
(1959) 12 KL CK 0004
In the High Court Of Kerala
Case No : Tax Revision Case No. 1 of 1958

Sadhoo Beedi Depot

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-12-1959

Acts Referred:

Citation : (1960) 11 STC 289

Hon'ble Judges : T.C. Raghavan, J;M.A. Ansari, J

Bench : Division Bench

Advocate : A. Madhava Prabhu and D.A. Kamath, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.A. Ansari, J.—The revision petitioner has been carrying on the business of buying and selling beedies and for the assessment year 1955-56 had reported a net turnover of Rs. 2,68,641-14-4, having claimed on the turnover exemption of Rs. 11,81,158-2-3, which represented sales of beedi and beedi tobacco. The assessee's accounts were not accepted by the Deputy Commercial Tax Officer, who estimated the taxable turnover to be Rs. 10,05,701-11-3. The revision petitioner had taken two objections to the proposed assessment, the first being that because sales of beedi by the petitioner were not first sales in the State of Madras, they would not be governed by Section 5(vii) of the Madras General Sales Tax Act. The second objection was concerning inclusion of purchase turnover relating to raw tobacco. The Deputy Commercial Tax Officer rejected the first objection and partially accepted the other. He accordingly made deductions and the taxable turnover was refixed at Rs. 7,85,546-4-10. The appeal before the Commercial Tax Officer was partly allowed, who held the assessee to have been wrongly exempted on a turnover of Rs. 59,253-9-11. The assessment was, therefore, refixed at the turnover of Rs. 8,44,799-14-3. An appeal, No. 146-57, was filed against the aforesaid assessment, which appeal the Tribunal has dismissed. This revision has been filed against the dismissal and the question

formulated for decision in the petition is :-

Whether on the facts and circumstances of the case, the sales effected by the petitioner are liable to be assessed u/s 5(vii) of the Madras General Sales Tax Act.

2. The learned counsel for the petitioner has argued that the taxing authorities have erred in construing "first" sales effected in the State of Madras in the clause to mean sales by "the first" dealer. To appreciate the argument it would be useful to give details of the clause, whose interpretation by the taxing authorities this petitioner challenges. Section 5(vii) of the Madras General Sales Tax Act before its amendment was as follows :-

The sale of cigars and cheroots at less than two annas per cigar and cheroot and beedi, snuff, chewing tobacco, or any other product manufactured from tobacco, shall be liable to tax u/s 3, Sub-section (1), only at the point of the first sale effected in the State of Madras by a dealer, but at the rate of six pies for every rupee on his turnover.

3. Certain words have been added by the Amendment Act 13 of 1955. These were after the words "by the dealer" in the main clause and the amendment was made to operate retrospectively. The clause after the aforesaid amendment reads as follows :-

The sale of cigar and cheroots at less than two annas per cigar or cheroot and beedi, snuff, chewing tobacco or any other product manufactured from tobacco shall be liable to tax u/s 3, Sub-section (1), only at the point of the first sale effected in the State of Madras by a dealer who is not exempt from taxation u/s 3, Sub-section (3), but at the rate of six pies for every rupee on his turnover.

4. It was argued before us, as was done before the taxing authorities, that there cannot be several sales of the same goods by a dealer, therefore the use of the word "first "with" sale" is meaningless and if the legislature desired to make liable sales effected in the State of Madras by the first dealer it ought to have framed the clause accordingly. It was further urged that as the Act is not so worded the assessee should be given the benefit of doubt. We think the word "first" in the clause indicates which out of the several sales by several persons is liable; for there may be several sales of the same goods by several persons and the word "first" clearly shows what other sales were being exempted from the tax. The clause next shows that such a first sale must be effected within the State of Madras and the third condition is that the sale must be by a dealer who is not exempted. To put it differently the word "first" separates the sale liable to tax from several others effected in the State of Madras which would otherwise be liable. In the case before us all the aforesaid three conditions exist and therefore the complaint by the assessee that he has been illegally assessed is not justified. We therefore think that the question formulated in the revision petition should be answered in the affirmative and accordingly the revision petition is dismissed. We fix the costs at Rs. 50.