(1960) 11 MAD CK 0045

In the Madras High Court

Case No : Tax Case No. 96 of 1958

K. Palaniappa Nadar APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 07-11-1960

Acts Referred:

Citation : (1961) 12 STC 338

Hon'ble Judges : Srinivasan, J;Rajagopalan, J

Bench : Division Bench

Advocate : A. Shanmugavel, for the Appellant; A. Alagiriswami, The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The view taken by the Tribunal on the evidence placed before it, that the assessee was the first purchaser of the tobacco within the State within the meaning of Section 5(viii) of the Act, as it stood in the relevant year-now it has been re-enacted in the same form and renumbered as Section 5(iv)-is correct and calls for no interference in revision.

2. The facts found by the Tribunal were as follows. The assessee, a dealer in tobacco, buys his tobacco from a wholesale merchant resident within the State of Madras, who holds a licence under L-5. The assessee''s seller, the wholesaler, buys tobacco both within the State of Madras and also outside, particularly in Andhra. The wholesale merchant has no L-5 licence to store his purchases in Andhra State. What he does is to employ a commission agent in Andhra to buy tobacco on his behalf and to get it bonded in the warehouse of the commission agent, for which the commission agent holds a L-5 licence. Purchases are effected through the representatives of the wholesaler sent over to Andhra. Subsequently whenever the wholesaler requires tobacco to be sent over to the State of Madras the commission agent sends that tobacco. That tobacco is then bonded in the warehouse of the wholesaler, in this State. It is that tobacco that is delivered to the assessee when he buys it.

3. It should be remembered that the assessee''s seller, the wholesaler, buys tobacco on his own in Andhra and not only to comply with any orders of the assessee. From this it should be clear that when purchases are effected in Andhra they are effected by the wholesaler either through his representatives or through his commission agent, and the tobacco purchased in Andhra is taken delivery of on behalf of the wholesaler in Andhra itself. The sale is complete by delivery within the State of Andhra only. The tobacco so purchased is not brought over immediately but kept in the bonded warehouse in Andhra, to be drawn upon whenever necessity arises, that is whenever the wholesaler requires tobacco to be brought over from Andhra to meet the demands for such tobacco within the State of Madras. When this tobacco is so brought over by the wholesaler, there is no element of sale incidental to which that transport is effected. The sale, as we pointed out, is completed by delivery within the State of Andhra, and therefore the tobacco kept in the bonded warehouse in Andhra is kept there as the tobacco that belongs to the wholesaler, though the bonded warehouse belongs to the commission agent.

4. Learned counsel for the assessee relied upon Section 22 of the Act as amended in 1955. But Section 22 will not help to establish that the assessee''s seller is the first purchaser within the State of Madras. The assessee''s seller, the wholesaler, bought the tobacco in Andhra. It may be that he bought the tobacco for eventual consumption in Madras. The evidence disclosed that out of the purchases effected by the wholesaler in Andhra and kept in the bonded warehouse of the commission agent, the commission agent was in some cases instructed to sell a portion of the tobacco within the State of Andhra itself. These purchases at any rate could not be said to be for consumption within the State of Madras. What Section 22 of the Act requires is not only that a sale or a purchase should be for consumption within the State of Madras, but that the delivery in Madras should be the direct result of the sale or purchase. In this case the position was that as a result of the purchase of the tobacco by the wholesaler within the State of Andhra, the delivery of that tobacco was within the State of Andhra. The subsequent transport of that tobacco by the wholesaler was that of his own goods, and that could not be said to be the direct result of his purchase in Andhra. When the assessee effected his purchase in Madras there was no element of transport at all to bring it as a case of delivery direct or otherwise within the meaning of Section 22.

5. Learned counsel for the assessee endeavoured to establish that whenever the assessee''s seller brought over his own tobacco from Andhra, it would be a case of delivery direct as a result of the purchase. We have pointed out earlier that the delivery in the case of the assessee''s seller was within the State of Andhra, and the subsequent transport did not bring it within the scope of Section 22 of the Act.

6. Another contention of the learned counsel for the assessee was that there might be discrimination in the imposition of tax, because if the wholesaler was

not the first purchaser within the State of Madras, the assessee would have to pay sales tax on a turnover which included not only the purchase price of the tobacco in Andhra but also the excise duty paid, because the assessee would not be entitled to the benefit of the exemption provided by Rule 5(i) of the Turnover and Assessment Rules. We are unable to see any real basis for any charge of discrimination to invalidate either Section 5(viii) or the rules. What the assessee had to pay his vendor constituted the purchase turnover on which the assessee had to be taxed. All the elements that went into the price charged by the assessee''s vendor would be relevant only for determining the price charged to the assessee, and no charge of discrimination could be based on the price the assessee had to pay to his vendor.

7. As we said, the view taken by the Tribunal on the evidence placed before it, that it was the assessee and not the wholesaler, the assessee''s vendor, resident in the State of Madras that was the first purchaser of the tobacco within the State of Madras is correct.

8. The petition fails and is dismissed with costs. Counsel''s fee Rs. 100.

