

(1976) 03 MAD CK 0019
In the Madras High Court
Case No : T.C. No's. 216 and 217 of 1971

A.S. Ganapathy Chettiar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 03-03-1976

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3

Citation : (1976) ILR (Mad) 337 : (1976) 38 STC 455

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : K. Srinivasan and K.C. Rajappa, for the Appellant; K. Venkataswami, Additional Government Pleader No. I, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—The petitioner is a dealer in coconut oil, vegetable oil, etc. For the assessment year 1960-61, he reported a total and

taxable turnover of Rs. 3,75,087.12 and Rs. 1,06,061.50 respectively. For the assessment year 1961-62, he reported a total and taxable turnover

of Rs. 2,62,836.36 and Rs. 62,845.75 respectively. On 25th September, 1961, there was a surprise inspection of the residence of the assessee

and certain anamath accounts were recovered. These anamath accounts disclosed purchases and sales of vegetable oils, vanaspati and kerosene.

The assessing officer included the turnover of sales disclosed in the anamath accounts also in the gross turnover determined by him in both the

assessment years, overruling the objection of the assessee that they are all second sales, not liable to tax under the Tamil Nadu General Sales Tax

Act. In the appeals preferred by the assessee, the Appellate Assistant Commissioner confirmed this addition disclosed in the anamath accounts

holding that there was no proof as to the bona fides of the names of the various persons in this State from whom the petitioner is said to have

purchased the oil and made the second sale. The Appellate Assistant Commissioner also pointed out that in the absence of purchase bills in

support of the contention, the sales could not be held to be second sales.

2. It appears that the assessing authorities took proceedings against the dealers whose names were disclosed in the anamath accounts of the

assessee for assessing the sales by them. In these proceedings, the assessing authorities relied on the entries in the anamath accounts of the

petitioner herein to prove that he has effected the sales of oil in the State. The Tribunal in the appeals in those cases held that it was not proper for

the assessing authorities to tax a person on the anamath entries of the petitioner herein. The Tribunal also stated that if really the dealers had sold to

the petitioner herein, there was no reason for the petitioner herein to have at all made the anamath entries in respect of either the purchase or the

second sales as the second sales would have been exempt from tax. When the Tribunal's order was sought to be revised in this court, this court

has confirmed the order of the Tribunal in T.C. No. 54 of 1965, etc., dated 7th July, 1965, holding that there was no necessity for the petitioner to

have entered these transactions in the anamath accounts of the petitioner for assessing the third parties. Specifically this court held that if really there

was a sale by those dealers to the petitioner herein "there was no reason for Ganapathy Chettiar (the petitioner herein) to have at all made anamath

entries in respect of either the purchases or second sales". This is for the reason that if really the petitioner had purchased from the local dealers

and the sales were second sales, they would be exempt from payment of sales tax and it was not necessary for the petitioner to have made these

entries in the anamath accounts and he could have disclosed the same to the assessing authorities. The Tribunal in rejecting the contention of the

petitioner that the sales turnover disclosed in the anamath accounts are second sales of vegetable oil and, therefore, not liable to tax, relied on the

decision of its earlier order in the case of dealers where it had held that they are not the first sales. The Tribunal also pointed out that the burden of

proving that the petitioner is not the first seller of oil in question was on him and that he has not discharged his burden and on that ground dismissed

the appeals preferred by the petitioner.

3. In this revision, the learned counsel for the petitioner strenuously contended that since the anamath accounts themselves show the purchases

from local dealers, those transactions should be treated as the first sales in the State and that, therefore, the sale effected by him is a second sale

not liable to be taxed under the Tamil Nadu General Sales Tax Act. He also contended that merely for the reason that his sellers have escaped

their liability by contending that they could not be fixed with the liability to tax on the basis of the entries in the anamath accounts of the petitioner, it

would not with any reasonable certainty be stated that there was no sale at all prior to the sale by the petitioner.

4. The question of liability to sales tax could not be approached from the point of view of the entry made by the assessee. It is the admitted case

that there were certain sales which the assessee claimed as second sales exempt from sales tax. Once it is accepted that there was a sale by the

assessee, it is for him to prove that that sale was not liable to sales tax as it is the second or the subsequent sale. The burden is on him to show that

it is a second or a subsequent sale by proving that there was an earlier taxable sale. This was the view we have held already in *Govindan & Co. v.*

State of Tamil Nadu [1975] 35 S.T.C. 50. It was held therein that if an assessee claims exemption from tax on the ground that his sales are second

sales, he is bound to show that there was an earlier taxable sale though it was not necessary for the assessee to prove that the earlier sale had

actually suffered tax. This was also the view expressed in *Imperium Traders v. State of Madras* [1975] 36 S.T.C. 6. The learned counsel relied on

an unreported judgment in T.C. Nos. 295 and 296 of 1964 dated 10th July, 1967 *Mehaboob and Company v. Government of Madras*; page 458

infra., in support of his contention that it is for the department to show that the sale effected by him is a taxable sale and not a second sale. We are

unable to agree that that decision in any way helps the learned counsel. The ratio of the judgment, in our opinion, is that in order to make a

transaction liable, it must be proved to be a sale and if once it is proved to be a sale, it is for the assessee to prove that that sale is exempt because

every transaction of sale is liable to tax u/s 3(1) of the Tamil Nadu General Sales Tax Act.

5. We are, therefore, of the opinion that the burden of proving that there was an earlier taxable sale was on the assessee.

6. The learned counsel then contended that in view of the fact that he was relying on the anamath accounts which were relied on by the assessing

authorities themselves which showed purchase of oil from local dealers, he did not consider it necessary to prove further that there was an earlier

sale. Since we are now holding that the burden is on the assessee to prove that there was an earlier taxable sale, the assessee should be given an

opportunity to establish that there was an earlier taxable sale. The learned counsel is well-founded in this contention. All along everyone of the

authorities rejected the argument solely on the ground that the anamath accounts disclosed the sales turnover and he had not discharged his burden

by merely showing that there was an entry in the anamath accounts relating to purchase. Further, the decision in the case of the dealers from whom

the assessee is supposed to have purchased the oil itself came when the appeals were pending. We, therefore, feel that the assessee shall be given

a further opportunity to prove that there was a taxable earlier sale. In order to determine this issue, the order of the Tribunal is set aside and it is

remanded. The petitioner will be permitted to adduce such further evidence as he may consider necessary. We accordingly allow the tax revision

cases,, set aside the order of the Tribunal and remand the matter to the Tribunal for fresh consideration. There will be no order as to costs.