(1981) 08 MAD CK 0028

In the Madras High Court

Case No : Tax Case No. 908 of 1977 (Revision No. 206 of 1977)

St. Antony's Timber Depot APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 20-08-1981

Acts Referred:

Citation : (1982) 51 STC 193

Hon'ble Judges : Swamikkannu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Balasubrahmanyan, J.—The petitioner is a firm by name St. Antony''s Timber Depot, Coonoor. It is a sales tax assessee. In the year 1975-

76, the assessee purchased from the Government Timber Depots timber of the value of Rs. 67,917.33. The assessee sold the timber subsequently

to various parties. This amount is estimated to be Rs. 86,255. The Deputy Commercial Tax Officer considered that the sales amounting to Rs.

86,255 were chargeable to sales tax as first sales under item 84 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. He made

an assessment accordingly. This assessment was confirmed in appeal by the Appellate Assistant Commissioner and later by the Sales Tax

Appellate Tribunal. The assessee is now before us in revision.

2. The contention in this revision is that the assessee''s sale of timber is not its first sale in the State, but only its second sale. It is hence urged that

entry 84 excludes this sale from single point levy.

3. The Tribunal did not accept this contention. They relied on an explanation

which was added to entry 84 by an amending legislation, Tamil Nadu

Act 15 of 1975. The explanation came into force on 12th March, 1975.

4. Entry 84 together with the explanation is as under :

84. Timber and bamboo.

Explanation. - For the purpose of this item, in the case of timber and bamboo purchased by the forest contractors in the auction of forest coupes

conducted by the forest department of the Government, the sale by such contractors of such timber and bamboo in any form or size shall be

deemed to be the first sale and the sale by the forest department in such auction of forest coupes shall not be deemed to be the first sale.

5. Before the explanation was added to entry 84, the single point levy on sales of timber and bamboo was to be worked out by finding out if the

sale in question is the very first sale in the State. If it is, the charge attaches. If it is not, it does not. One has only to go into the facts to find out

which is factually the first sale.

6. The explanation, however, has, in effect, made the first purchaser in the State as the first seller in the State. Factually, it is impossible for anyone

who is the first purchaser of an article in the State to be also its first seller in the State, if and when he later resells the article. But the explanation

has made a factual second sale as a statutory fiction. The question in this case is whether the statutory fiction can be applied to the present assessee

?

7. A study of the explanation shows that the statutory fiction does not cover all sales of timber and bamboo. On the contrary, the fiction is limited in

its application to sale by ""auction of forest coupes conducted by the first department of the Government"". These words convey a separate class of

transaction by the forest department. There is a distinction between auction of forest coupes on the one hand, and sales of timber on the other.

Both may be conduced by the same departmental officials. But in the first type of case, the auction is not of items of timber as such. The subject of

auction is of coupes in the gross according to area of description, and in situ. In contrast are sales by the forest department from its many depots of

forest timber, bamboo, etc., which had already been felled and brought to stock. This latter kind of sale cannot in reason be regarded as a sale of forest coupes.

8. The error of the Tribunal in the present case consists in overlooking the distinction between sale of timber and sale of forest coupes. The

explanation to entry 84 no doubt lays down a statutory fiction. But even that fiction bears on the presence of certain factual elements in the case.

The most important of which is that the sale should be of forest coupes. A statutory fiction must not only be construed according to its terms, but it

must be applied only where the facts required for its application are fully present. When the fiction in the explanation to entry 84 applies only to

those who have purchased coupes, it is not for the taxing authorities to extend that fiction and apply it also to those who have not purchased

coupes in coupe auctions, but only timber from Government depots. The order of the Tribunal states that the assessee had purchased the timber in

question from the Government Timber Depot. On this finding, it is impossible to invoke the explanation to entry 84 of the First Schedule to the Act.

9. In the result, the Tribunal''s order is set aside and the assessment on the entire turnover of Rs. 86,255 assessed as deemed first sale of timber is

set aside. The assessee will have its costs from the department. Counsel''s fee Rs. 250.

10. Petition allowed.

