(1995) 10 MAD CK 0040

In the Madras High Court

Case No : T.C. No. 339 of 1987 (Appeal No. 11 of 1987)

National Iron Traders — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 19-10-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 34

Citation : (1995) 10 MAD CK 0040

Hon'ble Judges : R. Jayasimha Babu, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The assessee is the appellant. This appeal is directed against the order passed by the Joint Commissioner by exercise of his power u/s 34 of the Tamil Nadu General Sales Tax Act, 1959. By exercising his suo motu power the Joint Commissioner revised the order passed by the Appellate Assistant Commissioner. It is against that order the present appeal has been preferred by the assessee.

2. National Iron Traders is a dealer in iron scrap. The assessee was reassessed for the year 1978-79 under the Tamil Nadu General Sales Tax Act (the TNGST Act, 1959) by the Deputy Commercial Tax Officer on a turnover of Rs. 2,39,705.92, being the purchase of iron and steel goods which had not suffered tax at prior stage. Aggrieved by the revised assessment the assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner took the view that when the dealer deals with another, it was too much to expect that he should find out whether the others business was continuing or not. He therefore allowed the appeal in respect of the purchase made from Jayachandra Traders.

3. According to the Joint Commissioner, in this case the dealers have purchased iron and steel scrap for Rs. 2,00,681 from Jayachandra Traders, Coimbatore, and sold these goods during the year 1978-79. The above sellers Jayachandra Traders were not registered dealers under the TNGST Act, 1959 during 1978-79

and hence the sales effected by them were not taxable. With the result the dealers have become first sellers in respect of these goods and hence the sales at the hands of the dealers are liable to be taxed being the first sales in the State. Further the onus of proof that there was earlier sale which was liable to be taxed lay on the dealer and when it was proved that the bill produced by the dealer was a fictitious one, there was no question of treating the sales as second sales. In view of the above circumstances the Joint Commissioner came to the conclusion that the order passed by the Appellate Assistant Commissioner is erroneous and prejudicial to the interest of the Revenue. After hearing the learned counsel appearing for the assessee the Joint Commissioner held that the Appellate Assistant Commissioner was not correct in allowing the appeal in respect of the purchase made from Jayachandra Traders. Consequently the Joint Commissioner restored the order passed by the assessing officer. As against this order the present appeal is preferred by the assessee.

4. The learned counsel appearing for the assessee submitted as under :

The Joint Commissioner was wrong in proceeding on the basis that merely because Jayachandra Traders from whom the scrap was purchased by the assessee were not registered dealers under the TNGST Act during 1978-79, the sales by the assessee will be liable to be taxed as the first sales. The bills issued by Jayachandra Traders clearly showed that the sales by them were not second sales. Iron and steel are goods which are amenable for tax at the point of first sale in the State. The assessee purchased the said iron from local dealer after paying necessary local tax on the purchases and hence unless and until it is established that the said seller, i.e., Jayachandra Traders had not paid the tax, the question of treating the sales by the assessee as first sale does not arise. Merely because the said Jayachandra Traders were not registered dealers under the TNGST Act during 1978-79 cannot absolve them from the liability to pay taxes on their sales and if at all there is any liability to sales tax on the transactions in question it is only in the hands of the said Jayachandra Traders and not in the hands of the assessee. The Joint Commissioner was wrong in his view that the onus of proof that there was an earlier taxable sale that was liable to be taxed lies on the assessee and failing to appreciate that the onus cast on the appellant-assessee will be discharged once it is shown that the seller is a real and identifiable person and it is not necessary to further show that the earlier transactions had actually suffered tax. It was therefore pleaded that the Joint Commissioner was not correct in reversing the order passed by the Appellate Assistant Commissioner.

5. On the other hand, the learned Additional Government Pleader (Taxes) submitted that the purchases effected by the assessee from Jayachandra Traders in only with an unregistered dealer. There is no proof on record that Jayachandra Traders paid the tax. The bills produced by the assessee are factious. Unless the assessee shows that his purchase has paid the tax, it is not possible for the assessee to say that the sales effected by it is a second sale. The appellate

Assistant Commissioner was not correct in stating that when one dealer deals with another, it was too much to expect that he should find out whether the others business was continuing or not. It is only on a perusal of the connected records the Joint Commissioner came to the conclusion that the Appellate Assistant Commissioner was not correct in allowing the appeal with regard to the purchases made with Jayachandra Traders. It was therefore contended that the order passed by the Joint Commissioner is in order.

