

(1974) 02 MAD CK 0030

In the Madras High Court

Case No : Tax Case No. 1 of 1974 (Revision No. 1 of 1974)

Govindan and Co.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-02-1974

Acts Referred:

Citation : (1975) 35 STC 50

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

Bench : Division Bench

Advocate : C. Venkataraman, of C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Appellant; K. Venkataswami, the First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—This revision is directed against the order of remand made by the Sales Tax Appellate Tribunal. The petitioners herein reported a total and taxable turnover of Rs. 18,17,325.20 and Rs. 223.42 respectively for the assessment year 1971-72 to the assessing authority. Later there was a surprise inspection of the petitioners' business premises on 17th August, 1972, and it was found that the petitioners had purchased iron and steel from 12 dealers during the assessment year 1971-72, the total of the purchases amounting to Rs. 3,91,495.03. At the stage of assessment, the taxable turnover was estimated at Rs. 4,30,873.42. The assessees questioned the assessment by riling an appeal before the Appellate Assistant Commissioner. In that appeal, the assessees complained that they were not given reasonable opportunity to put forward their objections before the assessing authority. Accepting this objection, the Appellate Assistant Commissioner directed the assessing authority to give reasonable opportunity to the petitioners before making the final assessment. Against the said order of the appellate authority, the assessees went before the Sales Tax Appellate Tribunal.

2. Their contention before the Tribunal was that the turnover of Rs. 3,91,495.03

representing the purchases of iron and steel from 12 dealers denoted second sales in the State and, therefore, they were not liable to be taxed. The Tribunal, however, dismissed the appeal with the observation that the assessing authority will furnish the appellants (petitioners) herein the substance of the result of the enquiries made by the investigating officer regarding the whereabouts of the 12 sellers from whom the petitioners had purchased the goods in question and permit the petitioners to adduce whatever evidence they chose to show that the dealers in question were real persons who had paid tax on the iron and steel goods sold by them to the petitioners.

3. Though the order of the Tribunal is one upholding the remit order passed by the Appellate Assistant Commissioner, the learned counsel for the petitioners contends that the direction of the Tribunal that the petitioners are to prove that the twelve dealers from whom they purchased the goods were real persons and that they had in fact paid the tax on the iron and steel is not correct and that it is not the duty of the petitioners to prove that their sellers have in fact paid the tax on their sales. The learned counsel appears to be right in his submission that the petitioners who claimed exemption from tax on the ground that their sales are second sales are bound to show that there has been an anterior taxable sale and that they need not prove that tax had in fact been paid on those anterior sales. To claim the benefit of tax on the ground that their sales are second sales, the petitioners need not show that their sellers have in fact paid tax and it is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers. Therefore, the direction given by the Tribunal that the petitioners are to show that the tax has been paid by their sellers on the iron and steel goods sold by them to the petitioners does not appear to be correct.

4. We, therefore, modify the direction contained in the last portion of the order of the Tribunal as follows :

The appellant is permitted to adduce whatever evidence it chooses to show that the dealers in question were real persons and that their sales are taxable under the Act.

5. With this modification, the tax case is dismissed. There will be no order as to costs.