

(1984) 07 MAD CK 0003

In the Madras High Court

Case No : Tax Case No. 341 of 1978 (Revision No. 118 of 1978)

K. Kasthuri

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-07-1984

Acts Referred:

Tamil Nadu General Sales Tax Rules, 1959 — Rule 6

Citation : (1985) 59 STC 141

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

Bench : Division Bench

Advocate : N. Inbarajan, for V.V. Nagarajan, S. K. Narayanan and R. N. Patel, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—In this tax revision case filed by the assessee, two items of turnover are in dispute; one of Rs. 12,500 said to be the sale

value of a second hand lorry sold by the assessee, and two, a sum of Rs. 37,452.81 said to be transport charges for the transport of bricks

supplied by the assessee to her various customers. So far as the first item is concerned, the Tribunal has held that though the assessee has proved

that her sale is not the first sale in the State, she has not proved that the earlier sales had suffered tax and that therefore she is liable to be taxed on

the sale proceeds of the second hand lorry. The Tribunal also rejected the assessee's contention that she is not carrying on any business in the sale

and purchase of lorries and that her business being the manufacture of bricks, she cannot be taken to be a dealer in lorry and taxed on the sales of

lorry.

2. Learned counsel for the assessee contends that the Tribunal has thrown a

heavier onus on the assessee to prove that any of the earlier sales of the lorry in the State had suffered tax and it is sufficient for the assessee to establish to get the exemption, on the ground of second sale that she is not the first dealer in the State and that has been established in this case.

3. It is seen that the assessee has shown before the Tribunal that she has purchased the lorry from one G. Ramakrishnan of Aminijikarai, who in turn had purchased the same from one V. M. Somu, who had in his turn purchased it from one Duraiswami Mudaliar of Kancheepuram. Thus the

assessee is shown to be atleast the fourth owner of the lorry in this State. We are inclined to agree with the submission of the assessee that she is

not bound to prove that the earlier sales had suffered tax so as to enable her to claim exemption on the ground of second sale. In this case, though

she has shown that there have been three earlier owners of the lorry in this State, it has not been shown that those sales were taxable sales. So far

as the assessee is concerned, though she is a dealer in bricks, she has carried on the incidental activity of purchase and sale of second hand lorry.

In view of the decision of the Supreme Court in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another*,

, as the assessee is carrying on incidental activity of sale of second hand lorry, the sale of lorry becomes taxable in her hands; but it is not known

whether the earlier owners were in the same position or not. If they had effected casual sales and if they have not sold it either in the course of their

principal business, they cannot be taken to be dealer and any sale by them cannot be taken to be a taxable sale. But on this aspect the Tribunal has

not applied its mind. Therefore we consider that the matter requires further investigation at the hands of the Tribunal, and remit the same to the

Tribunal for a fresh consideration by the Tribunal.

4. Coming to the second item of turnover relating to the transport charges, it is not in dispute that the assessee had shown the transport charges

separately apart from the price charges for the bricks. But the Tribunal has taken the view that the mere fact that the assessee has shown the

transport charges separately in her bills, will not enable her to claim deduction towards transport charges, unless there is a bargain between the

parties to pay transport charges separately apart from the price and in this case as no evidence is available to prove the bargain between the

parties apart from the sale bills, the assessee is not entitled to claim deduction towards transport charges. The Tribunal has purported to follow the decision of this Court in *State of Tamil Nadu v. Parry and Company* [1976] 38 STC 122. But the decision in *State of Tamil Nadu v. Parry and Company* [1976] 38 STC 122 is clearly distinguishable on the facts of this case. In that case it has been found that there was a bargain between the parties, buyer and seller, for payment of a consolidated price for the delivery to be effected on the purchaser's site; but at the time of preparing the bill, the transport charges had been shown separately. It is in the light of the special facts of that case that the Court held that the original bargain between the parties showing the contrary intention, charging the price and the transport charges separately in the bill will not enable the assessee to claim deduction towards transport charges. As a matter of fact, the decision in *State of Tamil Nadu v. Parry and Company* [1976] 38 STC 122 has been referred and distinguished in *Balakrishna Brick Works v. State of Tamil Nadu* [1982] 49 STC 251 and *Rajasthan Trading Corporation v. Commissioner, Board of Revenue (Commercial Taxes), Madras* [1984] 56 STC 113 in both of which the decision in *State of Tamil Nadu v. Parry and Company* [1976] 38 STC 122 has been confined to the facts of that case and has not been found to have any general application. The facts of this case, in our opinion, clearly fall within the ruling of this Court in *Rajasthan Trading Corporation v. Commissioner, Board of Revenue (Commercial Taxes), Madras* [1984] 56 STC 113. In *Rajasthan Trading Corporation v. Commissioner, Board of Revenue (Commercial Taxes), Madras* [1984] 56 STC 113 a dealer, in blue-metal jelly, sold the same obtained from the quarry. In the case of delivery of blue-metal ex-quarry, no transport charges were included in the bill. In case of delivery of the blue-metal at the site of the buyer, the cost of blue-metal was separately indicated in the bill and sales tax was also collected by the assessee only on the value of the blue-metals supplied. With reference to the transport charges, it was charges for and indicated in the bill by the assessee without including it in the price of the goods sold. On those facts, this Court held that there were twin bargains between the assessee and the customers, one for supply of blue-metal ex-quarry at a price with reference to which sales tax had also been collected by the assessee and the other for payment of transport charges not forming part of

the price of the blue-metal, but separately shown for delivery of the blue-metal at the place of the customer, if so desired, and that the requirements of rule 6(c)(i) of the Tamil Nadu General Sales Tax Rules, 1959 were fully satisfied and the assessee was therefore entitled to a deduction of the transport charges. Since this decision applies on all fours to this case, following the said decision, we hold that the assessee is entitled to deduction towards transport charges. The tax revision case is therefore allowed. There will however be no order as to costs.