6. We have heard the rival submissions. The assessee, National Iron Traders is a dealer in iron scrap, having place of business at Coimbatore. The assessing officer revising the order already made and confirmed the turnover at Rs. 2,39,705.92 stating that the purchases made from Jayachandra Traders and Dinakar Traders are not genuine and are not entitled for exemption. Aggrieved by this order the assessee preferred appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner granted second sale exemption with regard to the purchases made by the assessee with Jayachandra Traders. The assessee pointed out that the burden of proof lies on the assessee and it was established that the goods have been purchased from registered dealers. The assessee is not aware whether the sellers were in fact registered dealers or not. The Appellate Assistant Commissioner verified the purchase bills. According to him on a routine manner these bills, cannot be said to be fictitious. The R.C. number, date of registration with address of the parties, i.e., seller Jayachandra Traders are available in these bills. In the report of the Assistant Commissioner (Commercial Taxes), Coimbatore, dated April 9, 1980 it was stated that "on enquiry, it was found that the R.C. number related to one Vinayagar Gas Welding Works with door No. 23/91 D.B. Road, Coimbatore and the said R.C. has not been current after 1976-77 due to stoppage of business. The place of business at 56, West Thiruvenkatasamy Road, R. S. Puram, was inspected in the presence of the Appellate Assistant Commissioner. Inspection revealed that son of Thiru K. Komarasamy Asari, is running a lathe workshop by name Tvl. Sri Saraswathi Engineering Works in the address mentioned in the bill and his son Thiru K. Jayachandran was running a business in the name of Tvl. Jayachandra Traders in the said place. Two sale bill books and 10 loose bills with the name of the seller Tvl. Jayachandra Traders with the address 13/56, West Thiruvenkatasamy Road, R. S. Puram, were recovered. From this report it is clear that in the address given by Jayachandra Traders at No. 13/56, West Thiruvenkatasamy Road, there is a business run by Jayachandran, S/o. Komarasamy Asari. The inspecting officers have not probed further and not taken any statement from the said Jayachandran with regard to his dealings. From the inspection report it is clear that Jayachandra Traders is carrying on business in selling scrap and it is for the department to take action against him. It was pointed out that the R.C. number of Jayachandra Traders in fact relates to some hotel dealer who had already closed his business. However, the assessing officer has stated that it belongs to one Vinayagar Gas Welding Works, who has already stopped the business. The assessing officer has further stated that the place of

business of Jayachandra Traders were inspected and there is no such dealer at door No. 56, West Thiruvenkatasamy Road, Coimbatore, dealing in iron scrap. As per Assistant Commissioner''s report dated April 9, 1980, it was found that Jayachandran, son of Komarasamy Asari was running the business in the name of Jayachandra Traders in the same place. Therefore the Appellate Assistant Commissioner held that the assessee proved that they have purchased goods from registered dealers. The bills have been produced with all the particulars and therefore the assessee has discharged his burden of proof. Therefore according to the assessee when Jayachandra Traders issued a bill for the purchase of iron scrap the assessee cannot be expected to probe further in order to ascertain whether Jayachandra Traders are continuing business or not.

7. In [1975] 35 STC 50 in the case of Govindan & Co. v. State of Tamil Nadu this Court held that to claim the benefit of tax on the ground that the sales effected by the assessees are second sales, the assessees need not show that their sellers have in fact paid tax. It is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers.

8. In State of Tamil Nadu Vs. Chamundeswari Enterprises, it was held that if a sale effected by an assessee is not a first sale, which is only taxable under the Tamil Nadu General Sales Tax Act, 1959, then under the provisions of the Act that sale cannot be brought within the net of taxation and it is for the Revenue to search out the first seller and levy tax on the first sale. It is not for the assessee, who is the subsequent seller, to show that the first sale has been taxed. The onus on the subsequent seller is only to point out that there has been a first sale and the onus is not on him to show that the first sale has, in fact, suffered tax.

9. In [1984] 57 STC 137 in the case of State of Tamil Nadu, v. C. K. Gajapathy and Co., this Court held that if the assessee was able to show that there had been merely a taxable sale and its sale was only second sale, it was entitled to claim exemption of its sales as second sales.

10. In 1994 93 STC 185 in the case of State of Tamil Nadu v. Raman & Co. the Supreme Court while confirming the decision rendered in Govindan and Co. Vs. The State of Tamil Nadu, held no duty is case upon the assessee to show that his sellers have paid tax at first point.

11. Considering the facts arising in this case in the light of the judicial pronouncements cited supra, we hold that the Joint Commissioner was not correct in setting aside the order passed by the Appellate Assistant Commissioner and restoring the order passed by the assessing officer in so far as the turnover of Rs. 2,39,705.92 being the purchase made from Jayachandra Traders and Dinakar Traders are concerned. Accordingly, the order passed by the Joint Commissioner is set aside and that of the Appellate Assistant Commissioner stands restored.

12. In the result the appeal is allowed. No costs.

13. Appeal allowed.

