

(1991) 02 MAD CK 0061

In the Madras High Court

Case No : Tax Case (Revision) No. 876 of 1981

State of Tamil Nadu

APPELLANT

Vs

P. Janardhanan

RESPONDENT

Date of Decision : 21-02-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 3(1), 3(2), 38, 7(A(1)), 7(A)

Citation : (1991) 02 MAD CK 0061

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

Bench : Division Bench

Advocate : R. Karuppan, A.G.P. Taxes, for the Appellant; N. Inbarajan, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—This is Revenue's revision against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated April 14, 1981, and arises in the following circumstances :

2. The respondent is an assessee in the books of the Deputy Commercial Tax Officer, Coimbatore Rural Assessment Circle. He was assessed under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as "the Act") on a total and taxable turnover of Rs. 7,70,028 to best of judgment in assessment proceedings by the assessing authority, i.e., the Deputy Commercial Tax Officer, Coimbatore, dated December 31, 1979 for the year 1978-79. The taxable turnover was determined by the assessing authority in the following manner :

The assessing authority, while arriving at the taxable turnover, disallowed the claim of the assessee on the turnover of Rs. 35,951.72 as firewood and also assessed the sum of Rs. 3,03,563.05 u/s 7-A of the Act at 5 per cent. Aggrieved, the assessee preferred an appeal.

3. Before the appellate authority, it was first contended that the assessee had purchased only firewood for making packing cases and had not purchased any timber at all. It was argued that the assessee had sold chippings and shavings

while converting the firewood into planks and the chippings and shavings were sold as firewood only and, therefore, the sum of Rs. 35,951.72 was not liable to tax. It was also argued, in the alternative, that the purchase turnover of timber amounting to Rs. 3,03,563.05 could not attract the liability to tax u/s 7-A of the Act since the assessee did not manufacture any other goods out of the said timber and that the timber was only converted into planks or rafters which was not commercially a different product into which the timber could be said to have been consumed during the process of manufacture. The appellate authority, however, did not agree and the appeal was dismissed. The assessee then approached the Sales Tax Appellate Tribunal in further appeal. The same contentions were reiterated before the Tribunal. It was argued that what the assessee purchased was cut-ends of timber and even if the same were not to be treated as firewood, the same were used only for sizing the cut-ends into shocks for use in packing cases. It was maintained that the cut-ends which had been sized into shocks could not be said to have been consumed in the manufacture of other goods for sale, so as to attract liability to tax u/s 7-A(1)(a) of the Act. The case of the assessee was contested by the Revenue and besides controverting the submissions with regard to the applicability of section 7-A to the purchase of the goods, the claim with regard to the turnover of Rs. 35,952 as sale of firewood was also contested. It was maintained by the Revenue that even the turnover of Rs. 4,30,513.32 was liable to tax at 5 per cent single point under item 84 of the First Schedule to the Act and that the assessing authority had fallen in error by levying tax at 4 per cent multi-point on that turnover. The Tribunal upheld the claim of the assessee to the extent that the purchase turnover of Rs. 3,03,563 which have been subject to tax at 5 per cent u/s 7-A was held not legally correct and unsustainable. The assessment on that turnover was ordered to be set aside. The plea of the assessee as regards the turnover of Rs. 35,952 was partly accepted in the sense that the Tribunal found that the sale of cut-wastes made to the local foundry amounted to Rs. 34,033.53 and not Rs. 35,952. It was further found that the cut-wastes were wood scrap and saw dust which were taxable at multi-point rate of 4 per cent tax u/s 3(1) of the Act and that the plea that the same were sold only as firewood was not correct. The differential amount of Rs. 1,918.19 was held to relate to sales in sundries to retail consumers as fuel. Consequently, the amount of turnover of Rs. 1,918.19 out of Rs. 35,952 was also set aside. The Tribunal also accepted the plea of the Revenue that the sales turnover amounting to Rs. 4,30,513.32 was liable to tax at 5 per cent single point under item 84 of the First Schedule to the Act, u/s 3(2) of the Act, and not at 4 per cent, as levied by the assessing authority. The amount was accordingly modified and the levy of tax was enhanced to 5 per cent single point tax on the turnover of Rs. 4,30,513.32.

