(1995) 09 MAD CK 0083

In the Madras High Court

Case No : Tax Case Revisions No''s. 1592 to 1595 of 1984

State of Tamil Nadu APPELLANT

Vs

Bappu Raja and Company RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Item 84(1)

Citation : (1995) 09 MAD CK 0083

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

Bench : Division Bench

Judgement

Thanikkachalam, J.—All these revisions relate to the assessment year 1978-79. Two revisions relate to cancellation of tax levied under the Tamil Nadu General Sales Tax Act and additional sales tax and two of the revisions relate to dismissal of the enhancement petitions filed by the department. The assessee is a dealer in firewood and timber at Rajapalayam. The assessee was finally assessed on a taxable turnover of Rs. 9,84,140 for the assessment year 1978-79 and additional sales tax was also levied on the above turnover. On appeal, the Appellate Assistant Commissioner remitted back the assessment to the file of the assessing officer for further investigation and to pass an order on merits and in accordance with law. Against that order, the assessee preferred appeal before the Appellate Tribunal, disputing the entire turnover of Rs. 9,84,140 and also the additional sales tax levied therein. It has filed two separate appeals both under the Tamil Nadu General Sales Tax Act and the Tamil Nadu Additional Sales Tax Act, 1970. The Tribunal passed a common order. Before the Tribunal, the department contended by filing an enhancement petition to tax the sale of softwood at 5 per cent single point, which the Appellate Assistant Commissioner has observed as liable to multi-point rate of tax.

2. The turnover under dispute relates to the sales made to South India Viscose Limited and Seshasayee Paper Mills. There are 14 items of sales as enumerated in the order of the Tribunal. In respect of items 1 to 4, the assessee has

contended that the purchases were made from Tamil Nadu Forest Plantation Corporation, Trichy, Salem and Srinivasanallur and that they are second dealers and that the assessee had already paid tax to them. According to the assessee, even if the goods are treated as timber, the assessee is only a second dealer and therefore not liable to tax. The department accepted on verification that the purchases are from Tamil Nadu Forest Plantation Corporation and therefore, the assessee is liable to tax at 5 per cent. Hence, the Tribunal held that items 1 to 4 are not taxable at the hands of the assessee, as they are only second dealers.

3. In respect of items 5, 6 and 7, the assessee explained that the coupe itself in all the above cases is only fuel coupe and that all the goods were sold as firewood, the sales of which are exempted. On verification, it was found that the coupe is only fuel coupe and the assessee has also shown them as firewood sales and hence, all the items are exempted from tax according to the Tribunal. Items 8, 9 and 10 relate to sales to South India Viscose Limited and to Seshasayee Paper Mills. In these cases, the assessee has purchased timber from Forest Department through one of the partners by name M. P. V. Ayyanar Raja. The assessee contended that Thiru M. P. V. Ayyanar Raja in his individual capacity has purchased those goods from the Forest Department, after paying the tax and then, gave the timber to the assessee. The assessee is only a second dealer and therefore not liable to tax, according to the Tribunal. Under item 84 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, in case of timber and bamboos purchased by the forest contractor in the auction of the forest coupe conducted by the Forest Department the sale by such contractor of the timber shall be deemed to be the first sale. The assessee Bappu Raja and Company is not a forest contractor. Only the partner Ayyanar Raja was the contractor and he alone is entitled to purchase from the Forest Department. The Forest Department records show that Thiru Ayyanar Raja in his individual capacity has purchased timber from the Forest Department. The said Ayyanar Raja has purchased timber and passed it on the assessee. By following an earlier order of the Tribunal in the case of Sri Ram and Company v. State of Tamil Nadu in M.T.A. 280 of 1980, the Tribunal held that inasmuch as the assessee is only a second dealer, the assessee is not liable to tax on its sales. The assessee is not a direct purchaser from the Forest Department. In the Circumstances, the transactions in items 8, 9 and 10 are not liable to tax, according to the Tribunal.

4. The assessee purchased from private sources karuvai timber and sold them as firewood. Karuvai generally in common parlance is known and used as firewood and therefore, this is exempt from tax, according to the Tribunal. In so far as sale of eucalyptus to South India Viscose Limited is concerned, this wood has been purchased from private parties in Rajapalayam and that the purchase vouchers do not show that they are firewood. Eucalyptus can also be sold as timber. Therefore, the turnover of Rs. 1,296 will be taxed at 5 per cent.

