
(1979) 11 MAD CK 0016

In the Madras High Court

Case No : Taxation Case (Appeal) No. 220 of 1977

P.P.M. Thangiah Nadar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-11-1979

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3, 4, 5, 7A

Citation : (1980) 46 STC 67

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Sethuraman, J.—This is an appeal filed against the order of the Board of Revenue (Commercial Taxes) dated 28th December, 1976. The

assessee is a dealer in senna leaves, senna pods, etc. It reported a total and taxable turnover of Rs. 18,62,345.57 and Rs. 1,24,615.97

respectively for the year 1969-70 under the Tamil Nadu General Sales Tax Act, 1959. Out of Rs. 18,62,540.19, Rs. 15,19,705.82 related to

export sales and there were inter-State sales to the extent of Rs. 2,18,023.75. After allowing these deductions of export sales and inter-State

sales, the assessing authority determined the total (sic) and taxable turnover at Rs. 1,24,810.62. It was found from the accounts that 74,634

kilograms of senna leaves were exported to foreign countries out of which purchases of 67,173 kilograms were not supported by any bill. As these

purchases were considered to have been made from persons other than the assessee and in the circumstances in which no tax was payable by

them u/s 3, 4 or 5 of the Act, the assessing officer held that such purchases were liable to tax u/s 7-A of the Act. The purchase value of the said

goods was estimated at Rs. 67,173 at the rate of Re. 1 per kilogram and this turnover was assessed u/s 7-A of the Act. On appeal, the Appellate

Assistant Commissioner, relying on a decision of this Court in *M. K. Kandaswami v. State of Tamil Nadu* [1971] 28 S.T.C. 227, cancelled the

assessment of the said turnover.

2. This order of the Appellate Assistant Commissioner dated 30th December, 1971, was examined by the Board of Revenue in suo motu revision.

Subsequently, the Supreme Court reversed the decision of this Court on 15th July, 1975, and the Supreme Court's decision is reported in *State of*

Tamil Nadu v. M. K. Kandaswami [1975] 36 S.T.C. 191. The Board of Revenue therefore considered that the order of the Appellate Assistant

Commissioner was wrong and gave notice to the assessee to show cause why the order of the assessing authority should not be restored. After

hearing the assessee, the Board held that the export sales not being liable to tax under the local Act, this is a case to which Section 7-A would

apply and that, therefore, the purchase turnover would have to be taxed. In this view, the sum of Rs. 67,173 brought to tax by the assessing

authority was restored in the assessment. It is this order of the Board of Revenue which is now challenged in the present appeal before this Court.

3. Section 7-A runs as follows :

Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of

which is liable to tax under this Act) in circumstances in which no tax is payable u/s 3, 4 or 5, as the case may be, and either,-

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall

pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in Section 3, 4 or 5, as the case may be, whatever be the quantum

of such turnover in a year :

Provided that a dealer (other than a casual trader or agent of a nonresident dealer) purchasing goods [the sale of which is liable to tax under Sub-

section (1) of Section 3] shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than fifty thousand rupees.

4. It is unnecessary to go into the rest of the provision. It is this provision which came up for consideration in *M. K. Kandaswanti v. State of Tamil*

Nadu [1971] 28 S.T.C. 227. In that case, the facts were as follows : By a memorandum dated 5th March, 1970, the Joint Commercial Tax

Officer, Salem, called upon the assessee to pay certain amount by way of tax assessed under this section. According to him, the assessee had

purchased castor seeds through his own bought notes from registered dealers whose transactions were not verifiable. As the burden of proof was

on the assessee that any of his transactions was not liable to tax under this Act, it was for him to prove that the purchases had already suffered tax.

The assessee at this stage came forward with writ petitions to quash those notices. This Court held that the provision of Section 7-A could have

significance only in respect of taxable transactions on which tax was payable, but by some means the transactions had not been brought to tax or

had escaped tax. Merely because a dealer had made purchases from others, the particulars of which were not verifiable, then that would not, in

this Court's view, in itself be a circumstance to justifiably apply Section 7-A. Verifiability of the preceding transactions was not considered to be

one of the tests or conditions, and would be irrelevant to the scope of Section 7-A, and the phraseology had fallen short of achieving that purpose

which was to check evasion. The Supreme Court, on appeal, held that the assessee had purchased goods from agriculturists, householders or

unregistered dealers, as the case may be, under bought notes and that thereafter crushed them into oil. In such a case, the assessee would be liable

to tax on the purchase turnover of the goods u/s 7-A. The various ingredients for the assessability u/s 7-A were set out and the Supreme Court

pointed out at page 198 : ""Thus, in all these cases, the purchases have been made by the dealers of "goods, the sale or purchase of which is

generally liable to tax under the Act", but because of the circumstances aforesaid no tax was suffered in respect of the sale of these goods by the

sellers."" As the said goods had been converted into oil, the Supreme Court pointed out that Section 7-A would apply.

