
(1991) 03 MAD CK 0034

In the Madras High Court

Case No : T.C. No. 1231 of 1981 (Revision No. 529 of 1981)

State of Tamil Nadu

APPELLANT

Vs

N.C.R. Venkatesan

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 10

Citation : (1991) 03 MAD CK 0034

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Advocate : R. Lokapriya, for the Appellant; S.N. Kirubanandam for C. Venkataraman, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—Consequent upon the inspection of the business premises of the assessee-respondent by the officers of the

Intelligence Wing on July 1, 1973, 22 bags of gingelly seeds, 35 bags of groundnut kernels and 60 bundles (each 5 kgs.) of cane jaggery were

found in the stock. Besides, the assessee was also found to have done business in paddy and rice in the relevant assessment year 1973-74. As per

the books of account noticed by the Intelligence Wing, paddy purchases amounted to Rs. 21,853 while the sale of rice amounted to Rs. 10,430.

During the inspection and subsequently from the records of Khadi Soap Unit, Kaveripattinam, it was noticed that the assessee had supplied iluppai

oil to the extent of Rs. 1,28,000 in three instalments between September 5, 1973 and September 29, 1973. The counterfoils of the bills were not

produced by the assessee before the Intelligence Wing Officers at the time of inspection. No accounts had been maintained for the production and

supply of iluppai oil, groundnut oil, gingelly oil and oil-cakes. The statement of

the assessee had been recorded on August 27, 1974, as is evident from the proceedings of the Deputy Commercial Tax Officer dated March 22, 1979. In the statement made by the assessee it was stated that he was having a rice mill, groundnut decorticating mill as well as one rotary and crushing gingelly seeds, groundnut kernel and iluppai seeds and selling oil and oil-cakes. The case of the assessee before the Deputy Commercial Tax Officer was that he was entitled to exemption in terms of G.O. Ms. No. 1963, Revenue, dated April 21, 1960, which provided that the sales of the products of country oil chekku by every person owning or having interest in country oil chekku single or multiple, and dealing exclusively in the products of such chekkus would be exempted with effect from April 1, 1960. The assessing authority also found on the basis of the evidence recorded during the inspection and the materials on record that the plea of the assessee that he was entitled to the exemption was not sustainable. The assessing authority found that the quantity of various commodities, to which reference has been made by us above, went to show that the assessee was not exclusively dealing with the products of the country oil chekku. The assessing authority noticed that on the recorded evidence it had been established that the assessee not only dealt with country oil chekku products, but also in other kinds of oil besides dealing in paddy and rice. The assessee was accordingly assessed to a total turnover of Rs. 2,70,290 and was also subjected to penalty.

2. Aggrieved, the assessee-respondent preferred an appeal before the Appellate Assistant Commissioner. The appellate authority after a detailed discussion, concurred with the findings of fact recorded by the assessing authority with regard to the fact that the assessee was not exclusively dealing with the products of the country oil chekku. The appellate authority noticed that the assessee had entered into a contract with the Khadi Soap Unit, Kaveripattinam, on September 6, 1973, for the supply of 20,000 kgs. of iluppai oil, and as per the contract, he had supplied 3,500 kgs. on September 16, 1973, which would not have been possible even if the three country oil chekkus were put to use throughout within a short span of eleven days. The appellate authority on the basis of the materials on record and in the absence of any proof let in by the assessee, concluded that the supply of iluppai oil by the assessee had not only resulted

from the products of the country oil chekku, but also from other sources. The assessment made by the assessing authority on the sale of iluppai oil at Rs. 1,28,000 was sustained and the plea of the assessee once again with regard to the exemption under G.O. Ms. No. 1963 Revenue dated April 21, 1960 was rejected. Even the estimation made in respect of the first sales of groundnut oil, gingelly oil and oil-cakes was sustained. But the amounts were reduced and the total taxable turnover was refixed at Rs. 2,41,290. With regard to the levy of penalty as fixed by the assessing authority at Rs. 6,720, the penalty was sustained, but considering the circumstances of the case, the amount was reduced and refixed at Rs. 4,480 which was noticed to be equal to the tax due on the actual suppression made by the assessee.

