false, in the sense that the goods purchased have not been used as declared in the prescribed form, the purchaser is exposed to the penalties provided by Section 23 and Section 45(2)(e). If the purchaser will make a false declaration or a declaration which he does not comply with he would do so under peril of meeting those penalties. But on that account, the selling dealer is not deprived of the concessional rate. The physical changes which the Board mentioned do not appear to us to bring about any substantial change to the fact that the goods sold will fall within the First Schedule and are to be used as component parts by the purchasing dealer in the manufacture of some other goods falling within that Schedule.

3. The tax case is allowed with costs. Counsel's fee Rs. 100.

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