

---

**(1960) 03 KL CK 0031**

**In the High Court Of Kerala**

**Case No : Tax Revision Case No's. 3, 4 and 5 of 1958**

A. Vasudeva Pai and Others

APPELLANT

Vs

The State of Kerala

RESPONDENT

---

**Date of Decision :** 10-03-1960

**Acts Referred:**

**Citation :** (1960) 4 KLJ 427 : (1960) 11 STC 292

**Hon'ble Judges :** T.C. Raghavan, J;M.A. Ansari, J

**Bench :** Division Bench

**Advocate :** T.N. Subramania Iyer and S. Subramania Iyer, for the Appellant; The Government Pleader, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

T.C. Raghavan, J.—These three Tax Revision Cases arise out of a common judgment of the Kerala Sales Tax Appellate Tribunal, Trivandrum and they raise the same question of interpretation of Sub-section (vii) of Section 5 of the Madras General Sales Tax Act, 1939. The petitioners have been assessed to sales tax for the year 1955-56 and the main question for decision in these cases is whether the sales of beedies by the petitioners in the Malabar area within the Madras State during the year were liable to tax u/s 5(vii). The revision petitioners purchased the beedies from manufacturers in the Malabar area, whose turnovers in the year were less than Rs. 10,000 and sold them later and the question, as we have already observed, is the liability to tax or otherwise of the petitioners on these subsequent sales. Sub-section (vii) of Section 5, omitting the words not essential for the purpose of the present cases, reads :-

The sale of...beedies...shall be liable to tax u/s 3, Sub-section (1) only at the point of the first sale effected in the State of Madras by a dealer, who is not exempted from taxation u/s 3, Sub-section (3)...on his turnover.

2. The learned counsel for the petitioners urges that the sales involved in these cases are not liable to tax as they are not first sales of the beedies within the

State of Madras. According to him the sales by the manufacturers to the petitioners are the first sales and the sales by the petitioners which are taxed in these cases are only second sales and such second sales are not taxable. This argument was rejected by the Appellate Tribunal and has been reiterated before us.

3. An analysis of the sub-section extracted above reveals that three ingredients are necessary to attract the provisions thereof to any sale. They are, firstly, that the sale should take place within the State of Madras; secondly, that the sale should be by a dealer who is not exempted from taxation u/s 3(3) of the Act, i.e., it should be by a dealer whose turnover is not less than Rs. 10,000 and lastly, that the sale should be the first of such sales. There cannot be several sales of the same commodity by the same dealer but there can be a series of sales of the same commodity by several dealers within the State of Madras. Some of these sales might be by dealers exempted from tax u/s 3(3) by reason of their turnovers being less than Rs. 10,000 and the others by dealers not thus exempted. Sub-section (vii) of Section 5 makes the first of the latter category of sales liable to tax and this has already been decided by us in another case, *Sadhoo Beedi Depot, Beedi Merchants, Cannanore v. The State of Kerala*, T.R.C. No. 1 of 1958 Since reported at [1960] 11 S.T.C. 289. In the cases before us the manufacturers from whom the petitioners purchased the beedies are exempted from taxation u/s 3(3), so that the subsequent sales by the petitioners are the first sales effected in the State of Madras by dealers not exempted u/s 3, Sub-section (3). Hence we hold against the petitioners on this point.

4. Another contention that has been urged before us is based on the definition of "turnover" in Section 2(i) of the Sales Tax Act. The relevant portion of this definition reads :-

" Turnover" means the aggregate amount for which goods are either bought by or sold by a dealer. It is argued that the "turnover" contemplated by this definition is the aggregate of the purchases and also sales of a dealer and if these aggregates of the manufacturers were taken into consideration by the taxing authorities, the manufacturers of the beedies who sold them to the petitioners would not have been exempted u/s 3(3), as their turnovers would have exceeded Rs. 10,000. We would not express any opinion on the merits of this contention as it is not necessary, in our view, for the purposes of these cases. In the present cases there is no evidence or indication that even these aggregates of sales and purchases of the manufacturers of the beedies would have been more than the exemption limit of Rs. 10,000 u/s 3(3) and in view of that we disallow this contention.

5. Yet a third point has been raised before us in two of the cases, T.R.C. Nos. 3 and 5 of 1958. In these cases the Deputy Commercial Tax Officer had fixed the sale value of the beedies by adding ten per cent to the purchase value at which the petitioners purchased them from the manufacturers. The petitioner's learned counsel argues that this addition of such a high percentage of profits is

unwarranted, arbitrary and illegal. This contention appears to have some force. But our powers of revision u/s 12-B of the Madras General Sales Tax Act are limited and confined to interference only on the ground that the Appellate Tribunal either decided erroneously or failed to decide any question of law. In the cases before us this question does not seem to have been raised before the Tribunal, so that the Tribunal had not decided the question, much less, erroneously. Nor can it be said that the Tribunal failed to decide the question, as the question had not even been raised before it. Hence we will not be justified in allowing this contention at this stage.

6. All the contentions raised by the petitioner's learned counsel having failed, we dismiss the revision petitions with costs, fixing the Advocate's fee at Rs. 50 in each case.