(1991) 07 MAD CK 0046

In the Madras High Court

Case No : Tax Case No. 583 of 1982 (Revision No. 170 of 1982)

State of Tamil Nadu — APPELLANT

Vs

R. Athimoola Nadar and Sons — RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 22(1), 22(2)

Citation : (1991) 07 MAD CK 0046

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

Bench : Division Bench

Advocate : Mrs. Chitra Venkataraman, Additional Government Pleader Taxes, for the Appellant; V. Srikanth, for the Respondent

Judgement

Dr. A.S. Anand, C.J.—The controversy in this tax revision filed by the Revenue against the order of the Tamil Nadu Sales Tax Appellate

Tribunal (Additional Bench), Madurai, dated September 28, 1981, is centered around the deletion of penalty u/s 22(2) of the Tamil Nadu General

Sales Tax Act, 1959, hereinafter referred to as ""the Act"", by the Tribunal.

2. The Tribunal held that since at the relevant point of time the price of oil sold by the assessee was controlled, it was entitled to pass the sales tax

paid on that commodity, to the Tamil Nadu Civil Supplies Corporation of the Government, when the oil was sold to it as admittedly the oil had

been purchased by the assessee from another party and the assessee had paid sales tax on the purchases of the oil.

3. Section 22(1) of the Act reads as follows :

No person who is not a registered dealer shall collect any amount by way of tax or purporting to be by way of tax under this Act; and no

registered dealer shall make any such collection except in accordance with the provisions of this Act and Rules made thereunder :

Provided that nothing in this sub-section shall apply to the collection of an amount by a registered dealer, towards the amount of tax already

suffered under this Act, in respect of goods, the sale or purchase price of which is controlled by any law in force.

A reading of the proviso to section 22(1) of the Act shows the Legislature''s authority for collection of any amount, by a registered dealer, towards

the amount of sales tax already suffered in respect of goods, the sale or purchase price of which is controlled by any law in force. There was no

dispute before the Tribunal by the Revenue that the price of groundnut oil was controlled and had been fixed by the Government. It was also not

disputed that the price fixed by the Government was at much lower rate than in the open market and that in terms of G.O.Ms. No. 195 dated May

21, 1974, all the millers were required to supply a specific percentage of the stocks held by them on the date of the G.O. to the Tamil Nadu Civil

Supplies Corporation at the prescribed rate which was less than the prevailing market price. The assessee, it was not disputed, had to purchase oil

at a higher price from another dealer with a view to satisfy the obligations under G.O.Ms. No. 195 dated May 21, 1974, to supply the prescribed

percentages of oil to the Tamil Nadu Civil Supplies Corporation. On facts it has been found that the assessee supplied oil to the Tamil Nadu Civil

Supplies Corporation at a lower price though the assessee had paid higher for purchasing the oil satisfy the obligations under G.O.Ms. No. 195

dated May 21, 1974. The assessee passed on the burden of the tax amounting to Rs. 2,458 to the Tamil Nadu Civil Supplies Corporation even

though the sales tax paid by the assessee to other dealer from the groundnut oil had been purchased was to the extent of Rs. 2,816.70. There is no

dispute that it was the same oil and the same quantity which was purchased by the assessee that was sold to the Tamil Nadu Civil Supplies

Corporation by the assessee as per the directions in the G.O. Keeping in view the provisions of section 22(1) of the Act and particularly the

proviso thereof, the assessee was entitled to pass on the burden of the tax, already suffered, to the Tamil Nadu Civil Supplies Corporation. The

submission of the learned Additional Government Pleader (Taxes) that since in the bill the sales tax was not separately shown this burden could not be passed on to the Tamil Nadu Civil Supplies Corporation, does not appeal to us as there is no requirement in the proviso that the amount of tax

already suffered was required to be shown separately. Since on facts it is disputed that the sales tax which has been included in the price by the

assessee had actually been paid by the assessee to the other dealer from whom the oil was purchased to meet his obligations under the said G.O.,

the Tribunal did substantial justice by deleting the penalty u/s 22(2) of the Act. The order of the Tribunal does not suffer from any error. The tax

revision case, therefore, fails and is dismissed. No costs.

4. Petition dismissed.

