

(1979) 07 MAD CK 0022

In the Madras High Court

Case No : T.C. (R) No. 558 of 1975 (Revision No. 123 of 1975)

Deputy Commissioner (CT)

APPELLANT

Vs

Sivakumar and Company

RESPONDENT

Date of Decision : 05-07-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 10, 3, 4

Citation : (1980) 45 STC 436

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

Bench : Division Bench

Advocate : T.V. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—This is a revision petition filed against the order of the Sales Tax Appellate Tribunal dated 19th December, 1974.

2. The assessee is a dealer in oil and oilcakes and also groundnut kernels. During the relevant year, the assessee showed in its accounts purchases

of groundnut kernels for Rs. 72,145.50 from two dealers, namely, K. Swami of Tiruchengode and Ayyappan Traders of Tiruchengode. The

assessee filed the bills relating to the aforesaid purchases and contended that those purchases were only second purchases in this State so as not to

be taxed. The assessing authority did not accept this claim of the assessee and brought the turnover to tax. The Appellate Assistant Commissioner

also agreed with the assessing authority.

3. When the matter came on appeal before the Sales Tax Appellate Tribunal, the contention of the assessee was that the purchases were only

second purchases and that the bills produced mentioned that the goods in question had already suffered tax. The contention for the revenue was

that the assessee must prove that the goods in question had already suffered tax. Though the revenue did not deny that the dealers who sold to the assessee were in existence or that they were registered dealers, it is however stated that there is no proof of the dealers having suffered tax. The Tribunal took into account these contentions and came to the conclusion that the assessee had done what it could under the circumstances, namely, to produce the bills issued by those dealers certifying the payment of tax, and that if the payments certified are bogus or false, the department was to collect tax only from the sellers to the assessee and should not look to the assessee to collect the tax. It was, therefore, held that the turnover in question was not liable for assessment in the assessee's hands. The deletion of this amount is the subject-matter of the present revision.

4. The goods under consideration come within the scope of Section 4 of the Tamil Nadu General Sales Tax Act. Under that provision, the tax under the Act is payable by a dealer on the sale or purchase inside the State at the rate and only at the point specified in the Second Schedule. The Second Schedule to the Act contains the list of declared goods in respect of which a single point tax alone is leviable u/s 4. Item 6 in the said schedule provides for oil-seeds being taxable at the point of first purchase in the State. If the assessee had already purchased the goods from another dealer, he would be a second purchaser and not the first purchaser and, therefore, the assessee cannot be taxed under the provisions of Section 4.

5. For the State the contention is that Section 10 of the Sales Tax Act provides that the burden of proving that any dealer or any of his transactions is not liable to tax under the Act shall lie on such dealer. Taking the stand on this section, it was contended for the revenue that the assessee has not proved that these transactions are not liable to be taxed. As pointed out by the Tribunal, the assessee had done whatever it could, namely, by producing the relevant purchase bills and the names and addresses of the persons who sold the goods to the assessee. As recorded by the Tribunal, the revenue did not deny that the dealers were in existence or that they were registered dealers. It was, however, stated that the registration has subsequently been cancelled. That would not be material so far as the assessee is concerned, because so long as the assessee's

purchases are second purchases from a person or persons who were then registered dealers, it would not be liable to be taxed u/s 4. The learned

Government Pleader drew our attention to Rule 26(13), which provides that every dealer whose goods are liable to single point tax at the stage of

first sale or purchase, shall produce the bill in form 21. Form 21 provides for a declaration that the goods sold in the bill have suffered tax at the

hands of the seller. The rule does not provide that in the absence of such a certificate, the statutory exemption u/s 4 is liable to be withheld. To this

effect there is already a decision of this Court in Deputy Commissioner of Commercial Taxes, Madras Division, Madras-7 v. O. K. Agencies

[1967] 20 S.T.C. 145. That was a case which arose on Section 3, but the principle applicable is identical even with reference to Section 4. It was

held in the said decision that the concession u/s 3(2) of the Act then in force was absolute and the only condition available for obtaining the

concession was to show that the sale or purchase was not at the point specified in the First Schedule. Therefore, from the mere fact that the

assessee had failed to comply with Rule 26(13), it did not necessarily follow that the assessee had forfeited his right to get exemption from tax on

his turnover representing second purchases, even if he has otherwise established that his transactions related to second sales. This Court has also

pointed out that the rule was not mandatory. The same view has been earlier expressed by us, namely, that the non-compliance of the rule does not

visit the assessee with a liability to tax from which it is exempted u/s 4.

6. As far as the burden of proof is concerned, even though the assessee is liable to prove that it is eligible for the exemption, still the mode of proof

is not indicated in Section 10. In the present case, the proof that the assessee is not liable to tax has been discharged by the production of the

relevant bills and vouchers. In those bills and vouchers, it has been mentioned that the sellers to the assessee had paid the taxes. This is all that the

assessee could do, and the assessee has discharged the burden that lay on it u/s 10 of the Act. The exemption was rightly granted by the Sales Tax

Appellate Tribunal.

7. The revision accordingly fails and is dismissed with costs. Counsel's fee Rs. 250.