Thiru Manickam And Co vs The State Of Tamil Nadu on 26 October, 1976

Equivalent citations: 1977 AIR 518, 1977 SCR (1) 950, AIR 1977 SUPREME COURT 518, 1977 (1) SCC 199, 1977 TAX. L. R. 1621, 1977 (1) SCR 950, 39 STC 12, 1977 SCC (TAX) 165, 1976 U J (SC) 943

Author: Hans Raj Khanna

Bench: Hans Raj Khanna, Jaswant Singh

PETITIONER:
THIRU MANICKAM AND CO.

Vs.

RESPONDENT:
THE STATE OF TAMIL NADU

DATE OF JUDGMENT26/10/1976

BENCH:
KHANNA, HANS RAJ
BENCH:
KHANNA, HANS RAJ
SINGH, JASWANT

CITATION:
1977 AIR 518 1977 SCR (1) 950
1977 SCC (1) 199
CITATOR INFO :
RF 1985 SC1698 (44)

ACT:
Central Sales Tax Act, 1956--S. 15(b)--Scope of--Assessee bought declared goods and paid State sales tax--Sale by way of inter--state Sale--If entitled to refund of state sales tax.
Interpretation "refund" meaning of--Subsequent amendment of section--If could be used to interpret earlier ambiguous provision.

HEADNOTE:
Section 15(a) of the Central Sales Tax Act, 1956 as it existed at the rele-ant time enacted that tax in respect of any sale or purchase of declared goods inside the State

shall not be levied at more than one stage. According to cl. (b) if these goods were subsequently sold, in the course of inter-state trade, the tax to levied shall be refunded to such person as prescribed in the State law. The proviso to s. 4 of the Tamil Nadu General Sales Tax Act and r. 23 of the Rules provide for the refund of the sales tax in the type of cases mentioned in s. 15(b).

The appellant bought cotton yarn from local dealers and sold it by way of inter_state sale. It paid the State sales tax and claimed refund under s. 15 (b)of the Central Act. It succeeded in part at each of the different stages; but on second appeal for the balance, the Appellate Tribunal rejected the appellant's claim and held that it was not entitled to any refund including the relief granted by the Appellate Assistant Commissioner. The High Court rejected its revision petition.

Allowing the appeal,

HELD: (1) The appellant-firm is entitled to be paid the amount of sales tax levied under the State Act in respect of the goods sold by it in the course of inter-State trade provided the appellant has paid the sales tax tinder the central Act in respect of those sales. [956 E]

(2) The proviso to s. 4 of the State Act read with the rules leaves no doubt that the amount has to be paid to the dealer who sells the goods in the course of inter-State trade and who has paid the tax under the Central Act in respect of such sale. [955 B]

(3)(a) There is no anomaly in paying the amount of the sales tax under the State Act to a dealer who sells declared goods in the course of inter-State trade even though he did not himself pay the tax under the State Act in respect of those goods. The reason for that is the price charged from such dealer by the person from whom he purchased the goods would normally take into account the sales tax paid by the seller. [955 C]

(b) The case of M. A. Khader & Co. v. Deputy Commercial Taxation officer 25 S.T.C. 104 followed by the High Court is distinguishable on facts. The question of asking for refund of the sales tax paid under the State Act did not arise directly in that case. The emphasis in the word 'refunded' as used in s. 15(b) of the Central Act and the proviso to s. 4 of the State Act. on repayment of the amount. [954 G]

(4) (a) A word can have many meanings. To find out the exact connotaon of a word in a statute, one should look to the context in which it is used. The context would quite often provide the key to meaning of the word and the sense it should carry. Its setting would give. colour to it and provide due to the intention of the legislature in using it. In the instant case the context in which the word "refunded" is used shows that such repayment need not be to the person who initially paid the tax. [954 H]