4. The Additional Government Pleader (Taxes), appearing for the Revenue in this revision, submitted that the finding of the Tribunal that the purchase turnover of Rs. 3,03,563 was not subject to tax at 5 per cent u/s 7-A was erroneous inasmuch as the assessee had converted the cut-ends of wood into sized timber

and had manufactured packing cases out of the same. It was argued that since the purchased timber was consumed into the manufacture of packing cases, the purchases were liable to be taxed u/s 7-A of the Act. We cannot agree. Before the Tribunal, the plea of the assessee that he did not manufacture any packing cases but only sized the cut-ends into planks and shooks and sold them as such was accepted as a fact. It would be relevant to notice the following observations of the Tribunal in that behalf :

"..... The assessing officer subjected the purchase turnover of cut-ends that are not supported by regular purchase bills to tax u/s 7-A considering that the appellant manufactured out of those cut-ends packing cases which are different commercial products. The learned Authorised Representative at the time of hearing argued that the appellant did not manufacture any packing cases but only sized the cut-ends into planks and shooks and sold them and there is therefore, no consumption of cut-ends in the manufacture of other goods to attract liability to tax u/s 7-A(1)(a) of the Tamil Nadu General Sales Tax Act. The learned State Representative was asked to examine the accounts and give his report on this. In his report dated April 1, 1981, he has stated that the planks and reapers used for packing cases are only sized timber taxable at 5 per cent as per entry 84 of the First Schedule to the Tamil Nadu General Sales Tax Act. In the report, he has also stated that the sales turnover is liable to tax at 5 per cent and the assessment levying 4 per cent tax by the assessing authority may be enhanced and ordered for levy of tax at 5 per cent on the turnover of reapers and planks sold for use for packing cases. Thus it is clear that the appellant did not manufacture any packing cases from out of the cut-ends purchased by bought vouchers. They sold the sized planks and shooks for use for packing cases only."

5. Obviously, the finding of fact was recorded by the Tribunal that the assessee did not manufacture any packing cases from out of the cut-ends purchased by the bought vouchers on the basis of the report dated April 1, 1981, submitted by the Revenue's representative who had made that report after examining the accounts of the assessee. The representative of the Revenue had stated in his report clearly that the planks and reapers used for packing cases were only sized timber and that the assessee did not manufacture any packing cases out of the cut-ends purchased by him and what was sold was only planks and shooks for use for the manufacture of packing cases. The Tribunal, therefore, opined :

"..... In the appellant's case also we find that the cut-end woods purchased by the appellant has been cut into sizes of planks and shooks and sold for use for packing cases. This has been verified and found to be correct by the learned State Representative with reference to the accounts, purchase bills and sales invoices. Therefore, having regard to the facts above and in the circumstances of the case and also in consideration of all aspects in the nature of the business of the appellant we are of the view and opinion that what the appellant purchased as cut-end woods are not firewood but timber only that are sized not planks and

shooks without involving any manufacture by consumption of the goods in the manufacture of other goods which are different commercial products so as to attract liability to tax u/s 7-A of the Tamil Nadu General Sales Tax Act. Thus we hold that the purchase turnover of Rs. 3,03,563 subjected to tax at 5 per cent u/s 7-A is not legally correct and hence unsustainable."

In the face of the stand taken by the Revenue before the Tribunal and the report submitted by the representative of the Revenue before the Tribunal, it is not permissible for the Revenue now to contend that the assessee used the cut-end woods of timber for manufacture of packing cases. The report of the representative of the Revenue unmistakably showed that the assessee only sized the timber and converted into planks and shooks.

6. Since the Tribunal, which is the ultimate fact-finding statutory authority, found it as of fact that the purchased cut-end woods of timber were only sized by the assessee and converted into planks and shooks and that the assessee did not manufacture any packing cases from out of the cut-end woods, it is not permissible for the High Court, in exercise of the revisional jurisdiction u/s 38 of the Act, to ignore the finding of fact, particularly when we are of the opinion that the finding of fact neither defies logic nor can it be said to suffer from the vice of irrationality incurring the blame of being perverse. The opinion of the Tribunal that the mere sizing of the cut-ends woods into planks and shooks could not be said to involve any manufacturing process by consumption of the cut-end woods and that the sized planks and shooks converted from the cut-end woods continued to be timber which was commercially not a different product, is based on proper appreciation of the material on record and does not call for any interference. We, therefore, find that the Tribunal was perfectly justified in holding that the turnover of Rs. 3,03,563 assessed to tax at 5 per cent by invoking the provisions of section 7-A of the Act by the assessing authority was not legally correct and thus, was unsustainable. To attract liability to tax u/s 7-A(1)(a) of the Act, it must be established that the purchased goods were consumed or used in the manufacture of other goods for sale. Since the assessee did not consume the cut-end woods in the manufacture of other goods, because shooks and planks continued to retain the identity of timber only, he could not attract liability to tax u/s 7-A(1)(a) of the Act. The order of the Tribunal, under revision, therefore, does not call for any interference at our hands in exercise of the revisional jurisdiction u/s 38 of the Act. Consequently, the revision fails and is dismissed. There shall, however, be no order as to costs.

7. Petition dismissed.