
(1984) 03 MAD CK 0008

In the Madras High Court

Case No : Tax Case No. 240 of 1976 (Appeal No. 26 of 1978)

R.M. Basha

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-03-1984

Acts Referred:

Citation : (1986) 62 STC 432

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case purchased the old superstructures, belonging to Life Insurance Corporation of India, one situated

at Broadway and the other at Dr. Guruswamy Road, for Rs. 1,00,000 and Rs. 77,666.66 respectively, on the understanding that the said

superstructure would be demolished and the debris would be removed. The assessee, after demolishing the superstructures, had sold the old iron

and timber materials. The assessee is also a dealer in old iron scrap materials. On the sales of old iron and timber materials by the assessee, the

assessee was assessed on a taxable turnover of Rs. 1,78,026.62 for the assessment year 1973-74, under the Tamil Nadu General Sales Tax Act.

The assessee contended that his sales of old iron and timber materials are second sales inside the State, the first sales being by the Life Insurance

Corporation of India, and therefore he is not liable to be taxed on this sales of old iron and timber materials got out of the demolition of the

superstructures purchased from the Life Insurance Corporation of India. The assessing authority finalised the assessment on the basis that the

assessee is the first seller of the old iron and timber materials and therefore he is liable to be taxed on the said sales turnover. The matter was taken on appeal by the assessee before the Appellate Assistant Commissioner, who also held that the assessee should be taken to be the first seller of the old iron and timber materials, since the Life Insurance Corporation of India is not a dealer and therefore its sale cannot be taken to be the first taxable sale inside the State. Thereafter, the assessee took the matter before the Sales Tax Appellate Tribunal. The Tribunal also took the same view by holding that since the Life Insurance Corporation of India is not a dealer as defined in the Act, its sale cannot be taken to be the first taxable sale and therefore the assessee's sale alone should be taken to be the first taxable sale. The above decision of the Tribunal has been questioned by the assessee in this appeal.

2. According to the learned counsel for the assessee, there have been two sales involved in the assessee, purchasing the superstructures from the Life Insurance Corporation of India and the assessee, after demolition, selling the old iron and scrap and timber materials, and since there is an earlier sale by the Life Insurance Corporation of India, his sale should be taken to be only the second sale. But this contention of the assessee overlooks an obvious fact. In this case, admittedly, the Life Insurance Corporation of India has not entered into any agreement to sell the old iron scrap materials as such. The agreement between the assessee and the Life Insurance Corporation of India is for the demolition of the superstructures and for clearance of the debris for a stated consideration. Therefore, there is no sale of old iron materials as such by the Life Insurance Corporation of India to the assessee, so that the assessee's sale of old iron scrap materials can be termed as "second sales". No doubt, it is true, that the authorities below have proceeded on the basis that there is a sale by the Life Insurance Corporation of India, of the old iron scrap materials, but since the Life Insurance Corporation of India is not a dealer, its sale cannot be taken to be the first taxable sale inside the State. But, on the materials, the authorities below are not right in proceeding on the basis that there has been a sale of old iron scrap materials from the Life Insurance Corporation of India, to the assessee. Admittedly, the Life Insurance Corporation of India did not sell the old iron scrap materials but

they have merely sold the superstructures to the assessee for the purposes of demolition and for clearing the debris. The contract for demolition of

the superstructures and clearance of debris cannot be split up as a sale of timber, as a sale of old iron scrap, and as sale of bricks, etc. Therefore,

we are of the view, that there has been no sale of old iron scrap materials as such by the Life Insurance Corporation of India to the assessee and

hence the assessee's sale of old iron scrap materials should alone be taken as the first sale inside the State. Hence, the assessee's liability to pay

tax on his sales of old iron scrap materials cannot be legally questioned. This tax case appeal therefore, fails and is dismissed. No costs.

3. Appeal dismissed.