(1990) 10 MAD CK 0017

In the Madras High Court

Case No : Tax Case (Revision) No. 146 of 1981

State of Tamil Nadu — APPELLANT

Vs

N.S. Raja and Company — RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 4, 5, 53(4)

Citation : (1990) 10 MAD CK 0017

Hon'ble Judges : Venkataswami, J;Abdul Hadi, J

Bench : Division Bench

Judgement

Venkataswami, J.—The only question that arises for consideration in this tax case is what is the date, on and from which the notification

issued under the Tamil Nadu General Sales Tax Act, 1959, will come into force in the absence of any specific date mentioned in the notification

itself.

2. Before considering the above question we will give brief facts leading to the filing of this tax case. The assessment year in question is 1973-

1974. The respondent was assessed on a turnover of Rs. 12,600.85 relating to sales of dust of grams and pulses for the period from August 28,

1973 to March 31, 1974, assessed at 10 per cent. The respondent aggrieved by that order preferred an appeal to the Assistant Commissioner

and the first appellate authority partly allowed the appeal by granting relief on a turnover of Rs. 2,956.75. Still aggrieved be preferred further

appeal to the Sales Tax Appellate Tribunal. The Tribunal on the view that the notification issued under the Tamil Nadu General Sales Tax Act on

March 4, 1974, has to be construed exempting sales of dust of grams and pulses without specifying any date of coming into force and the notification must be deemed to have come into force from the beginning of the assessment year, namely, April 1, 1973 onwards, allowed the

appeal granting exemption on the whole turnover.

3. The Revenue aggrieved by the order of the Tribunal has preferred this revision petition. The learned Government Pleader contends that in the

absence of any date in the impugned notification the coming into force of the notification will be the date of publication of such notification in the

Gazette. In support of this, he brings to our notice section 53(4)(b) of the Tamil Nadu General Sales Tax Act. Section 53(4)(b) read as follows :

All notifications issued under this Act, shall, unless they are expressed to come into force on a particular day, come into force on the day on which

they are published.

4. The learned counsel appearing for the respondent-assessee placing reliance on a judgment of the Supreme Court reported in Mathra Parshad

and Sons v. State of Punjab [1962] 13 STC 180 submits that the order of the Tribunal is right and the exemption notification must be deemed to

have come into force from the beginning of the assessment year. In the Supreme Court judgment the passage relied on by the learned counsel for

the respondent reads as follows :

The exemption thus must operate either from the date of the notification or from the commencement of the financial year. Here, the nature of the

tax, as disclosed in sections 4 and 5, is decisive. In section 5, the tax is made leviable ''on the taxable turnover every year of a dealer''. The

divisions of the year and the taxable turnover into different parts are to make easy the collection of tax, and form part of the machinery sections. If

the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever it comes in, in the year for which the tax is

payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the

notification fixed the date for the commencement of the exemption. In the present case, the notification did not fix the date from which the

exemption was to operate, probably because the Act omitted to make such provision, enabling the State to do so, and the exemption must,

therefore, operate for the whole year, during which it was granted.

5. It will be seen from the passage that in the Act under which the case arose

before the Supreme Court there was no provision analogous to the

express provision like section 53(4)(b) of the Tamil Nadu General Sales Tax Act. There is no scope for the argument that the notification without

giving any specific date will come into force from the beginning of the financial year. We accept the argument of the learned Additional Government

Pleader and hold that the Tribunal went wrong in applying the ratio of the Supreme Court to the facts of this case and particularly in the light of the

express provision of section 53(4)(b) of the Act. Accordingly the tax case is allowed. However, there will be no order as to costs.

6. Petition allowed.