(1990) 01 MAD CK 0092

In the Madras High Court

Case No : Tax Case No. 596 of 1980

M.S. Viswanathan and Co. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 05-01-1990

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 4, 7A

Citation : (1990) 01 MAD CK 0092

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : S.V. Subramaniam, for the Appellant; R. Karuppan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Venkataswami, J.—This tax revision is directed against an order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 11th December, 1979, and made in C.T.A. 336 of 1979.

2. The assessment year in question is 1977-78.

3. The petitioner is a dealer in oil and oil-cakes. It used to purchase oil-seeds from shandy dealers and agriculturists. We are concerned here with the purchase of gingelly oil-seeds amounting to Rs. 4,08,053, both from the shandy dealers and agriculturists. It may be mentioned that gingelly oil-seeds, being declared goods, are liable to tax at the point of first sale in the State. The assessing officer taxed the said turnover of Rs. 4,08,053 u/s 7-A of the Tamil Nadu General Sales Tax Act (hereinafter called "the Act"). The contention of the assessee was that whatever be the liabilities of the petitioner so far as the purchases of gingelly oil-seeds were made from agriculturists, the purchases from the shandy dealers (unregistered dealers) cannot be taxed at the hands of the petitioner by invoking section 7-A of the Act. In other words, as per section 4 of the Act, a dealer in "declared goods" is liable to pay tax irrespective of the quantum of turnover in a year. "Dealer" includes both registered and unregistered dealers. If so, the sale by an unregistered dealer of declared goods is liable to be taxed at

his hands irrespective of the quantum of turnover. Therefore, according to the petitioner, it is not liable to pay sales tax u/s 7-A of the Act in so far as the turnover related to purchases of gingelly oil-seeds from shandy dealers (unregistered dealers). This contention was not accepted both by the assessing officer as well as by the Appellate Assistant Commissioner and also by the Tribunal. Hence the present tax case. The same argument is reiterated before us. Mr. S. V. Subramaniam, learned counsel appearing for the petitioner, submitted that details of purchases from shandy dealers and also agriculturists have already been furnished with break-up figures. Therefore, it is for the Revenue to find out the unregistered dealers from whom the petitioner has purchased gingelly oil-seeds and assess the turnover accordingly. The Revenue cannot shift the point of taxability merely on the ground that the seller is a small unregistered dealer/shandy dealer.

4. The learned Additional Government Pleader (Taxes) is not in a position to controvert the argument of the learned counsel for the petitioner.

5. We find force in the argument of the learned counsel for the petitioner.

6. As rightly contended by the learned counsel for the petitioner, the tax is attracted on the first sale of gingelly oil-seeds as per section 4 read with entry 6(ii) of the Second Schedule to the Tamil Nadu General Sales Tax Act. Therefore, the sales by unregistered dealers are exigible to tax only at the hands of the seller and not at the hands of the purchaser. However, in the case of purchase from agriculturists, section 7-A of the Act is undoubtedly attracted. We have noticed earlier that details of purchases have already been given by the petitioner. Learned Additional Government Pleader argues that the Revenue will have to verify whether the particulars of shandy dealers given by the petitioner are correct. If, on verification, the Revenue finds that the details given by the petitioner regarding the purchases from shandy dealers are either incomplete or false, to that extent, the petitioner will be liable to pay tax u/s 7-A of the Act. We think,, no exception can be taken to this argument.

7. As we have laid down the law, the case has to be remanded for the purpose of verification as to the correctness or otherwise of the details given by the petitioner regarding the purchases of gingelly oil-seeds from the shandy dealers (unregistered dealers).

8. In the result, we hold that that part of the turnover relating to purchases of gingelly oil-seeds from agriculturists is exigible to tax u/s 7-A of the Act and regarding the remaining part of the turnover alleged to have been purchased from shandy dealers (unregistered dealers) the matter is remitted to the assessing officer to find out the correctness or otherwise of the particulars given by the petitioner. It is for the petitioner to establish to the satisfaction of the assessing officer that the purchases were from shandy dealers (unregistered dealers). The assessing officer shall give relief from tax liability in respect of purchases by the petitioner from unregistered shandy dealers on his satisfying

with such purchases. The tax case is accordingly partly allowed and remitted in the above terms. However, there will be no order as to costs.

9. Petition partly allowed.

