(1997) 09 MAD CK 0044

In the Madras High Court

Case No : T.C. (Appeal) No. 975 of 1988

Bharath Refineries and Oil Mills — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:
Central Sales Tax Act, 1956 — Section 6A

Citation : (1997) 09 MAD CK 0044

Hon'ble Judges : R. Jayasimha Babu, J;B. Akbar Basha Khadiri, J

Bench : Division Bench

Judgement

Jayasimha Babu, J.—This appeal is preferred against the order made by the Joint Commissioner, suo motu revising the order of the

Appellate Assistant Commissioner, for the assessment year 1981-82. The Joint Commissioner has in the impugned order held that the movement

of refined groundnut oil of the value of Rs. 8,00,690 moved under lorries despatched from Erode between July 19, 1981 and July 25, 1981 were

pursuant to a contract of sale and that net turnover relates to inter-State sales effected by the assessee.

2. It is not in dispute that the assessee had filed form XX and produced form F and complied with all other requirements of section 6-A of the Act

at the time of despatch of these goods to different persons, who according to the assessee are all his consignment agents. Those declarations were

initially accepted by the assessing officer, but the assessment was later reopened to bring this transactions to tax, on the ground that they were not

consignment transfers, but in reality inter-State sales.

3. The Appellate Assistant Commissioner allowed the appeal of the assessee, holding that the documents produced establish that there was no

transfer of property in the goods from the assessee to the consignee; that there were agreements between the two to show that the consignee was

a consignment agent, and that he has also rendered accounts about the sales effected by him. The agreement between the parties includes a clause

that the property was held by the consignee at the risk and cost of the assessee. Substantial amounts were paid as advance by the consignee to the

assessee.

4. The Commissioner has placed reliance solely on the two slips being letters written by the assessee to its canvassing agent at Nagpur, for holding

that there were orders prior to the despatch of those lorry loads and these consignees were in fact buyers.

5. In the course of the order of the Commissioner, there is no discussion whatsoever of any of the documents, which the assessee had filed and

their contents, viz., the agency agreement, the statements of account, form XX and form F, all of which were contemporaneous. The discussion in

the Commissioner''s order is only with reference to these two slips, and nothing is said about the other documents or their genuineness.

6. The impugned order of the Commissioner, therefore, is one which is required to be and is set aside. The matter is remanded to the Joint

Commissioner, for considering all the documents in accordance with law. The Joint Commissioner is directed to dispose of the matter within a

period of three months from the date of receipt of a copy of this order.

7. The appeal is ordered accordingly.

8. Ordered accordingly.

