

(1991) 04 MAD CK 0076

In the Madras High Court

Case No : T.C. No. 132 of 1982 (Appeal No. 10 of 1982)

K.M.V. Rajagopal Raja

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 30-04-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1991) 04 MAD CK 0076

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : S.N. Kripanandan for C. S. Chandrasekara Sastry, C. Venkat Raman and C. Natarajan, for the Appellant; Mrs. Chitra Venkataraman, Additional Government Pleader (Taxes), for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The assessee is in appeal against the order passed by the Board of Revenue in suo motu revision.

2. It transpires from a perusal of the record that for the assessment year 1975-76 the assessee reported a total and taxable turnover of Rs. 2,56,651.93 and Rs. 11,032.83, respectively. Exemption was claimed to the extent of Rs. 1,01,989. The Deputy Commercial Tax Officer disallowed the exemption in respect of the direct sale of forest coupes to three parties totaling to Rs. 1,01,989 and taxed the turnover at 4 per cent. On appeal, the Appellate Assistant Commissioner found in favour of the assessee and held the direct sales were not taxable since the coupes are only firewood and firewood is exempt from tax. The Board of Revenue issued notice and proposed to modify the order of the Appellate Assistant Commissioner. Notice was issued calling upon the assessee to show cause why the order of the Appellate Assistant Commissioner deleting the turnover of Rs. 1,01,989 taxable at 4 per cent should not be set aside. After hearing the parties, the Board of Revenue found that the assessee had not worked the coupes at all and what they had sold to the three parties were the coupes as such and only the buyers had felled the trees and sold them. On these

facts the Board of Revenue found that the plea of the assessee that what has been sold by them was firewood was not correct since what had been sold by the assessee was the coupes of forest without in any way appropriating those.

3. Learned counsel for the appellant submitted before us that the assessee had sold only firewood and that being exempt, the Board of Revenue ought to have granted exemption. We cannot agree. The material on the record shows that the coupes were sold by the assessee without the assessee having worked in those coupes at all. The standing trees in the forest sold by the lessee of the coupe could not be termed as firewood. If the buyers of those coupes sold firewood that would not entitle the assessee to the benefit of exemption as his sale to the buyer was only forest trees. The Appellate Assistant Commissioner, therefore, fell in error in holding that firewood had been sold by the assessee. That was misappreciation of the evidence, plain and simple. In our opinion the finding of the Board of Revenue, in the facts of the case that since the assessee had not worked the coupes and had sold them as such and it was only the buyers who had felled the trees and sold them, the assessee would not be entitled to the exemption is sound and does not call for any interference. Consequently, since the sale of forest wood in coupes would be sale of goods as per the plain phraseology of section 2(j) of the Act, the order of the Board of Revenue does not call for any interference. The appeal fails and is dismissed. No costs.

4. Appeal dismissed.