

MADRAS REFINERIES LTD.

A

v.

STATE OF TAMIL NADU

SEPTEMBER 18, 2001

[B.N. KIRPAL, S.N. PHUKAN AND P. VENKATARAMA REDDI, JJ.]

B

Sales Tax :

Tamil Nadu General Sales Tax Act, 1959 :

Schedule—Item 159, Explanation—First sale in the State—Levy of Tax—Sale by an oil company to another oil company—Amount received by oil refinery from industrial pool account—Proposed to be included in turnover treating it as sale price—Held, any money received by the refinery either from Indian Oil Corporation Ltd. or from the compensation pool which is relatable to the sales made by the refinery to IOCL is not to be included in taxable turnover as it is not to be regarded as the first sale in the State—Therefore, to that extent, no tax can be levied in the hand of the refinery on the amount so received.

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6243-6245 of 1998.

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From the Judgment and Order dated 3.8.98 of the Tamil Nadu Taxation Special Tribunal, Chennai in T.P. Nos. 615, 791 and 1933 of 1997.

AND

F

Civil Appeal Nos. 1048-1049 of 1999.

From the Judgment and Order dated 3.8.98 of the Tamil Nadu Taxation Special Tribunal, Chennai in T.P. No. 2193 of 1997.

Harish N. Salve, Solicitor General and Mukul Rohtagi, Additional Solicitor General, M.L. Verma, T.L.V. Iyer, S. Balakrishnan, R.L. Ramani, N. Prasad, K.K. Mani, C.N. Sreekumar, Ms. Deepa, Ms. Revathy Raghavan, Ms. Shweta Garg and Ms. Rekha Pandey for the appearing parties.

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The following Order of the Court was delivered :

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A *Civil Appeal Nos. 6243-6245 of 1998*

The challenge in these appeals is to the three show cause notices which were issued by the respondent in respect of the years 1984-85, 1986-87 and 1988-89 proposing to include in the turnover the amount received by the appellant from the industrial pool account and treating the same as sale price.

B

The undisputed facts are that the appellant has a refinery and major portion of its products are sold to different oil companies. According to the Solicitor General, the main sales of the appellant are of oil to the Indian Oil Corporation Ltd. (IOCL). In respect of the sales so made, according to a prescribed formula and in order to achieve equivalisation of price of petroleum products produced by the appellant and other similar companies, the money is paid to it from the industrial pool account in cases where the retention price of the appellant is more than the sale price (equivalent to ex-refinery price) received from the oil companies.

C**D**

Under the Tamil Nadu General Sales Tax Act, sales tax is payable on the sale of all kinds of mineral oils as per the Schedule. The point of levy of tax is at the point of first sale in the State. Explanation 1 after item No. 159 provides that "for the purposes of items 151 to 159, a sale by an oil company to any other oil company shall not be deemed to be the first sale in the State and accordingly any sale by one oil company to another person (not being an oil company) shall be deemed to be the first sale in the State". Explanation 2 makes it clear that for the purpose of Explanation 1, oil company would mean the Madras Refineries Ltd., Indian Oil Corporation Ltd., Bharat Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd. and such other oil company as may be notified by the Government of Tamil Nadu.

E**F**

It is by reasons of the said Explanation 1 that no sales tax was levied on the appellant in respect of the sales worth Rs. 1180, 52,00, 952 made by the appellant to IOCL during the year 1988-89. Similarly on sales made to IOCL for the years 1984-85 and 1986-87, no tax was levied thereon. It is not in dispute that on the sales made by IOCL, sales tax is leviable.

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What is proposed to be done now pursuant to the notice which has been issued is to include in the turnover the amount received by the appellant from the compensation pool. It is the case of the appellant that in the show cause notices, it is stated that the amount so received is to form part of the sale price and, therefore, would be includible in its taxable turnover. It is, however,

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contended that even if it be assumed that the amount received from the compensation pool would form part of the sale price, but, as the amount is received in connection with the sales made by the appellant to another oil company, namely, IOCL, then, by virtue of Explanation 1 referred to hereinabove, the transaction is not to be regarded as the first sale within the State. The amount received by the appellant as a sale consideration from out of the pool relateable to the said sale would, therefore, not be regarded as part of the taxable turnover at all because it is not deemed to be the first sale in the State, tax being levied only at that point.

It seems that the Tribunal has not gone into this aspect. The position in law being thus clear, namely, that any money received either from the Indian Oil Corporation Ltd. or from the compensation pool which is relateable to the sales made by the appellant to IOCL, is not to be included in the taxable turnover as it is not to be regarded as the first sale in the State; therefore, to that extent, no tax can be levied in the hand of the appellant on the amount so received.

With this clarification, the assessing authority should now proceed with the case pursuant to the show cause notices which are issued by it. The appellant may, if it so chooses, file its objections to the show cause notices, within eight weeks and the assessing authority will proceed thereafter in the light of the clarification now made.

These appeals are disposed of in the aforesaid terms, the order of the Tribunal is set aside and the case is remanded to the assessing authority for fresh adjudication in accordance with law.

Civil Appeal Nos. 1048-1049/1999

For the reasons stated in our above order passed in Civil Appeal Nos. 6243-6245/1998, these appeals are also disposed of, the order of the Tribunal is set aside and the case is remanded to the assessing authority for fresh adjudication in accordance with law. The appellant may, if it so chooses, file its objections to the show cause notices, within eight weeks and the assessing authority will proceed thereafter in the light of the clarification now made.

R.P.

Appeals disposed of.