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(b) The amended provision makes it plain beyond doubt that the tax levied under the State Act in respect of declared goods has to be reimbursed to the person making sale of those goods in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in the law in force in that State. According to the notes on clauses appended to the statement of objects and reasons of the Bill the amendment made in cl. (b) makes it clear that local sales tax would be reimbursed to the person making the sale in the course of inter-State trade and commerce. The amendment made in cl. (b) can thus be taken to be an exposition by the legislature itself of its intent contained in the earlier provision. [955 G]

(c) The fact that the amendment of cl.s.(b)15ofwas not like some other provisions given retrospective effect, would not materially affect the position. The legislature as a result of the amendment clarified what was implicit in the provisions as they existed earlier. An amendment which is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision even though such amendment is not given retrospective effect. [956 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1528 of 1971. (Appeal by Special Leave from the Judgment and Order dated 23-11-1970 of the Madras High Court in Tax case No. 398/7C (Revision No. 260/70) S.T. Desai and T.A. Ramachandran, for the ,Appellant. V.P. Raman, .Addl. Solicitor General for India. A.V. Rangan and Miss A. Subhashini, for the Respondent. The, Judgment of the Court was delivered by KHANNA, J. This appeal by special leave is against the judgment of the Madras High Court Whereby. the High Court dismissed the petition flied by the appellant under section 38 of the Tamil Nadu General Sales Tax Act, 1959 (hereinaf- ter referred to as the State Act).

The matter relates to the assessment year 1960-61. The appellant firm is a dealer in cotton yarn. The appellant bought yarn from local dealers and manufacturers and, in turn, sold that yarn by way of inter-State sale. Sales tax under the State Act on the yarn purchased by the appellant had been paid by those manufacturers and dealers. The inter-State sales of yarn made by the appellant were assessed to tax under the Central Sales Tax Act (hereinafter referred to as the Central Act) in the hands of the appel- lant. The appellant claimed refund of the tax amounting to Rs. 16,769.96 paid under the State Act in respect of the yarn sold by it in the course of inter-State trade in ac- cordance with section 15(b) of the Central Act and the proviso to section 4 of the State Act read with rule 23 of the Tamil Nadu General Sales Tax Rules, as these provisions stood at the relevant time. The Additional Commercial Taxation Officer admitted the claim of the appellant for refund of the tax only in respect of the sum of Rs. 5,562.59 and rejected the claim in respect of the balance On appeal the Additional Appellate Assistant Commissioner allowed refund of a further sum of Rs. 3,204.73 and rejected the claim regarding the balance of Rs. 8,002.64. On second appeal the Appellate Tribunal relying upon

the decision of the Madras High Court in M.A. Khader & Co. v. Deputy Commercial Taxa- tion Officer(1), rejected the claim of the appellant for the balance of Rs. 8,002.64. At the instance of the State representative, the Tribunal further held that the appellant was not entitled to get refund of the amount of Rs. 5,562.59 and Rs. 3,240.73 in respect of which relief had been granted by the Appellate Assistant Commissioner. The appellant thereafter preferred revision petition to the Madras High Court under section 38 of the State Act. The High Court dismissed the said petition after observing that the princi- ple laid down in the case of M.A. Khader & Co. (supra) would apply to the facts of this case. The appellant hereafter came up in appeal to this Court by special leave. Before dealing with the point of controversy, it may be apposite to refer to the material provisions of law, 'as they stood at the relevant time. A number of goods have been declared under section 14 of the Central Act to be of special importance. in inter-State trade or commerce. Cotton yarn is one of those goods. Section 15 of the cen- tral Act at the relevant time read as under:

> "15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.--Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :--
>
> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

Section 4 of the State Act reads as under:

> "4. Tax in respect of declared goods.--Notwithstanding anything contained in section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in .the Second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year:
>
> Provided that where a tax has been levied under this section in respect of the sale or purchase of declared goods and such goods are sold in the course of inter-State trade
> (1) 25 s.T.c. 104.

or commerce the tax so levied shall be refund- ed to such person in such manner and subject to such conditions as may be prescribed."

According to the Second Schedule to the Stale Act, the tax on cotton yarn but excluding cotton yarn waste shall be one per cent at the point of the first sale in the State.