5. It may be seen that, in the said case, the Supreme Court was concerned with Clause (a) of Sub-section (1) of Section 7-A, which provides for cases where the assessee consumes the goods in the manufacture of other goods for sale or otherwise. In the present case, it is not in dispute that the goods, which were purchased and which are now under consideration, have been sent abroad as and by way of export sales. In such a case, the learned counsel for the assessee contended that Clause (b) invoked here would not at all have application. It is not in dispute that Clauses (a) and (c) do not apply here. In the order of the Board of Revenue, the following passage occurs: ""However, sub-item (b) of Section 7-A comes into operation, because the dealer had disposed of the senna leaves so bought in a manner other than by way of sale in the State. He had exported the goods to foreign countries and there was no sale within the State. The contention that he had disposed them of by way of sale in the State and this sale, which had occasioned the export, is a sale within the State is not correct. The expression "by way of sale, in the State" in Clause (b) of Sub-section (1) of Section 7-A refers to a chargeable sale within the State. The sale effected by the dealer to the foreign buyer is not a chargeable sale within the State, because of the constitutional prohibition imposed on the State Legislature. The sale contemplated in this clause should therefore be taken to be the local sale exigible to tax.

6. The language of Section 7-A(1)(b) does not require that there must be a local taxable sale in order to get out of the liability imposed by Section 7-A. Section 7-A contemplates two conditions to attract the liability thereunder. One is that there must be no tax payable u/s 3, 4 or 5 by the vendor (sic) to the assessee, and the other is that there must be a disposal of the goods in any manner otherwise than by way of sale in the State. The question as to whether in satisfying the second condition, there must be a local taxable sale does not at all appear to be relevant. Otherwise, the legislature would have used the appropriate expression to show that in the second part of the condition set out above, the taxability of the local sale would be relevant. In the absence of such words, we do not consider that the Board of Revenue was justified in reading the word ""taxable before the word ""sale"" occurring in Section 7-A(1)(b). The liability to tax must arise on the plain language of the provision. One has to look merely

at what is said. There is no room for any intendment.

7. In Section 2(n), there is a definition of the word ""sale"". Explanation (3)(a) to that definition runs as follows :

The sale or purchase of goods shall be deemed, for the purposes of this Act, to have taken place in the State, wherever the contract of sale or

purchase might have been made, if the goods are within the State-

(i) in the case of specific or ascertained goods, at the time the contract of sale or purchase is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale or purchase by the seller or by the

purchaser, whether the assent of the other party is prior or subsequent to such appropriation.

8. This explanation deals with two kinds of cases. The first category is of specific or ascertained goods which were within the State at the time the

contract of sale was entered into. The contract of sale is the one which is relevant in the case of a dealer who is sought to be assessed. In the

present case, the contract of sale would thus be the export sale. In such a case, if the specific or ascertained goods were within the State, at the

time of the contract, then they would be deemed to be local sales. Even in the case of unascertained or future goods, if at the time of the

appropriation to the contract, by the seller or by the purchaser, whether the assent of the other party is prior or subsequent to such appropriation,

the goods were in this State, the sale would be a local sale. It cannot be in dispute that in the present case, the goods were in the State either at the

time when the contract was made or at any rate at the time when the appropriation was effected, namely, at the time of the consignment to the

foreign country. So, the explanation deems it to be a local sale. This explanation would have to be applied even for construing the words ""sale in

the State"" in Section 7-A. So read, it would be clear that in the present case there was a sale within the State. It may be that due to the

constitutional prohibition against taxing an export sale the State Government would not be in a position to tax the sale. But so long as the definition

provision read with Section 7-A showed that it was only a local sale, it would follow that for the purpose of Clause (b) of Sub-section (1) of

Section 7-A also, it would be a local sale. In other words, as there was a local

sale in the State under the provisions of the Act, then Section 7-A would not be attracted. The fact that it occasioned the export would be irrelevant in this context. The result is that, in the present case, the assessee was not liable to be taxed on the purchases under consideration and, therefore, we set aside the order of the Board of Revenue in so far as this item of sale is concerned and allow the appeal. The assessee will be entitled to his costs. Counsel's fee Rs. 250.