

(1983) 02 MAD CK 0019

In the Madras High Court

Case No : T.C. No. 1473 of 1977 (Revision No. 331 of 1977)

Deputy Commissioner (CT), Coimbatore Division, Coimbatore	APPELLANT
Vs	
G. RAMASWAMY and CO.	RESPONDENT

Date of Decision : 03-02-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1984) 57 STC 13

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; P.R. Ranganathan, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case is a dealer in textiles. In the year 1969-70, he has sold one motor car for a sum of Rs. 49,500.

The said turnover was brought in for assessment by the assessing authority as an escaped turnover u/s 16 of the Tamil Nadu General Sales Tax

Act, 1959. Before the assessing authority, the contention of the assessee was that motor car has been purchased in the State of Tamil Nadu on

25th July, 1968, from Messrs Krishna Mines, Tirunelveli, and therefore, the sale by him is a second sale which is exempted under the provisions of

the Act. The assessing authority, however, rejected the assessee's contention and brought the said turnover to assessment. The assessee filed an

appeal before the Appellate Assistant Commissioner but without success. The assessee thereafter took the matter to the Sales Tax Appellate

Tribunal. Before the Appellate Tribunal, the same contention was reiterated by the assessee. The Tribunal, after verification of the facts, found that

the assessee had purchased the motor car from Krishna Mines, Tirunelveli, that,

therefore, his sale during the year of assessment is a second sale, that the assessee cannot be held liable to pay the tax on the said turnover. That in relation to the car sold, the sale by Krishna Mines is the first sale, and that Krishna Mines are liable to pay the tax as the first sellers of the motor car in the State. In this view, the Tribunal set aside the assessment on the turnover of Rs. 49,500 representing the sale value of the motor car sold by the assessee.

2. Aggrieved against the order of the Tribunal, the State has filed this revision petition. The contention advanced by the learned Government

Pleader on behalf of the State is that the assessee who claims the benefit of exemption on the basis that his sale is a second sale, must show that

their sellers have in fact paid the tax. According to the learned Government Pleader, the assessee who claims the benefit of exemption must not

only show that there has been an earlier taxable, sale, but also show that the earlier seller had paid the tax on the first sale. The same contention has

been urged before the Tribunal, and the Tribunal had no difficulty in rejecting that contention in view of the decision of this Court in *Govindan &*

Co. v. State of Tamil Nadu [1975] 35 STC 50, wherein this Court has clearly held that to claim the benefit of the tax on the ground that sales

effected by the assesseees are second sales, the assesseees need not show that their sellers have in fact paid the tax, and that it is enough if the seller

shows that there has been an earlier taxable sale in this case. Subsequent to the decision of the Tribunal, which is the subject-matter of revision

before us, another Bench of this Court in *State of Tamil Nadu v. Chamundeswari Enterprises* [1983] 52 STC 124, to which one of us was also a

party, has reiterated the same principle as has been laid down in *Govindan & Co. v. State of Tamil Nadu* [1975] 35 STC 50. Having regard to the

two decisions referred to above, it is not for the assessee who is admittedly a second seller of the motor car to show that the first sale has in fact

been taxed and the tax paid, and the onus on the subsequent seller is limited to establish that there was in fact an earlier sale in this State, and that

his sale is only a second sale. Therefore, the decision of the Tribunal on this point has to be upheld.

3. The learned Government Pleader, however, relies on the judgment of another Bench rendered in (T.C. No. 1319 of 1977) *State of Tamil Nadu*

v. Sri Velan Stores [1984] 57 STC 11 in support of his submission that the second sale of a motor car cannot have the benefit of a single point

scheme of taxation, and the benefit of the single point scheme is applicable only to the sale of new motor cars. It is not doubt true that that case

also related to the sale of a second-hand car. The Court made an observation that a second-hand car cannot be regarded as a car sold in brand

new condition, and that the second-hand cars will be a different commercial commodity from new cars. However, we find that the case was

decided against the assessee on the basis that there is no proof of an earlier taxable sale in the State, and therefore, the decision of the Tribunal in

favour of the assessee holding that his sale is a second sale and as such not taxable was not legally tenable. Having allowed the tax case filed by the

State on the ground that the assessee has not established that his sale is a second sale, the further observations made by the Bench in that case

appear to be purely obiter. In this view, we are not constrained to follow the view expressed by the said Bench in that case.

4. Item 3 of the First Schedule to the Act "motor vehicles including motor cars, motor taxi-cabs, etc." are taxable only at a single point at the point

of first sale in the State. Item 3 does not make a distinction between new motor cars and second-hand motor cars. In a series of sales of motor

cars in this State, the first sale either of a new car or of a second-hand car, is alone taxable. All the subsequent sales in the State are exempted. If

item 3 is understood as relating only to new motor cars, the very purpose of bringing in item 3 in the First Schedule will be lost. When the statute

does not use the words "new motor car", and uses the words "motor car", we must understand that expression as covering both the new motor

cars and the old motor cars. When the language used in item 3 is expressed and specific, so as to apply to all motor cars, we do not see how the

Court can alter the statutory language so as to sustain the difference between the new cars and the second-hand cars. We are, therefore, clearly of

the view that the expression "motor vehicles including motor cars, motor taxi-cabs, motor cycles and cycle combinations, etc." occurring in item 3

of the First Schedule will embrace both the new and second-hand vehicles. As a matter of fact, in State of Tamil Nadu v. Chamundeswari

Enterprises [1983] 52 STC 124 which deals with the sale of second-hand lorry that item has been taken to be covered by item 3 of the First

Schedule.

5. There are no merits in the tax case, and it is, therefore, dismissed. There will be no order as to costs.