

**(1977) 01 MAD CK 0038**

**In the Madras High Court**

**Case No :** Tax Case No. 161 of 1973 (Revision No. 138 of 1973)

State of Tamil Nadu

APPELLANT

Vs

Kannagi Engineering Works

RESPONDENT

**Date of Decision :** 19-01-1977

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 38

**Citation :** (1979) 43 STC 491

**Hon'ble Judges :** Sethuraman, J;Ismail, J

**Bench :** Division Bench

**Advocate :** The Additional Government Pleader, for the Appellant; R. Venkataraman, for the Respondent

**Final Decision :** Dismissed

## Judgement

Ismail, J.—This is a petition preferred by the State u/s 38 of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as the Act, against the order of the Sales Tax Appellate Tribunal dated 23rd October, 1972. The matter lies within a very narrow compass. The respondent herein had returned a turnover of Rs. 30,632 representing the sale of cycle rickshaws. The question for consideration was, whether the sale was liable to tax at 6 per cent single point under entry 38 of the First Schedule to the Act or at 3 per cent multi-point. The case of the State was that the turnover in question was liable to be assessed at 6 per cent single point, while the case of the respondent was that it was liable to be assessed only at 3 per cent multi-point. In other words, the controversy was whether cycle rickshaws fell within the scope of entry 38 of the First Schedule to the Act or not. The said entry is as follows:

Bicycles, tandem cycles and cycle combinations, tyres and tubes and accessories and parts.

2. The Tribunal in an elaborate order has held that cycle rickshaws cannot be brought within the scope of "cycle combinations" occurring in the said entry. The

Tribunal has pointed out that the essence of a bicycle is self-propulsion, while, in the case of a cycle rickshaw, the essence is somebody carrying another seated in the rickshaw, and it is more pronounced as a rickshaw than as a cycle. We cannot say that the said reasoning of the Tribunal is erroneous. At the same time we may also point out that the collocation of the words occurring in entry 38 will clearly show that cycle rickshaws cannot fall within the said entry. It is to be noticed that in the said entry, after the word "bicycles", there is a comma and thereafter the expression "tandem cycles and cycle combinations" occurs. Thus, it will be seen that the expression "cycle combinations" goes along with the expression "tandem cycles" and that is why the word "and" has been used in-between the two and the expressions are not separated by any comma. The significance of this can be appreciated when we take into account entry 3 of the same schedule. That entry, so far as it is relevant, reads as follows:

Motor vehicles including motor cars, motor taxi-cabs, motor cycles and cycle combinations, motor scooters, etc., etc.

3. Here again it will be seen that the expression "cycle combinations" is tacked on with the expression "motor cycles" by the word "and" and the two expressions are not separated by a comma, as the other expressions are separated in the said entry, thus indicating that "cycle combinations" goes along with the expression "motor vehicles". On the same reasoning, in the present case, the expression "cycle combinations" occurring in entry 38 will go along with "tandem cycles" and if so, cycle rickshaws will not come within the scope of that entry. Hence, we hold that the Tribunal has not committed any error of law in coming to the conclusion that cycle rickshaws will not fall within the scope of entry 38 of the First Schedule to the Act.

4. The result is the tax revision case fails and is dismissed with costs of the respondent-counsel's fee Rs. 250 (Rupees two hundred and fifty only).