**(1961) 12 MAD CK 0026**

**In the Madras High Court**

**Case No :** Tax Case No. 167 of 1960 and Rev. No. 88 of 1960

S. Rathinaswamy Chettiar APPELLANT

Vs

The State of Madras RESPONDENT

**Date of Decision :** 05-12-1961

**Acts Referred:**

**Citation :** (1962) 75 LW 493 : (1962) 13 STC 419

**Hon'ble Judges :** Srinivasan, J;Jagadisan, J

**Bench :** Division Bench

**Advocate :** K. Srinivasan, D.S. Meenakshisundaram and R. Gangadharan, for the Appellant; G. Ramanujam, for The Government Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

Srinivasan, J.—The assessee is a dealer in bullion and jewellery. The net turnover determined by the assessing authority was over Rs. 27,00,000. The dealer claimed that the turnover of Rs. 3,80,918 representing sales of bullion, being other than first sales, was exempt from tax. The Deputy Commercial Tax Officer rejected the claim on the ground that the dealer has not maintained a separate account of the gold and silver sold from out of the stocks obtained from dealers or licensees. This officer took the view that since the assessee was also manufacturing jewels from out of the bullion stocks held by him, there was no identity between the bullion purchased from the dealers and that sold as bullion by the assessee. Exemption was however granted partly to the extent of Rs. 70,100. In appeal before the Appellate Assistant Commissioner of Commercial Taxes the assessee contended that when he sold the bullion as such to a purchaser, he would naturally draw upon his stock of bullion which he had purchased from his dealers and such a transaction being a second sale would be exempt from tax. He pointed out that in the earlier years, this basis of granting an exemption on second sales had been accepted, and further that no separate accounts for bullion taxable as first sales and exemptible as second sales were necessary to be maintained. These contentions however failed to gain acceptance. The Appellate Assistant Commissioner took the view that the purchase of bullion from other dealers came to about one-seventh of his total purchases of bullion. On this basis, he thought that one-seventh of the sales of bullion would have been drawn from the stocks covered by purchases from other dealers. He accordingly allowed exemption in respect of Rs. 80,000 out of the turnover of Rs. 3,80,918.

2. The same contentions were put forward before the Tribunal. The Tribunal declined to accept the plea of the assessee that when he had sold a quantity of bullion representing a total sales turnover of Rs. 5,63,000, this should be taken to cover the entirety of his purchase from other dealers. According to the assessee, a presumption should be raised in his favour that the entire quantity covered by second sales was included in the sales turnover of bullion of Rs. 5,63,000.

3. The Tribunal rejecting these contentions, the assessee has moved this Court in revision.

4. We find it exceedingly difficult to follow the reasoning adopted by the officers below in declining to grant the exemption. Here is a case where a dealer purchases bullion both from other dealers and persons other than dealers. When he effects sales of bullion as such, the bullion may come out of the first or the second category mentioned above. If it comes out of the first category, his sale would obviously be a second sale which would not be liable to tax. It is true that the assessee has not maintained a separate account of the quantity purchased from other dealers showing against the entries in this account the subsequent sales of bullion by him. Personally speaking, we feel that such an account would be only a make-believe one. There is no distinction in the nature of the goods sold, whether it comes out of the first or second category. It is true that the assessee might utilise any part of the gold acquired by him for the manufacture of jewels, and likewise he may sell any part of the bullion as bullion. But the point to remember is that where the assessee has acquired a certain quantity of bullion from any dealer, that sale transaction has suffered tax and that quantity is not liable to sales tax at a second sale. If, therefore, the total quantity of bullion sold by him exceeds the quantity of bullion which he purchases from other dealers, this latter quantity can be regarded as the subject-matter of a second sale. Apart from the difficulty of identifying one piece of gold from another as covered by a purchase from a dealer and from a non-dealer, the insistence upon the maintenance of any such account will only lead to fabrication of spurious accounts. It is not as if the goods sold under the one head or the other are different from each other. What the law requires is that there should be no escape of tax. If the gold is actually the subject-matter of a first sale, that is secured by the circumstance that the quantity of bullion sold by the dealer exceeds the quantity which he has purchased from other dealers. To the limit therefore the quantity of gold purchased from other dealers is part of the total quantity of bullion sold by this dealer, there is no reason to hold that that

 

quantity would not be covered by the non-liability to tax granted on account of a second sale. As has been urged by the learned counsel for the assessee, under circumstances such as the above, the natural presumption arises that a person engaged in a transaction will presumably follow that course which takes him out of the taxable category rather than otherwise.

5. We are of the opinion that the officers and the Tribunal below have set an artificial and unnatural standard in the facts and circumstances of the case. We are of opinion that the turnover in question can under the law be deemed to relate to the quantity of gold which the assessee had purchased from other dealers and was consequently the turnover relating to second sales of bullion.

6. The petition is accordingly allowed with costs. Counsel''s fee Rs. 100.