
(1978) 03 MAD CK 0052

In the Madras High Court

Case No : Tax Case No. 924 of 1977 (Appeal No. 68 of 1977)

N. Mohanlal

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 15-03-1978

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4, 5, 7A

Citation : (1979) 43 STC 433

Hon'ble Judges : P. Govindan Nair, C.J.; V. Ramaswami, J

Bench : Division Bench

Advocate : K.J. Chandran, for the Appellant;

Final Decision : Dismissed

Judgement

Govindan Nair, C.J.—We do not think that we should admit this appeal, though a right has been conferred, unlike in the case of revision, to approach this Court in appeal, for we consider that the point taken in the appeal cannot be sustained. It is a well-accepted principle that even when there is a statutory right of appeal, the court can screen the appeal to find out whether the opposite side should be bothered to come up before this Court. Such a principle is laid down in Order 41, Rule 1, of the Code of Civil Procedure. There is no similar provision in the Sales Tax Act with which we are concerned. But the principle under that rule can be applied to sales tax cases and it is necessary that it should be applied because this Court should not be flooded with appeals which can be disposed of at the initial stage of hearing.

2. Now, turning to the contention raised by the appellant, it can be summarised thus. The appellant has admittedly a turnover relating to sales amounting to Rs. 43,359.58. It is also admitted that the turnover of Rs. 14,717.50 is also taxable by virtue of the provisions of Section 7-A. The two together exceed the Rs. 50,000 limit mentioned in Section 3(1) and so the appellant is liable to pay tax under the Act. But it was contended before us by the counsel for the appellant that the only turnover that is taxable under the Act is that of Rs. 14,717.50

coming u/s 7-A. The attempt is to leave out the sum of Rs. 43,000 and odd turnover from reckoning altogether. This is sought to be achieved by stating that rule 5, which provides for computation of the turnover, only referred to in (sic) Sections 3, 4 and 5 of the Act. The rules were framed before Section 7-A was introduced in the Act. Those rules cannot obliterate the section or produce a result different from that contemplated under the Act. We have, therefore, to look at the relevant sections, Section 3(1), Section 7-A, as well as the definition of the term "total turnover" under the Act. If we look at these provisions, it is clear that the Rs. 50,000 limit has been exceeded. The "total turnover" takes within its ambit taxable as well as non-taxable turnover. Admittedly, Rs. 14,717.50 is taxable turnover. Assuming that the sum of Rs. 43,000 and odd is a non-taxable turnover, that has also to be taken into account for the purpose of computing the "total turnover". Section 3(1) talks of the "total turnover" exceeding Rs. 50,000. So, the two have to be added together for determining the liability. When they are added, clearly the assessee is liable to be taxed on the sum total of the two turnovers. Rules, as we said, cannot have the overriding effect on the provisions of the Act. We, therefore, dismiss this appeal.