5. The department contended that according to the High Court''s decision in T.C. No. 938 of 1979 dated September 29, 1980 [Reported as K.S. Vasan and Sons

Vs. The State of Tamil Nadu, , the certificate issued by the Forest Department is of no significance, for it is not clear as to on what basis, the Forest Department gave certificate that it is a fuel coupe. The assessment records in the present cases reveal that the assessee is a dealer in firewood and timber. The wood under dispute, wattle eucalyptus, blue gum, can be used as timber as well as firewood and therefore, the wood is timber or firewood has to be decided with reference to the purchase and sale records only and the judgment referred to by the department will not apply to the assessee''s case, as the assessee is not an exclusive dealer in timber. The assessee did not advance any argument regarding the turnover disputed in items 13 and 14 mentioned above. Hence, the levy of tax on these items was confirmed by the Tribunal.

6. The Appellate Assistant Commissioner has held while remanding the appeal to the assessing officer that the turnover of softwood should be subjected to tax at 4 per cent multi-point as against 5 per cent single point levied by the assessing officer under entry 84 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. The department also represented that the Appellate Assistant Commissioner has erred in holding that softwood is not timber and would not fall under entry 84 of the First Schedule. Hence, the department submitted in the enhancement petition to levy tax on the sale of softwood at single point at 5 per cent. According to the department, the sale of wattle, blue gum should be taxed at single point rate as timber. The above goods can be classified as firewood or as timber. Even if it is treated as timber, the assessee is only a second dealer and the transaction cannot be taxed. Therefore, the Tribunal held that the enhancement petition is liable to be dismissed. In respect of additional sales tax levied, that was also cancelled. In the result, the appeal under the Tamil Nadu General Sales Tax Act, 1959, was allowed substantially and the appeal under the Additional Sales Tax Act was allowed in full and the enhancement petition was dismissed.

7. Learned Additional Government Pleader for Taxes submitted that the Tribunal was not correct in holding that the turnover in question was not exigible to tax, since the sales are second sales. According to the department, the sale by the assessee is a first sale under Explanation 2 to item 84 of the First Schedule to the Tamil Nadu General Sales Tax Act and the assessee is liable to pay the tax. The assessee is rightly subjected to tax by the assessing authority to single point as first dealer. The records would go to show that the purchases were on behalf of the firm only and not by the individual partner for any of his own business dealings. The Tribunal ought to have allowed the enhancement petition filed by the Revenue on the ground that the turnover of softwood should be subjected to single point tax under item 84 of the First Schedule. Karuvai purchases were not utilised as firewood.

8. We have heard the learned Additional Government Pleader for Taxes and perused the records carefully. In order to hold that the assessee was only a second dealer and the assessee is not liable to tax on such sales, since the

assessee is not a direct purchaser from the Forest Department, the Tribunal relied upon its earlier decision in M.T.A. 280 of 1980. The order passed in M.T.A. 280 of 1980 came up by way of revision before this Court in T.C. 730 of 1983. By an order dated December 19, 1984, this Court accepted the finding given by the Tribunal and dismissed the revision filed by the department. In view of the abovesaid facts, the order passed by the Tribunal that the transactions in items 8, 9 and 10 are not liable to tax, is in order. In so far as karuvai is concerned, there is no evidence on the side of the department that it was not used as firewood. Further, karuvai timber was also purchased by the partner of the firm from the Forest Department and the same was sold to the assessee-firm and hence, the assessee is the second seller. Therefore, we uphold the order passed by the Tribunal in exempting the sale value of karuvai timber from tax. Another item is sale of wattle, eucalyptus, blue gum. The assessment records in the present case reveal that the assessee is a dealer in firewood and timber. Whether the woods purchased by the assessee are timber or firewood, has to be decided with reference to purchase and sales records. Further the purchase of these timbers from the partner of the firm and the sale by the firm would be a second sale. Hence, the sale value of eucalyptus should also be exempted as second sales.

9. According to the department, the Appellate Assistant Commissioner was not correct in holding that softwood is not timber and would not fall under entry 84 of the First Schedule. Hence, the enhancement petition was filed to tax the sale of softwood at single point at 5 per cent. Under this head, the sale of wattle, blue gum should be taxed at single point rate as timber. The above goods can be classified as firewood or as timber, according to the Tribunal and even if it is treated as timber, the assessee is only a second dealer and the transaction cannot be taxed. It is on this ground, the enhancement petition was dismissed. The reason given by the Tribunal for not taxing the sale value of wattle, blue gum since it is only a second sale, is in accordance with the earlier order passed by this Court in T.C. 730 of 1983 dated December 19, 1984. Accordingly, we see no reason to interfere with the order passed by the Tribunal in dismissing the enhancement petition. Hence all the revisions are dismissed. No order as to costs.

10. Petitions dismissed.

