(2002) 07 MAD CK 0256

In the Madras High Court

Case No : Tax Case (Revision) No. 963 of 1995

Munaga Seshachalam Chetty APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Tamil Nadu General Sales Tax Act, 1959 — Section 12(5)

Citation : (2002) 128 STC 590

Hon'ble Judges : V.S. Sirpurkar, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C. Venkatraman, for the Appellant; S.V. Radhakrishnan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The assessee challenges in this revision, the concurrent orders passed by the Sales Tax Appellate Tribunal, the appellate order passed by the Appellate Assistant Commissioner (CT)II, as also the initial assessment order passed by the Commercial Tax Officer. All the three authorities below have taken a view that the turnover of Rs. 1,30,900 by the assessee was liable to be taxed under the Central Sales Tax Act, inviting 6 per cent of tax. The authorities have also inflicted penalty, on account of the assessee having given an incorrect turnover in an incorrect manner in the return.

2. The assessee sold the goods, namely, the groundnut outside the State and claimed that the goods were sold in his capacity as a commission agent of an agriculturist. The assessment related to the year 1985-86 and it seems that, even before the assessing authority, the assessee claimed that if at all, he was liable to pay tax at the rate of 3 per cent. The assessing officer found that inspite of the chances given, the assessee had not produced "C" forms from his purchaser, nor was the claim of the assessee that he effected the sales in his capacity as a commission agent true. The. assessing authority had also given

time from April 1, 1986 to May 31, 1989 for production of any material evidence to prove the assessee''s claim. The sale was therefore treated to be an inter-State sale covered under the CST Act and it was also charged at 6 per cent. Penalty of Rs, 11,781 was also inflicted u/s 9 of the Central Sales Tax Act, 1956 read with Section 12(5)(iii) of the Tamil Nadu General Sales Tax Act. In the appeal also, the same position continued, as the appellate authority also found that inspite of chances given, no advantage was taken by the assessee by producing any material evidence in support of his claim. The appellate authority took stock of the explanation given by the assessee that his books of accounts were seized by the Income Tax department and hence he was not in a position to put any material before the appellate authority. This argument was repelled by observing that the appellant could have obtained extracts from the Income Tax department, which, he failed to do. The appellate authority also observed that the assessee had not filed any details for exemptions or even "C" forms for enjoying the benefit of concessional rate of tax. On that, the appeal came to be dismissed. Before the appellate Tribunal also, the same situation continued, where, some startling facts also came to be noted by the Appellate Tribunal suggesting therein that in fact, the goods were despatched under form XX. But, even those despatches were not free from suspicion. We will have nothing to do with that aspect because, in this case, it is clear that firstly, there was sale, secondly, the sale was in the course of inter-State trade, thirdly, the assessee had not produced "C" forms and lastly, there was no material on facts to suggest that all this was done in his capacity as a commission agent of an agriculturist.

3. The learned counsel however again reiterated the same arguments that the assessee''s books of account were seized by the Income Tax department and therefore, he was not in a position to file any material evidence in support of his claims. We are unable to understand as to how is it that the assessee should have failed to take advantage of three years of pendency of the matter before the assessing authority. In these three years, he could have done everything, including also, collecting the "C" forms from the purchaser. There is absolutely nothing on record to suggest that he acted as a commission agent of an agriculturist and thereby the whole transaction was exempt from any tax. All these would be pure questions of fact and in our opinion, all the three authorities below have properly dealt with the materials before them. We do not find any error having been committed by any of the authorities. There is no question of law involved in this revision. The revision is therefore dismissed without any orders as to costs.