(1995) 03 MAD CK 0129

In the Madras High Court

Case No : Tax Case (Revision) No. 73 of 1984

State of Tamil Nadu APPELLANT

Vs

Ameen and Company RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (1995) 03 MAD CK 0129

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The department is the petitioner herein. The assessee is a dealer in tanned hides. For the assessment year 1979-80, the assessee purchased wattle extract for a sum of Rs. 1,28,504.56 from South India Tanners and Dealers Association (hereinafter referred to as "association"). The assessing officer holding that the assessee was the last purchaser in the State, taxed the purchase of wattle extract under item No. 59 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (for short, "the Act"). This order was confirmed by the Appellate Assistant Commissioner on appeal. Aggrieved by the said order, the assessee filed second appeal before the Tribunal. The Tribunal relying upon the various decisions, came to the conclusion that the sum of Rs. 1,28,504.26 being the purchase turnover of wattle extract is not taxable, since the association did not sell the wattle extract to the assessee, but distributed the same to its members. Accordingly, the sum of Rs. 1,28,504.26 was deleted. It is against that order, the State is in revision before this Court.

2. Learned Additional Government Pleader (Taxes) submitted that the assessee was the last purchaser of the wattle extract in the State and therefore, the purchase turnover is taxable under the Act. It was further submitted that the association did not act as the agent of the members. The association itself is a dealer and assessed to tax and therefore, what was said to be distributed by the association was sale of wattle extract liable to be taxed under the Act. It was

further submitted that according to the Explanation (1) to section 2(n) of the Act, the transfer of property involved in the supply or distribution of goods by a society, club, firm or any association to its members for cash or for deferred payment or other valuable consideration or not in the course of business shall be deemed to be a sale for the purpose of this Act and therefore, the distribution of wattle extract by the association to its members is to be considered as sale and purchase effected as a last purchase in the State. According to the learned Additional Government Pleader, admittedly the respondent had purchased the wattle extract from the association and used the same in the tanning process. Since it was only an outright purchase from the association, the Tribunal was not correct in deleting the amount of Rs. 1,28,504.26.

3. On the other hand, learned counsel for the respondent submitted that the association imported wattle extract and distributed the same to its members after collecting only service charges. Therefore, there is no sale involved in this transaction. Learned counsel for the respondent-assessee relied upon the articles of association and the statement contained in the annual report, in order to contend that the object of the association was only to mutually help the members in the matter of obtaining wattle extract. According to learned counsel, since no transfer is involved, the assessee cannot be considered to be a purchaser of wattle extract from the association. In order to support his contention, the learned counsel for the assessee relied upon the decisions in Madurai Kaithari Javuli Urpathiyalargal Sangam Ltd. and Another Vs. State of Tamil Nadu, and The State of Tamil Nadu Vs. The Madras Advocates'' Co-Operative Society Limited, . Therefore, according to the learned counsel, the Tribunal was correct in holding that there was no purchase or sale while the association distributing wattle extract to its members.

4. We have considered the rival submissions. The fact remains that the assessee is a member of the association and from the association, the assessee got wattle extract to the value of Rs. 1,28,504.26. According to the assessee, since the wattle extract was distributed by the association to its members, there was no sale or transfer and therefore, the said amount is not amenable to tax under the Act. On the other hand, the department contended that the association sold the wattle extract to the assessee and therefore, the assessee being the last purchaser and consumer, the sale turnover is liable to be taxed under the Act. According to the assessee, there is mutuality among the members of the association. Therefore, there is no profitability while the association importing the wattle extract and distributing the same among the members by only collecting the service charges. The department contended that the association itself is a dealer and by utilising its import licence, the association said to have imported wattle extract. The assessee is also having import licence and according to the department, the assessee has not surrendered the import licence in favour of the association for the purpose of importing wattle extract, so that the assessee can say that the association is an agent in the matter of importing wattle extract. According to the department, the assessee was a last purchaser

and consumer of wattle extract and therefore, the turnover of the said amount of Rs. 1,28,504.26 is liable to be taxed.

5. The Tribunal merely relying on the decisions came to the conclusion that the said turnover is not taxable. There was no discussion for coming to the said conclusion. It is not known, whether wattle extract was imported by the association either by utilising its own import licence or the import licence of the assessee and other members of the association. It is also not known, whether service charges alone was paid to the association or the value of the goods was paid by the assessee. It is not in dispute that the amendment introducing section 2(n) brought about by Amendment Act No. 28 of 1984 which came into effect from May 29, 1984 will not be applicable to the facts of this case, since the assessment year involved in this case for the year 1979-80. However, without proper particulars, it is not possible to decide whether there is any transfer that took place between the assessee and the association in the matter of distributing wattle extract. We, therefore, direct the Tribunal to ascertain all these facts and decide the issue on merits and in accordance with law after giving an opportunity of being heard to the assessee. In this view of the matter, this revision is allowed, the order passed by the Tribunal is set aside and the matter is remitted back to the Tribunal with a direction to decide the issue on merits and in accordance with law. There will be no order as to costs.

6. Petition allowed.