**(1959) 12 MAD CK 0005**

**In the Madras High Court**

**Case No :** Tax Revision Case No. 34 of 1957 and Tax Case No. 20 of 1958

M.S. Chidambara Nadar Sons and Co. APPELLANT

Vs

State of Madras RESPONDENT

**Date of Decision :** 07-12-1959

**Acts Referred:**

**Citation :** (1960) 11 STC 321

**Hon'ble Judges :** Ramachandra Iyer, J;Rajagopalan, J

**Bench :** Division Bench

**Advocate :** V. Sethuraman, for the Appellant; G. Ramanujam, for The Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ramachandra Iyer, J.—These two revision cases raise the question of liability to sales tax of turnovers representing the price of packing

materials employed for effecting sales of the cotton and yarn respectively by the assessees in the two cases. The question whether the turnover

relating to packing materials would be assessable to tax, there being no claim for exemption under Rule 5 (1) (g) (ii) of the Sales Tax (Turnover

and Assessment) Rules, was considered in two decisions of this Court, viz., Varasuki and Co. Vs. The Province of Madras, and Indian Leaf

Tobacco Development Co., Ltd. v. State of Madras [1954] 5 S.T.C. 354. It was held that where there was a sale of certain goods, the intention

being to sell the goods as packed, there would be a sale of the packing materials as well and the turnover relating to them would be liable to sales

tax.

2. Mr. Sethuraman, who appeared for the assessee, contended that the two

 

decisions required reconsideration in the light of the Judgment of the

Supreme Court in State of Madras v. Gannon Dnnkerley and Co., Ltd. [1958] 9 S.T.C. 353. We do not agree that the decisions in the two cases

are in any way contradictory to the principles laid down by the Supreme Court. In State of Madras v. Gannon Dunkerley and Co., Ltd. [1958] 9

S.T.C. 353, the Supreme Court laid down that four conditions must be satisfied before there could be a sale of goods, viz., there should be (1) an

agreement between the parties for the purpose of transferring title to goods, (2) capacity of the parties to contract, (3) money consideration and

(4) as a result of the transaction the property in the goods should actually pass to the buyer. It cannot be disputed having regard to the findings

arrived at by the Tribunal that the last three conditions have been satisfied in the present case. The question then is, whether there has been an

agreement between the parties for the purpose of transferring title in the packing materials. When there is an agreement to purchase cotton to be

delivered by the seller to the buyers, it is implicit in the contract that the goods should be delivered as packed. We can, therefore, imply that there

is a contract to pay for and purchase the packing materials as well. This was the principle that was laid down in Varasukhi and Co. v. Province of

Madras [1951] 2 S.T.C. 1 and in Indian Leaf Tobacco Development Co. Ltd. v. The State of Madras [1954] 5 S.T.C. 354.

3. It was next contended that there was no intention on the part of the assessee to charge for the packing materials and that there being no

consideration for the transfer of property in the packing materials, it should be held that there was no sale. The Appellate Tribunal has rejected the

case of the assessee that he did not intend to charge for the packing materials. That finding of fact, which is supported by the evidence and

circumstances of the case, is binding upon us. The conclusion arrived at by the Tribunal that the assessee would be liable to sales tax in respect of

the turnover relating to the packing materials for cotton and yarn sold by them is correct.

4. The revision cases fail and are dismissed with costs. Advocate''s fee for Rs. 100.

 