Clauses (1) to (3) of rule 23 of the Madras General Sales Tax Rules, 1959 read as under:

> "23. (1) The tax levied under section 4 in respect of the sale or purchase inside the State of any goods specified therein shall, if such goods are sold in the course of inter-State trade or commerce, be refunded in the manner and subject to the conditions pre- scribed in this rule to the dealer who has made the inter-State sale and has paid the tax under the Central Sales Tax Act, 1956, in respect of such sale.
>
> (2) Every ;such dealer who claims a refund under this rule shall within the time allowed in sub-rule (3) submit to the assess- ing authority a statement in Form A-4.
> (3) The statement referred to in sub-

rule (4) shall be submitted to the assessing authority not later than three months. from the date on which the dealer paid the Central sales tax due on the transaction in respect of which he claims refund of the State sales tax:

> Provided that the assessing authority may condone delays up to a period of fourteen days in the submission of the statement, if he is satisfied that the dealer had sufficient cause for not submitting the statement within the said period."
>
> In appeal before us, Mr. Desai on behalf of the appel- lant has assailed the judgment of the High Court and has urged that in accordance with clause (b) of section 15 of the Central Act, the proviso to section 4 of the State Act and rule 23 of the Madras General Sales Tax Rules, the sales tax under the State Act in respect of yarn which was the subject-matter of inter-State sale, should have been paid to the appellant. The High Court, according to the learned counsel, was in error in holding to the contrary. As against that learned Additional Solicitor General has can- vassed for the correctness of the view taken by the High Court. There is in our opinion considerable force in the contention advanced by Mr. Desai.
>
> Section 15 of the Central Act, as it existed at the relevant time, contemplates that every State law in so far as it imposes or authorises the imposition of tax on sale or purchase of declared goods, would be subject to the re- striction and condition that the tax payable under that law in respect of any sale of purchase of such goods inside the State shall not exceed two per cent of the sale or purchase price thereof and such tax shall not be levied at more than one stage.
>
> Clause (b) of that section has a direct bearing, and accord- ing to that clause, where tax has been levied under the State law in respect of sale or purchase of declared goods which are subsequently sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such

> conditions as may be prescribed in any law in force in that State. Section 4 of the State Act has been cnacted in conformity with section 15 of the Central Act. The proviso to that section deals with the refund of the sales tax levied under the State Act in respect of declared goods when such goods arc sold in the course of inter-State trade or commerce.

According to that proviso, where a tax has been levied under section 4 in respect of the sale or purchase of declared goods and such goods are sold in the course of inter- State trade or commerce, the amount of tax shall bc re- funded to such person in such manner and subject to such conditions as may be prescribed. In pursuance of this provi- so, the State Government has framed rule 23 of the Madras General Sales Tax Rules, 1959. According to clause (1) of that rule, the refund of the sales tax has to be made to the dealer who makes the inter-State sale and who has paid the sales tax under the Central Act in respect of such sale. Clause (3) of the rule provides that statement shall be submitted to the assessing authority by the aforesaid dealt not later than three months from the date on which the dealer pays the tax under the Central Act. It may be stated that the Madras General Sales Tax Rules, 1959 had to be placed on the table of both the Houses of the State, legislature under sub-section (5) of section 53 of the State Act. In the face of clause (b) of section 15 of the Central Act, the proviso to section 4 of the State Act and rule 23 of the Madras General Sales Tax Rules, we have no doubt in our mind that it is the appellant who is entitled to get the refund of the sales tax levied under the State, Act in respect of the goods in question because it was the appel- lant who sold the goods in the course of inter-State trade and paid the sales tax under the Central Act on that ac- count..

