

(1990) 06 MAD CK 0033

In the Madras High Court

Case No : Tax Case No"s. 1132 and 1133 of 1980 (Revision No"s. 695 and 696 of 1980)

Ananda Stores

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-06-1990

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1990) 06 MAD CK 0033

Hon'ble Judges : Venkataswami, J;K.S. Bakthavatsalam, J

Bench : Division Bench

Advocate : V. Srikanth for M/s. C.S. Chandrasekara Sastry and C. Venkataraman and C. Natarajan and K. Lakshmi Narayanan, for the Appellant; R. Karuppan, Government Pleader (Taxes), for the Respondent

Judgement

Venkataswami, J.—These two tax cases arising out of levy of additional sales tax for assessment years 1976-77 and 1977-78 need an answer to a common question. The question is, whether the turnover relating to "declared goods" is includible in the taxable turnover u/s 2 of the Tamil Nadu Additional Sales Tax Act, 1970 (hereinafter called "the Act") for the purpose of fixing the rate of tax.

2. Brief facts leading to the filing of these tax cases may now be noted. For the assessment year 1976-77, the taxable turnover of the assessee was determined by the assessing officer in a sum of Rs. 11,40,584.44. Out of this taxable turnover, a turnover of Rs. 4,27,771 represented sales of declared goods, and as such, subjected to levy of maximum of 4 per cent and the balance turnover, namely, Rs. 7,12,813.05 represented sales of general goods. For this year, namely, 1976-77, initially, the assessing officer, taking the turnover of general goods alone, namely, Rs. 7,12,813.05 as taxable turnover, for the purpose of additional sales tax, proposed to levy tax at the rate applicable to taxable turnover less than Rs. 10 lakhs. Subsequently, he revised the proposal and included the turnover of goods relating to declared goods for the purpose of

levying additional sales tax and thus fixed the taxable turnover at Rs. 11,40,584.44. It may at once be pointed out that the levy of additional tax was only on the turnover relating to general goods. In other words, the turnover relating to declared goods was excluded from the levy of additional tax. The turnover relating to declared goods was taken into account only for the purpose of fixing rate of tax. By including the turnover relating to declared goods, the slab of taxable turnover for the purpose of additional sales tax had been fixed at Rs. 11,40,584.44 and the rate of tax was accordingly fixed. The assessee raised objection for the inclusion of turnover relating to declared goods for the purpose of arriving at taxable turnover slab u/s 2 of the Act. According to the assessee, the maximum of 4 per cent was levied on the sales of declared goods and in the light of the proviso to section 2 of the Act, the inclusion of turnover of declared goods was illegal. That objection was overruled and the assessing officer levied additional tax at 0.7 per cent on the turnover relating to general goods, on the basis that the taxable turnover exceeded Rs. 10 lakhs. Except the difference in figures, the point of law that arises for consideration is identical in respect of the assessment year 1977-78.

3. Aggrieved by the view taken by the assessing officer, two appeals were preferred to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner, by a common order dated February 23, 1979, dismissed the appeals.

4. On further appeals, the Sales Tax Appellate Tribunal also, by a common order, dismissed the appeals on April 16, 1980. It is under these circumstances, these two tax revisions came to be filed.

5. The learned counsel appearing for the petitioner submitted that the inclusion of turnover of sales relating to "declared goods" is in violation of proviso to section 2 of the Act and, therefore, the assessment orders, confirmed by the Tribunal, are liable to be revised.

6. The learned Additional Government Pleader, contending contra, submitted that no additional tax was levied on the sales turnover of the declared goods and, therefore, the question of violating the proviso to section 2 did not arise. Hence the orders do not call for any interference.

7. We have considered the rival submissions. For appreciation of the same, it is necessary to set out section 2 of the Act as it stood then, which reads as follows :

"Section 2. Levy of additional tax in the case of certain dealers. - (1)(a) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the "said Act"), shall in the case of a dealer whose taxable turnover for a year exceeds three lakhs of rupees, be increased by an additional tax calculated at the following rates, namely :

Provided that where in respect of declared goods as defined in clause (h) of section 2 of the said Act, the tax payable by such dealer under the said Act,

together with the additional tax payable under this sub-section, exceeds four per cent of the sale or purchase price thereof, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed four per cent of the sale or purchase price of such goods."

(Prevailed during the assessment years in question, namely, 1976-77 and 1977-78)

8. It is seen from the above section that levy of additional tax is attracted when the taxable turnover of a dealer for a year exceeds rupees three lakhs. Proviso to section 2 forbids levy of additional tax in excess of the rate for "declared goods". In these two cases, the turnovers relating to sales of declared goods have not been subjected to levy of additional tax inasmuch as they have already been subjected to maximum rate of tax fixed for declared goods. However, for the purpose of finding out the taxable turnover for the year, the turnover relating to sales of declared goods had no doubt been taken note of. That, in our opinion, is not in any way contrary to the intention of the proviso to section 2 of the Act. The inclusion of turnover relating to declared goods in the taxable turnover u/s 2 was only for the purpose of fixing rate of tax and levying additional tax on the taxable turnover of general goods. There is nothing to suggest in the proviso to section 2 that the turnover relating to sales of declared goods shall not be included for the purpose of finding out the taxable turnover u/s 2 to fix the rate of tax. The only condition that can be spelt out from the proviso to section 2 is, thus no additional tax can be levied on the turnover of declared goods to exceed the rate fixed for them. As pointed out already, that has not been done in these two cases.

9. In the result, we do not find any infirmity in the common order of the Tribunal and consequently the tax cases are dismissed. However, there will be no order as to costs.

10. Petitions dismissed.