(1983) 11 MAD CK 0038

In the Madras High Court

Case No : Tax Case No. 784 of 1983 (Revision No. 284 of 1983)

State of Tamil Nadu APPELLANT

Vs

C.K. Gajapathy and Co. RESPONDENT

Date of Decision : 10-11-1983

Acts Referred:

Citation : (1984) 57 STC 137

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

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

Judgement

Ramanujam, J.—The disputed turnover in this case is Rs. 29,108.07. The said sum represents the sales turnover of stainless steel vessels in

the hands of the assessee. The assessee''s contention was that the vessels sold by it on a turnover of Rs. 29,108.07 cannot be taxed as they are

second sales. The assessee-company also produced the bills of its purchase to show that it purchased the goods from a local dealer, Messrs.

Premier Steel Distributors, carrying on business at No. 27, Ravanier Street, Madras-3. The fact that the stainless steel vessels sold by the assessee

have been purchased from a local dealer cannot be disputed in view of the bills of purchase dated 30th June, 1980, and 1st July, 1980, produced

by the assessee. The only contention urged by the Revenue is that even though the purchases are from a local dealer, the local dealer''s registration

certificate having been cancelled even before the date of purchase, the sales could not be taxed, and therefore, the sales by the assessee should be

taxed as first sales. The Tribunal considering the contention of the Revenue, held that the purchases by the assessee being from a local dealer, and the sales by the local dealer being taxable sales, the question whether he is a registered dealer or not is immaterial. In this view, the Tribunal held

that the disputed turnover represents the assessee''s second sales and they are entitled to be exempted as second sales. That decision of the

Tribunal has been challenged before us on the ground that the local dealer who sold the goods to the assessee had no valid registration certificate,

his registration certificate having been cancelled earlier to the date of his purchases but notified later on 31st December, 1980, in the Commercial

Taxes Bulletin, and that since the goods had been purchased by the assessee at a time when his vendor had no valid registration certificate, the

assessee''s sales should be taken as first sales. We do not see how the Revenue could put forward such a contention. If the assessee is able to

show that there has been merely a taxable sale and its sale was only a second sale, it is entitled to claim exemption of its sales as second sales. In

this case, Messrs. Premier Steel Distributors are admittedly dealers in stainless steel-wares. Even assuming as contended by the Revenue that they

did not have a valid registration certificate, their sales are admittedly taxable. It is not the case of the Revenue that all sales effected by unregistered

dealers are not liable to be taxed under the Act. As a matter of fact, if that were to be the position, all registered dealers would like to have their

registration cancelled for the purpose of escaping from tax. Therefore, we are not in a position to accept the contention of the learned Government

Pleader that merely because Messrs. Premier Steel Distributors were not registered dealers at the time when they sold the goods to the assessee,

their sales are not taxable sales. It is not the case of the Revenue that Messrs. Premier Steel Distributors are not dealers and the sales effected by

them were only casual and the sales have not been effected in their capacity as registered dealers. Once Messrs. Premier Steel Distributors are

found to be dealers engaged in the manufacture or purchase or in the business of purchase and sale of stainless steel vessels, all sales effected by

them are taxable sales. It has been held by this Court in Govindan & Co. v. State of Tamil Nadu [1975] 35 STC 50 and State of Tamil Nadu v.

Chamundeswari Enterprises [1983] 52 STC 124 that if there is a prior sale in the State, the subsequent sales cannot be taken to be exigible for tax

under the Act as second sales. The goods in question are admittedly governed by single point scheme of taxation. In this view of the matter, we do not have any justification for interfering with the order of the Tribunal. The tax case is, therefore, dismissed. No costs.

