

(1979) 11 MAD CK 0030

In the Madras High Court

Case No : Tax Case (Appeal) No. 247 of 1977

D.A. Sathyanarayana Chettiar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-11-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 7, 7A

Citation : (1982) 49 STC 303

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : P. Veeraraghavan, for the Appellant; P. Suryaprakasam, for Additional Government Pleader, for the Respondent

Judgement

Sethuraman, J.—This appeal has been filed against the order of the Board of Revenue dated 24th June, 1976. The assessee is a dealer in gold and silver jewels. There was an assessment on the assessee by an order dated 27th November, 1970. In the original order, the Deputy Commercial Tax Officer, Coimbatore, computed the sales turnover at Rs. 73,319.40 and the purchase turnover assessable u/s 7-A of the Tamil Nadu General Sales Tax Act at Rs. 30,637.50. These amounts aggregated to Rs. 1,03,956.90. However, by the said order, he levied tax only on the sales turnover of Rs. 73,319.40. As the assessee had applied for compounding the tax liability, Section 7(1) of the Act was applied and the tax due was calculated accordingly. In the same order, he observed that separate order would be passed dealing with the liability u/s 7-A of the Act. On 20th March, 1971, the order u/s 7-A came to be passed with reference to a turnover of Rs. 30,637.50 assessable u/s 7-A. The tax due thereon was levied separately. The assessee filed an appeal against the order dated 20th March, 1971, that is, the order u/s 7-A before the Appellate Assistant Commissioner, Coimbatore. The assessee did not have any grievance against the earlier order dated 27th November, 1970. The Appellate Assistant Commissioner following a judgment of this Court in *M. K. Kandaswami v. State of Tamil Nadu* [1971] 28 STC 227 held that as the purchases were from household people and not from

dealers and as there was no tax liability on the sellers, the turnover could not be assessed u/s 7-A.

2. The Board took up suo motu revision proceedings by issuing a notice on 29th March, 1976, proposing to revise the order dated 2nd July, 1971, of the Appellate Assistant Commissioner against the assessment order dated 20th March, 1971. This notice came to be issued in pursuance of a Supreme Court decision in State of Tamil Nadu v. M. K. Kandaswami [1975] 36 STC 191 reversing the earlier decision of this Court in M. K. Kandaswami v. State of Tamil Nadu [1971] 28 STC 227. The Commissioner of Commercial Taxes by his order dated 24th June, 1976, held that the Appellate Assistant Commissioner had wrongly excluded the turnover of Rs. 30,637.50 assessed u/s 7-A. In the course of the order it was further stated:

It will be taxed as bullion as the old jewellery was bought only to manufacture other jewellery out of it. This turnover will be included in the total turnover, and the total turnover will be Rs. 1,03,956.90. As this turnover exceeded the maximum of Rs. 75,000 prescribed for assessment u/s 7 during that year, the dealers are not eligible for assessment u/s 7. The taxable sales turnover of Rs. 73,319.40 will be liable u/s 3 and taxed at three per cent and the taxable purchase turnover of Rs. 30,637.50 will be liable u/s 7-A and will be taxed at 1 per cent. The assessing officer will give effect to this order.

3. It is this order of the Board of Revenue, which is now challenged in the present appeal.

4. The first point taken in this appeal is as regards the assessability of the sum of Rs. 30,637.50. The submission of the learned counsel for the assessee was that Section 7-A would not apply to tax the said turnover. Identical contentions were raised in P. S. Sankaralinga Nadar v. Commissioner for Commercial Taxes (T. C. No. 244 of 1977) [1982] 49 STC 302 and the said case was disposed of today. For the reasons contained therein, we are not able to accept the assessee's submission on the liability to tax on the sum of Rs.30,637.50 u/s 7-A

5. The next contention that was urged by the learned counsel for the assessee was that in the order of the Board of Revenue, what is revised is not only the order of the Appellate Assistant Commissioner dated 2nd July, 1971, but also the order dated 27th November, 1970, passed by the assessing authority compounding the tax liability u/s 7(1) on the turnover computed in the said order. According to the learned counsel the Board of Revenue had powers to revise the order of any authority only within a period of five years and the order dated 27th November, 1970, could not have been the subject of revision by the Board in 1976.

6. We find that there is substance in this submission. We have already pointed out that the assessing authority passed two different orders one on 27th November, 1970, and another on 20th March, 1971, respectively under Sections 7(1) and 7-A. It is the latter order which was challenged before the Appellate

Assistant Commissioner. The Board could revise the order of the Appellate Assistant Commissioner dated 2nd July, 1971, as the revision itself was made on 24th June, 1976, within the period of five years contemplated by the statute. It is only that part of the Board's order which aggregated the turnover assessed under the assessment order dated 27th November, 1970, and the order dated 20th March, 1971, that is now challenged. As the order of the Deputy Commercial Tax Officer dated 27th November, 1970, cannot be the subject of revision by the Board of Revenue in 1976, the Board's order in so far as it affected the finality of the said order will be bad. We, therefore, hold that the revision of the Board's order will be restricted to bring to tax the sum of Rs. 30,637.50 u/s 7-A. In so far as the order directs the total turnover the order cannot be sustained. The assessee will continue to have the benefit of compounding for this year in accordance with Section 7 granted by the order dated 27th November, 1970.

7. The result is, the appeal is partly allowed. There will be no order as to costs.