

(1980) 02 MAD CK 0022

In the Madras High Court

Case No : Tax Case No. 218 of 1980 (Appeal No. 8 of 1980)

Sri Venkateswara Agencies

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 19-02-1980

Acts Referred:

Citation : (1980) 46 STC 430

Hon'ble Judges : M.M. Ismail, C.J.; Ratnam, J

Bench : Division Bench

Advocate : S. Swaminathan, for the Appellant;

Judgement

Ismail, C.J.—This is an appeal against the order of the Board of Revenue (Commercial Taxes) dated 19th September, 1979, suo motu

revising the order of the Appellate Assistant Commissioner, Cuddalore. The assessee is a dealer in petroleum products. It sold a car and claimed

exemption from tax, in respect of the turnover relating to the same, on the ground that its sale was only a second sale, as it had purchased the car

from one Muthuswami in this State itself. The Deputy Commercial Tax Officer, Nannilam, who made the assessment, stated that the appellant had

not produced any recorded proof whether the earlier sale had already suffered tax or not. In this view, he rejected the claim for exemption made

by the appellant herein. Against the order of the Deputy Commercial Tax Officer, the appellant preferred an appeal to the Appellate Assistant

Commissioner, Cuddalore. That officer, by his order dated 10th January, 1976, allowed the appeal. He stated that he had carefully considered the

full facts of the case which showed that the appellant had purchased the car on 19th February, 1972, from one Muthuswami Gounder of

Coimbatore, then residing at Tirupur and that the appellant was not the first seller of the car in the State to attract liability to tax at 15 per cent on

Rs. 6,700. He concluded :

In the absence of any evidence to show that the appellants are the first sellers of the car in the State and relying on the recent decision in the case

of Govindan & Company v. Sales Tax Appellate Tribunal [1973]32S.T.C.188, the revised assessment made for 1972-73 on Rs. 6,700 levying

the tax and penalty of Rs. 1,005.00 and Rs. 1,508.00 respectively is set aside and the appeal is allowed.

2. It is this order of the Appellate Assistant Commissioner that was revised by the Board. The Board referred to several decisions of this Court

holding that any person claiming exemption from tax on the ground that his was the second or subsequent sale in the State must prove that there

was an earlier taxable sale in the State, even though it was not necessary for him to prove that the earlier sale had actually suffered tax, and came

to the conclusion that in this case the appellant had not established that there was an earlier taxable sale in the State. On this basis, the Board of

Revenue sustained the assessment made by the Deputy Commercial Tax Officer. It is this order of the Board of Revenue that is challenged before

us.

3. Mr. Swaminathan, the learned counsel for the appellant, contended that the ground for assessment given by the Deputy Commercial Tax Officer

was different from the ground for assessment given by the Board in the sense that the Deputy Commercial Tax Officer proceeded on the basis that

the assessee must prove that the earlier sale had suffered tax, while the Board proceeded only on the basis that the earlier sale was a taxable sale in

the State. We are of the opinion that this contention cannot in any way affect the validity of the order of the Board of Revenue. From what we have

pointed out already, it will be seen that the Appellate Assistant Commissioner proceeded solely on the basis that as that appellant was not the first

seller, his sale was exempt from tax. Certainly that decision is not correct in law. On the face of it, therefore, the order of the Appellate Assistant

Commissioner was erroneous in law. When the Board of Revenue took up suo motu revision proceedings, it is not in dispute that the entire

assessment was before the Board. If so, certainly, the Board can even sustain

the order of the Deputy Commercial Tax Officer on a ground different from the one given by the Deputy Commissioner Tax Officer provided the Board had given an opportunity to the appellant to meet the new ground. The Board in this case in the notice which it issued to the appellant herein had given it that opportunity by pointing out that the appellant would be entitled to claim exemption only if it proved that there was an earlier taxable sale in the State and even after the opportunity contemplated was made available to the appellant, the appellant did not prove that the earlier sale was a taxable sale in the State. If so, the Board of Revenue was right in revising the order of the Appellate Assistant Commissioner and sustaining the assessment made by the Deputy Commercial Tax Officer, though on a slightly different ground. Consequently, the appeal fails and is dismissed.

4. Appeal dismissed.