

(1982) 08 MAD CK 0055
In the Madras High Court
Case No : Tax Case No. 1304 of 1977

State of Tamil Nadu

APPELLANT

Vs

Pyarelal Malhotra

RESPONDENT

Date of Decision : 26-08-1982

Acts Referred:

Citation : (1984) 57 STC 215

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 only question that arises in this tax case which has been filed by the State against the order of the Sales Tax Appellate Tribunal, Madras, is whether the Tribunal is justified in law in rejecting the petition for enhancement filed by the State in limine on the ground that the said enhancement petition will not lie.

2. The assessee in this case had purchased scrap locally, converted the same into M.S. Rods and then sold the same locally. The local sales of M.S. rods were not taxed by the assessing authority following the decision of this Court in Pyarelal Malhotra v. Joint Commercial Tax Officer [1970] 26 STC 416 which held that the local sales made out of locally purchased scrap cannot be taxed as iron and steel are taxable only at one stage. Against the original order of assessment, there was an appeal to the Appellate Assistant Commissioner in relation to other matters. That appeal having failed, the assessee filed appeals before the Sales Tax Appellate Tribunal. While the appeal were pending before the Tribunal, the decision of this Court in Pyarelal Malhotra v. Joint Commercial Tax Officer [1970] 26 STC 416 had been reversed by the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , wherein the Supreme Court had held that though iron and steel are taxable only at single point, scrap iron being commercially a different product from the finished product, i.e., M.S. rods, the

State can levy tax on both scrap as well as rods. Taking note of the decision of the Supreme Court in the above case, the State filed an enhancement petition before the Tribunal, stating that the first sales of M.S. rods in this State should also be taxed. The Tribunal, however, rejected the enhancement petition in limine on the ground that the turnover on the first sales in M.S. rods was not the subject-matter of assessment by the assessing authority nor was it the subject-matter before the appellate authority and that since the appeal before the Tribunal was from the order of the Appellate Assistant Commissioner, it is not open to the Tribunal to entertain the enhancement petition and deal with the assessability or otherwise of the transaction of sales of M.S. rods. The order of the Tribunal in so far as it rejects the enhancement petition filed by the State has been challenged in this tax case.

3. According to the learned Government Pleader the question whether the Tribunal can entertain an enhancement petition in respect of a turnover which was not before the assessing authority is concluded by a decision of this Court in *Deputy Commissioner of Commercial Taxes v. Panayappan Leather Industries* [1981] 47 STC 88. A perusal of the said judgment shows that the question that arose here is covered by the said decision. In that case an identical question arose and the Bench to which one of us was a party has held, after referring to the provisions contained in section 36(3)(a)(i) and 36(3)(a)(ii) that in an appeal preferred by an assessee u/s 36 the entire assessment is set at large before the Tribunal and the Tribunal can go into the correctness or otherwise of the order of assessment by the assessing authority himself and not the order of the Appellate Assistant Commissioner alone against which the appeal has been filed before the Tribunal and that if it comes to the conclusion that the assessing authority has not assessed a turnover which is liable to be assessed under the law or assessed a turnover at a rate lower than that sanctioned by the law, it is open to the Tribunal to set aside the order of the assessing authority and revise the assessment or direct him to make a fresh assessment in the light of the opinion expressed by it.

4. In view of the said decision with which we respectfully agree, we have to set aside that portion of the order of the Tribunal which rejected the State's petition for enhancement and direct the Tribunal to entertain the State's application for enhancement and consider the same on merits, and pass appropriate orders. There will, however, be no order as to costs.