The High Court in turning down the claim of the appellant relied upon its earlier decision in the case of M. A. Khader & Co..(supra). Perusal of the facts of that case would show that the assessee therein sought a writ of certi- orari to quash the assessment made under the Central Act in respect of transactions which were admittedly interState sales. The question of asking for the refund of the sales tax paid under the State Act did not arise directly in that case. There were no doubt some observations in the course of that judgment, according to which refund of the sales tax can be claimed only by the person who himself has earlier paid that tax, and not by a person who has not himself paid such tax. So far as those observations are concerned, we are of the opinion that the emphasis in the word "re- funded" as used in clause (b) of section 15 of the Central Act and the proviso to section 4 of the State Act is on repayment of the amount. A word can have many meanings. To find out the exact connotation of a word in a statute, we must look to the context in which it is used. The context would quite often provide the .key to meaning of the word and the sense it should carry. Its setting would give colour to it and provide cue to the intention of the legislature in using it. A word, as said by Holmes, is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used. The context in which the word "refunded" is used shows that such repayment need not be to the person who initially paid the tax. It is indeed for the State legislature to specify the person to whom such amount is to be repaid either in the statute enacted by it or to make a provision for that pur- pose in the rules. The State legislature has made it Clear in the proviso to section 4 of the statute that provision in this respect would be made in the rules. The rules which have been framed leave no doubt that the amount has to be paid to the dealer

who sells the goods in the course of inter-State trade and who has paid the tax under the Central Act in respect of such sale.

There is also no anomaly in paying the amount of the sales tax under the State 'Act to a dealer who sells de- clared goods in the course of inter-State trade, even though he did not himself pay the tax under the State Act in re- spect of those goods. The reason for that is that the price charged from such dealer by the person from whom he pur- chases the goods would normally take into account the sales tax paid by the seller.

Assuming that there was some ambiguity in the languages of clause (b) of section 15, as it existed at the relevant time, the matter is made clear by the amendment made in the Central Act by the Central Sales Tax (Amendment) Act, 1972 (Act No. 61 of 1972). As a result of the amendment, clause

(b) of section 15 of the Central Act reads as under:

> "(b) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-

State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State."

The amended provision makes it plain beyond any pale of controversy that the tax levied under the State Act in respect of declared goods has to be reimbursed to the person making sale of those goods in the course of inter-State trade or commerce in such manner and subject to such condi- tions as may be provided in the law in force in that State. According to the notes explaining the different clauses appended to the statement of objects and reasons of the Bill which emerged as the amending Act, the amendment made in clause (b) makes it Clear that local sales tax would be reimbursed to the person making the sale in the course of inter-State trade and commerce. The amendment made in clause (b) can thus be taken to be an exposition by the legislature itself of its intent contained in the earlier provision. We are not impressed by the argument of the learned Additional Solicitor-General 11 -- 13 3 85CI/76 that the amendment made in clause (b) was intended to mark a departure from the position in law as it existed before the amendment. The fact that the amendment of clause (b) of section 15 was not like some other provisions given retro- spective effect, would not materially affect the position. As-already mentioned above, the legislature as a result of the amendment, Clarified what was implicit in the provisions as they existed earlier. An amendment which, is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision, even though such amendment is not given retrospective effect. We may refer in this context to observations on page 147 of Craies on Statute Law (Sixth Ed.) which read as under:

> " .... in Cape Brandy Syndicate v.

I.R.C.(1) Lord Sterndale M.R. said: 'I think it is clearly established in Att. Gen. v. Clarkson, supra, that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation if it pro- ceeded on an erroneous construction of previ- ous legislation cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier'."

Looking to all the facts, we are of the view that the appel- lant-firm is entitled to be paid the amount of sales tax levied under the State Act in respect of the goods sold by it in the course of inter-State trade provided the appellant has paid the sales tax under the Central Act in respect of those sales. We accordingly accept the appeal, set aside the judgment of the High Court and order that the appellant-firm be paid the amount of sales tax levied under the State Act in respect of the goods sold by it in the course of inter-State trade provided the appellant has paid the sales tax under the Central Act in respect of those sales. The appellant shall be entitled to recover its costs both in this Court as well as in the High Court from the respondent.

P.B.R. Appeal al- lowed.

(1) [1921] 2 K.B. 403 at P. 156.