(1995) 07 MAD CK 0100

In the Madras High Court

Case No : Tax Case (Revision) No. 66 of 1986 (Revision No. 30 of 1986)

Rangan Engineering Company APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : (1995) 07 MAD CK 0100

Hon'ble Judges : Venkatachalam, J;Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—In this tax case revision u/s 38 of the Tamil Nadu General Sales Tax Act, 1959 preferred by the assessee, in relation to the assessment year 1979-80, the only question is whether the impugned sales of electrical goods, which are subject to only single point tax under the Tamil Nadu General Sales Tax Act, by the assessee are second sales in the State of Tamil Nadu and so exempted from tax. It is settled law that in such a situation, the assessee should prove that the alleged preceding sale is a taxable sales. Though according to the assessee, electrical goods were purchased by it from one Honesty Electricals under the relevant sale bills standing in the name of "Honesty Electricals", the enforcement authorities have produced a sworn statement dated March 14, 1980 of one Jayanthilal J. Takkar stating that the abovesaid bills standing in the name of Honesty Electricals were issued by him. He has also stated in the same statement thus :

"Actually I have not dealt any goods except sale of bills for consideration of 2 per cent to 3 per cent of bill value."

He also made the following observations in the abovesaid statement :

"Besides the above commission dealing, I was also selling bills for second sales of scheduled goods and general goods for a consideration of 2 per cent in most of the cases and 3 per cent in a few cases of the bill value. The intending purchasers will give details and specifications, rates, etc., for preparing the bills and I will prepare the bills as required by the purchasers. The bills were sold with the following style of business and all these bills were issued by myself and signed by me by different names :

1. Prince Electricals, 178/179, NSC Bose Road, Madras (signed as H. G. Desai).

2. Milton Trading Corporation, 4 Narasinha Desan Lane, Madras-3 (signed as H. G. Desai).

3. Asco Traders, 8, Ponnappan Lane, Madras-3 (signed as K. P. Patel).

4. Honesty Electricals, 8, Singannan Street, Madras-3 (signed as M. Suri).

For the above styled business, I have taken registration under the Tamil Nadu General Sales Tax and Central Sales Tax Acts by declaring before the registration authorities that I intend to start business but I did not take registration in any case as a running business."

2. Therefore, it is clear that there was actually no sale of electrical goods from honesty Electricals to assessee as contended by the assessee. Further, it must also be noted that the assessee has not made any claim for cross-examination of the said Jayantilal J. Takkar in relation to his abovesaid statement. No doubt, one ground in this revision runs as follows :

"The Sales Tax Appellate Tribunal should have held that the alleged statement of Jayantilal J. Takkar of M/s. Honesty Electricals cannot be relied on against the appellants since the statement had been recorded behind the back of the appellants and had not been put to the appellants and copy furnished with opportunity of cross-examination and was not justified in relying upon the statement to sustain the assessment."

3. But, even in this ground or any other ground in this revision, it is alleged that any claim was earlier made for cross-examining the said Jayantilal J. Takkar. Therefore, it is clear that the assessee did not want to challenge the abovesaid statement given boy Jayantilal J. Takkar on March 4, 1980. However, learned counsel for the petitioner sought to argue that in State of Tamil Nadu v. J.C. Electricals [1984] 57 STC 16, this Court refused to interfere in revision in view of the finding of the Tribunal below therein that the abovesaid "Honesty Electricals" is a genuine trader. From this, the counsel wants to argue that in this case also, the abovesaid Honesty Electricals should be held to be a genuine trader. But, we are unable to accept this argument. We do not know the actual materials that were placed before the case The State of Tamil Nadu Vs. J.C. Electricals, . But in the present case, in the light of the abovesaid statement given by Jayantilal J. Takkar of Honesty Electricals, there can be no difficulty in holding that there was actually no sale of goods to the assessee because in the abovesaid statement dated March 4, 1980, there is a categorical admission that there was no sale of goods at all by the abovesaid Jayantilal J. Takkar of Honesty Electricals. Therefore, the argument of the learned counsel for the petitioner also fails and

we do not see any merit in this tax revision.

4. In the result, the tax revision petition is dismissed. No costs.

5. Petition dismissed.