(1983) 12 MAD CK 0024

In the Madras High Court

Case No : T.C. (R.) No. 830 of 1982

Sree Karpagambal Mills Ltd. APPELLANT

Vs

State of Tamil Nadu RESPONDENT

Date of Decision : 21-12-1983

Acts Referred:

Citation : (1984) 57 STC 300

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

Bench : Division Bench

Advocate : R.S. Venkatachari, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader I, for the Respondent

Judgement

Ramanujam, J.—The assessee, who is the petitioner herein, was assessed to sales tax, among other things, on a turnover of Rs. 38,588

being the sale proceeds of a Benz Car, 1968 model, TMZ 905, sold by the assessee on 30th July, 1979, to one Gandhimathi Estate, South

Coorg. The assessment as regards that turnover was challenged by the assessee on the ground that he is not a dealer in cars and that he is only a

textile manufacturer and therefore sales tax cannot be levied on a casual sale like the sale of used car. That contention of the assessee was rejected

by the assessing authority on the ground that though the assessee is not dealing in cars, he has sold the car incidentally in the course of his business

and that, therefore, in view of the decision of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of

India Ltd. and Another, , even casual transactions of sale which is incidental to the main business of the assessee are taxable under the Tamil Nadu

General Sales Tax Act. The assessee appealed before the Appellate Assistant Commissioner, disputing amongst other things, his liability to pay sales tax on the sale of the used car. Before the Appellate Assistant Commissioner, the assessee contended that even if the sales turnover of the

car could be brought to charge, since the sale was a second sale in the State, it is not liable to be taxed. The Appellate Assistant Commissioner

held that since the assessee has purchased the car from one Hukami Chand, who is only a private person and not a dealer, the assessee''s sale is

the first taxable sale in the State and therefore, the assessee cannot escape the liability of payment of sales tax on the sale of his car. The matter

was taken to the Tribunal by the assessee, contending that his sale being a second sale, it cannot be taxed under the provisions of the Act. The

Tribunal also held that since the person from whom the assessee had purchased the car is not a dealer doing business transactions, the assessee''s

sale has to be taken as the first sale and therefore, the assessment on the sales turnover of the car cannot be questioned. Aggrieved by the decision

of the Tribunal, the assessee has come before this Court.

2. According to the learned counsel for the assessee, the facts of this case clearly attract the decision of this Court in State of Tamil Nadu v.

Chamundeswari Enterprises [1983] 52 STC 124 and therefore, the assessment on the sales turnover of the used car has to be set aside. As

against this, the learned Government Pleader contends that though the sale is found to be a second sale, the earlier sale is not a taxable sale, and

therefore, the assessee is not entitled to claim the benefit of exemption on the ground that his sale is a second sale in view of the decision of this

Court in Govindan & Co. v. State of Tamil Nadu [1975] 35 STC 50. There is no dispute as regards the facts. One Hukami Chand of this State

has purchased the car from a party in Karnataka State. From the said Hukami Chand, the assessee has purchased the car after Hukami Chand

had used the car for some years. Thereafter, the assessee had sold the car which he had purchased from Hukami Chand earlier, during the

assessment year 1979-80. On these admitted facts, question is, whether the assessee can claim exemption on the ground that his sale is the second

sale within the State.

3. The object of giving exemption for second sale is to see that in a series of sales in the State, the first sale is to be taxed and all other sales will

have to be exempted. Having regard to the object of giving exemption to second sales, it is not enough for the assessee to show that there has

been a first sale, but he must also show that the first sale is taxable one. It is no doubt true, as has been held in State of Tamil Nadu v.

Chamundeswari Enterprises [1983] 52 STC 124 and the earlier decision in Govindan & Co. v. State of Tamil Nadu [1975] 35 STC 50, the

assessee need not show that the earlier sale has, in fact, been taxed and tax has been collected thereon and that the onus is not on the assessee to

show that the first sale has, in fact, been taxed. But, even though the assessee is not under an obligation to get an exemption on the ground that his

sale is a second sale and that tax has been paid on the first sale, the assessee is under an obligation to show that the earlier sale is a taxable sale, as

otherwise, all the sales in respect of the goods will get exempted, which is not the object of the Act. In this case, the assessee has merely shown

that he had purchased the car from Hukami Chand of this State and that the sale by Hukami Chand is the first sale in the State. If Hukami Chand is

not a dealer and on that ground his sale is not a taxable sale, then the assessee cannot claim the benefit of exemption on the ground that his sale is a

second sale. If an exemption is granted on these facts, then, the first sale will not be taxable as the seller is not a dealer and the subsequent sale

cannot be taxed as it is not the first sale. Therefore to carry out the object of the Act in giving exemption to second sales, it must be established by

the dealer who claims the exemption that the first sale or the earlier sale is a taxable sale. In this case, there has been no investigation as to whether

Hukami Chand, who effected the first sale of the car in this State, is a dealer or not. Both the Appellate Assistant Commissioner and the Tribunal

have merely stated that Hukami Chand is a private person and therefore, he cannot be taken to be a dealer. Even a private person can be a dealer

and the question whether he is a dealer or not will depend upon the nature of the activity he is carrying on. Therefore, it cannot outright be said that

Hukami Chand is a dealer or not, in the absence of any detailed enquiry. If Hukami Chand is found to be a dealer as defined in the Act, then his

sale will be a taxable sale. On the other hand, if he is found to be not a dealer and doing no business at all, then his sale has to be taken as a non-

taxable sale and consequently, the assessee''s sale should be taken to be the first taxable sale in this State. As already stated, none of the authorities have gone into the question as to whether Hukami Chand is really a dealer as defined in the Act or not. Since that question is material

for deciding the question as to whether the assessee''s sale is a first sale, as claimed by the Revenue or a second sale, as claimed by the assessee,

we allow this appeal and remit the matter to the Tribunal to dispose of the matter afresh, after giving a finding as to whether Hukami Chand, from

whom the assessee had purchased the car, is a dealer or not. There will be no order as to costs.

