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**(1995) 07 MAD CK 0078**

**In the Madras High Court**

**Case No :** T.C. No's. 16 to 19 of 1989 (Revisions No's. 15 to 18 of 1989)

State of Tamil Nadu

APPELLANT

Vs

C. Pandian

RESPONDENT

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**Date of Decision :** 05-07-1995

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 3

**Citation :** (1995) 07 MAD CK 0078

**Hon'ble Judges :** Venkatachalam, J;Abdul Hadi, J

**Bench :** Division Bench

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## Judgement

Abdul Hadi, J.—These tax case revisions by the Revenue are against the common order of the Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A. Nos. 658, 659, 697 and 698 of 1986 respectively filed by the assessee. While T.C. (R) Nos. 16 and 17 of 1989 respectively relate to tax and additional tax in relation to assessment year 1982-83, T.C. (R) Nos. 18 and 19 of 1989 respectively relate to additional tax and tax in relation to assessment year 1981-82.

2. The question involved in these revisions is whether the turnover to the extent of Rs. 7,42,118 in relation to the assessment year 1981-82 and the turnover to the extent of Rs. 4,26,032 in relation to the assessment year 1982-83 are only second sales and hence not taxable in view of section 3(2) of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act") or they are only first sales exigible to tax. While the Appellate Assistant Commissioner has held that they are only first sales by the assessee, the Tribunal below has held that they are only second sales and hence exempted them from tax pursuant to section 3(2) of the Act. So holding the Tribunal has also held that the assessee is not liable to additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970. Aggrieved, the Revenue has preferred these tax case revisions.

3. Since the respondent-assessee remains unrepresented, we have heard the argument of the learned Additional Government Pleader (Taxes) alone.

4. Learned Additional Government Pleader (Taxes) submits that there was no material at all to prove the contention of the assessee as he has not furnished any relevant details of the source of their alleged purchase of single point goods spoken to u/s 3(2) of the Act. She also points out that the abovesaid turnovers were found from incriminating documents recovered on inspection of the assessee's place of business on July 20, 1982 and that the said turnovers were not accounted in the books of accounts of the assessee. She also points out that even though two pre-assessment notices were separately sent to the assessee, one in relation to the assessment year 1981-82, dated January 9, 1986, and another in relation to the assessment year 1982-83, dated March 6, 1986, there was no reply from the assessee. Only for the first time in the first appeal grounds, the assessee claimed that the abovesaid turnovers were only second sales by the assessee. She also points out that the Tribunal has not considered the abovesaid features and that its approach to the question is totally unsound.

5. The Tribunal has only observed that the abovesaid incriminating records did not show that the assessee had made inter-State purchases of the abovesaid goods or "voucher purchases" from agriculturists or any other persons, and on that footing alone has come to the conclusion that the Revenue has not proved that the abovesaid goods in the hands of the assessee have not suffered tax earlier. Learned Additional Government Pleader (Taxes) submits that the Tribunal has thrown the burden wrongly on the Revenue since according to her, the burden of proof is only on the assessee to prove that the alleged earlier purchases by the assessee were taxable sales in order to claim exemption for the impugned sales as subsequent second sales.

6. After going through the Tribunal's order, as well as the orders of the other authorities below, we find that there is great force in the above referred argument of learned Additional Government Pleader (Taxes). If really, the assessee wanted to claim exemption u/s 3(2) claiming the impugned turnovers as second sales in the State of Tamil Nadu, of single point goods the burden is on him to prove that there were earlier taxable sales of those goods in his favour in Tamil Nadu. But, he has not even chosen to give any material about his alleged earlier purchases. The Tribunal has certainly overlooked this material feature of the case. In fact, the assessee did not even reply to the above referred to both the pre-assessment notices. This fact is also adverted to by the Appellate Assistant Commissioner thus :

"The dealer had not also raised any objections to the pre-assessment notices issued for the years 1981-82 and 1982-83 proposing assessments on the basis of the entries in the records recovered."

Likewise, even in the original assessment order, the assessing authority also referred to this fact. We were also shown from the assessment file the relevant pre-assessment notices, one dated January 9, 1986 and another dated March 6, 1986, as already mentioned. If really, the abovesaid impugned sales are second sales and hence exempted from tax, the assessee would have replied to the pre-

assessment notices accordingly. It is significant to note that not only to the first pre-assessment notice dated January 9, 1986, but also to the second pre-assessment notice dated March 6, 1986 there was no reply. Even if the assessee wanted to say that his own statement before the inspection authority cannot be a guiding factor in deciding the question, he should have stated so by sending a reply to the pre-assessment notices. Further, only if the assessee gives particulars about his previous vendors, the department can verify whether those vendors and the alleged prior sales were genuine. But, when the assessee chooses not to give any particulars about the alleged purchases by him, the burden is not cast on the department to prove that there were earlier sales in favour of the assessee. Further, it should also be noted that the above referred two turnovers were not at all accounted in the books of accounts and they were only discovered through the incriminating records recovered at the time of the abovesaid inspection. In this connection, we may also point out that in relation to the abovesaid incriminating records, the finding of the authorities below is that those records consisting of several slips and pocket note books related to the assessee only. Further, simply because there was no proof that the assessee has effected any inter-State purchases or voucher purchases from agriculturists or any other person, it can be straightaway concluded that the impugned turnovers represent only second sales. Therefore, it is clear to us that the Tribunal has erred in law in having modified, the assessment made by the assessing authority, which was confirmed by the first appellate authority.

7. Accordingly the order of the Tribunal is set aside in relation to the abovesaid two turnovers in the respective years and the order of the assessing authority is confirmed. Consequently, these tax revisions are allowed. No costs.

8. Petitions allowed.