
(1990) 02 MAD CK 0001

In the Madras High Court

Case No : Tax Case No. 123 of 1988 (Appeal No. 23 of 1988)

Sree Narayan Timbers

APPELLANT

Vs

Joint Commissioner-II (Commercial Taxes), Madras-5

RESPONDENT

Date of Decision : 08-02-1990

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 3(2)

Citation : (1990) 02 MAD CK 0001

Hon'ble Judges : Venkataswami, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : K. Govindarajan, for the Appellant; R. Karuppan, Additional Government Pleader (Taxes), for the Respondent

Judgement

Venkataswami, J.—The turnover in dispute in this case is a sum of Rs. 2,73,941.95 relating to assessment year 1981-82. This turnover was

originally subjected to tax by the assessing officer. On appeal, the Appellate Assistant Commissioner exempted this turnover on the ground that the

sale of timber by the assessee/appellant herein is second sale eligible for exemption. The Joint Commissioner, Commercial Taxes, by exercising suo

motu power, issued notice and called upon the assessee to show cause as to why the exemption granted by the Appellate Assistant Commissioner

should not be withdrawn, on the ground that the first sale was by a dealer whose registration certificate for the assessment year in question has

been cancelled. The assessee contended that when the purchases were made by the assessee on 9th August, 1981, the registration certificate was

in force and only subsequent to the purchases, the registration was cancelled on 16th October, 1981, with retrospective effect from 1st April,

1981 and therefore, his purchases cannot be said to be ineligible for exemption.

This contention was not accepted by the Joint Commissioner.

Hence he set aside the order of the Appellate Assistant Commissioner granting exemption on the turnover of Rs. 2,73,941.95 and restored the order of the assessing officer. Aggrieved by the order of the Joint Commissioner, this appeal is filed.

2. Mr. K. Govindarajan, learned counsel appearing for the assessee, submitted that the retrospective effect given to the cancellation will not affect

the right of the assessee in claiming exemption as second sale. In support of that, he relied on two decisions, namely, Cromelite (India) Pvt. Ltd.

Vs. State of Maharashtra, and The State of Tamil Nadu Vs. Nava Bharath Enterprises (P.) Ltd., . In any event, the exemption will not depend

upon the sale by a registered dealer or unregistered dealer according to the learned counsel for the appellant. What is required by the assessee is

to show that the first sale is a taxable sale. If that is proved, the assessee is eligible to get exemption on his sale which is second sale. In support of

this, he relied on a decision of this Court in State of Tamil Nadu v. C. K. Gajapathy and Co. reported in [1984] 57 STC 137. In that case,

Ramanujam, J., speaking for the Bench, has taken the following view :

Once the local dealer was found to be dealer engaged in the manufacture or purchase or in the business of purchase and sale of stainless steel

vessels, all sales effected by it were taxable sales and the contention that merely because the seller was not a registered dealer, when it sold the

goods to the assessee, its sales to the assessee were not taxable sales could not be accepted. If the assessee was able to show that there had been

merely a taxable sale and its sale was only second sale, it was entitled to claim exemption of its sales as second sales.

From the above ratio, it is clear that once the fact that the first sale is taxable sale is established, then the second sale cannot be brought into the net

of taxation if the goods are liable to single point tax at the point of first sale simply on the ground that the first sale was not by a registered dealer.

This is because, a conjoint reading of the definitions of ""dealer"" and ""sale"" read with the charging section, namely, section 3, particularly, section

3(2) of the Tamil Nadu General Sales Tax Act, 1959, will show that there is nothing to suggest that if the first sale is not by a registered dealer, it

will not attract sales tax. Further, for the default, if any, on the part of the

department, in not collecting the tax on the first sale by an unregistered dealer, the purchaser cannot be made to suffer tax on his factual second sale. It can also be presumed that at the time of purchase, the first seller must have collected tax. So far as the case on hand is concerned, it is common ground that the first seller was a registered dealer, admittedly for the year 1980-81, and because he failed to renew the registration for the year in question, namely, 1981-82, it was cancelled on 16th August, 1981, with effect from 1st April, 1981 while the transaction in dispute took place on 9th August, 1981. Therefore, it is not correct to hold that the sale by the appellant/assessee is the first sale exigible to tax.

3. For these reasons and also applying the ratio of the decision in State of Tamil Nadu Vs. C.K. Gajapathy and Co., , we have no hesitation to allow the tax case and set aside the order of the Joint Commissioner and restore the order of the Appellate Assistant Commissioner. However, there will be no order as to costs.

4. Appeal allowed.