3. The assessee went in further appeal before the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Coimbatore. The Tribunal by its judgment dated May 13, 1981, set aside the assessment on the turnover of Rs. 1,13,290 as refixed by the appellate authority and the assessment on the turnover of Rs. 1,28,000 was also set aside but the matter on that account only was remanded to the assessing authority for fresh proceedings. Aggrieved, the Revenue is before us in this tax revision case.

4. Would an assessee, as in this case, be entitled to the benefit of the exemption envisaged in G.O. Ms. No. 1963, Revenue, dated April 21, 1960

? As already noticed, the Government order issued in supersession of earlier notifications, exempted, inter alia, with effect on and from April 1,

1960, from the tax payable under the Madras General Sales Tax Act, 1959, the sales of the products of country oil chekku by every person

owning or having interest in country oil chekku single or multiple, and dealing exclusively in the products of such chekkus. In order to claim

exemption under this clause of the Government order dated April 21, 1960, it is not only necessary for the assessee to establish that the sales were

of the products of the country oil chekku, but also to establish that he was dealing exclusively in the products of such country oil chekku. From the

statement of the assessee as noticed by the assessing authority as also the appellate authority and the inspection records and the recorded evidence

during the inspection on July 1, 1973, it is obvious that the assessee was not exclusively dealing with the products of country oil chekku. Indeed,

the assessee does own three country oil chekkus. By looking to the business transactions of the assessee, the assessing authority as well as the first appellate authority were perfectly justified in drawing the inference that the supply of 3,500 kgs. of iluppai oil within a short span of time and the availability of 22 bags of gingelly seeds, 35 bags of groundnut kernel and 60 bundles (each 5 kgs.) of cane jaggery besides purchase of paddy and sale of rice went to show that the assessee was not dealing exclusively in the products of country oil chekku. As a matter of fact, the inspection made on July 1, 1973, during the assessment year in question had brought to light that there were recorded evidence to show that the assessee had dealt with not only in country oil chekku products, but also in other kinds of oil also. The findings recorded by the assessing authority and the appellate authority on the basis of the materials collected during the inspection of the Khadi Soap Unit, Kaveripattinam, were that the assessee was not entitled to the exemption under G.O. Ms. No. 1963, Revenue, dated April 21, 1960. The burden of proving that the transaction of the assessee was not liable to tax under the Act in view of section 10 of the Act was on the assessee and he did not discharge that burden at all.

5. The Tribunal lightly took note of the nature of the transactions of the assessee, although the Tribunal noticed that the commodities and goods found by the assessing authority and the appellate authority in the stocks of the assessee did not admit of any doubt and that the assessee had also been dealing in paddy and rice. The Tribunal, however, took the view that the mere dealing in paddy and rice along with the products of the country oil chekku would not be enough to deny the benefit of exemption envisaged in G.O. Ms. No. 1963, Revenue, dated April 21, 1960 to the assessee. We cannot agree. That the expression "exclusively" used in the Government order has to be construed strictly admits of no doubt, and therefore the benefit of exemption would be available only to a dealer dealing exclusively in the products of country oil chekku. The transactions which had been made by the assessee during the assessment year in question clearly went to show, as was noticed by the assessing authority as well as the appellate authority, that even in oil, the assessee was not dealing exclusively which the products of country oil chekku. The Tribunal, in our opinion, fell completely in error in holding that the assessee was entitled to the benefit of exemption provided in G.O. Ms. No. 1963, Revenue,

dated April 21, 1960. In doing so, the Tribunal ignored the admitted facts as also the logical inferences from the same particularly when the

assessee led no evidence to discharge the burden of proving to the contrary. The order of Tribunal cannot, therefore, be sustained. We accordingly

accept the tax revision case, set aside the order of the Tribunal and restore the order of the appellate authority. No costs.

6. Petition allowed.