(1983) 09 MAD CK 0042

In the Madras High Court

Case No : Tax Case No. 28 of 1978 (Revision No. 20 of 1978)

India Beedi Leaves APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 22-09-1983

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1984) 57 STC 190

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : D. Raju, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—In this tax revision case the assessees question the levy of additional sales tax on them for the assessment year 1975-76. The assessees have been doing business in beedi leaves at Vaniyambadi and they declared a total and taxable turnover of Rs. 10,08,620.79 for the year 1975-76. After a check of the accounts, the turnover of the assessees was finally determined at Rs. 10,08,622. In the same order of assessment the assessing authority levied an additional tax of Rs. 4035. The assessees took the matter on appeal, but without success. The matter was then taken to the Tribunal by the assessees contending that on their turnover included the turnover relating to two of their principals, each of whose turnover was less than Rs. 10,00,000, their principals were not liable to pay additional tax and that if their principals were not liable to pay additional tax, the assessees were also not liable to pay the additional tax. The Tribunal dealing with the said contention held that even if the total turnover of each of the principals of the assessees was less than Rs. 10,00,000, still the assessees in whose hands the tax had been levied in respect of the turnover relating to each of the principals was liable to pay additional tax, that the provision relating to additional sales tax did not make a distinction between an agent and principal, that it directed levy of additional tax on a person on whom the assessment was made as a dealer and that therefore even if the assessees in the present case had acted as agents of certain principals, since sales tax had been levied on them treating them as dealers, they should also be made liable to additional sales tax, which was consequential on the levy of tax under the Tamil Nadu General Sales Tax Act, 1959. In that view of the Tribunal dismissed the assessee''s appeal. Aggrieved by the order of the Tribunal, the assessees are before us.

2. According to the learned counsel for the assessee, admittedly a part of the turnover which had been assessed in the hands of the assessees related to the turnover of each of the two principals of the assessees and as those principals had to total turnover of less than Rs. 10,00,000 each they cannot be made liable to pay additional sales tax and if those principals are not liable to pay additional sales tax, the assessees cannot also be made liable to pay the additional sales tax.

3. It is seen that at the relevant time section 2(1) of the Tamil Nadu Additional Sales Tax Act, 1970, was as follows :

"2. Levy of additional tax in the case of certain dealers. - (1) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959), hereinafter in this section referred to as the said Act shall, in the case of a dealer whose total turnover for a year exceeds ten lakhs of rupees, be increased by additional tax at the rate of ten per cent of the tax payable by that dealer for that year and the provisions of the said Act shall apply in relation to the said additional tax as they apply in relation to the tax payable under the said Act :

Provided that where in respect of declared goods as defined in clause (h) of section 2 of the said Act, the tax payable by such a dealer under the said Act together with any additional tax payable under the sub-section exceeds four per cent of the sale or purchase price thereof, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed four per cent of sale or purchase price of such goods."

4. According to the said provision, if a dealer who has been assessed under the Tamil Nadu General Sales Tax Act, 1959, had a total turnover of more than Rs. 10,00,000 additional tax at the rate of ten per cent of the tax payable by that dealer for that year shall be levied on him and the provisions of the principal Act shall apply in relation to the said additional tax, as they apply in relation to the tax payable under the said Act. This provision is very specific and it imposes liability to pay additional sales tax on that dealer in whose hands the sales tax had been levied under the principal Act. Admittedly in this case the assessees have been assessed under the Tamil Nadu General Sales Tax Act, treating them as dealers and they have not questioned that assessment. Once they are assessed to sales tax under the principal Act, then they automatically become liable to pay additional tax, as section 2(1) of the Tamil Nadu Additional Sales Tax Act, 1970, specifically says that additional tax is payable by a dealer in whose hands the assessment to sales tax under the principal Act has been made.

For the purpose of applying section 2(1) of the Tamil Nadu Additional Sales Tax Act, it is unnecessary to go into the question as to whether the assessees in the present case have been assessed in their capacity as independent dealers or as commission agents. The only thing to be noticed is, whether the person on whom additional tax is sought to be levied is the persons on whom sales tax had been levied and whether the total turnover of such person is more than Rs. 10,00,000 or not. Admittedly in this case the total turnover of the assessees exceeds Rs. 10,00,000. Having regard to the scope of the provisions referred to above it is not open to the assessees now to contend that their total turnover comprised of the turnover relating to their two principals whose total turnover did not exceed Rs. 10,00,000 each and since their principals are not liable to pay additional tax, the assessees are also not liable to pay additional tax. As already stated, the levy of additional tax u/s 2(1) of the Tamil Nadu Additional Sales Tax, 1970, is consequential on the original assessment, and if the original assessment to sales tax has been made on a person and that person''s turnover exceeds Rs. 10,00,000, then the levy of additional tax is automatic u/s 2(1) . It is not possible at the stage of levy of additional tax to dissect the turnover of the assessees to find out whether it is their personal turnover or whether it related to their principals.

5. In this view of the matter, we are inclined to agree with the view taken by the Tribunal is this case. The tax case is therefore dismissed. There will be no order as to costs.

