

(1990) 07 MAD CK 0068
In the Madras High Court
Case No : Tax Case No. 541 of 1985

State of Tamil Nadu

APPELLANT

Vs

S. Duraisamy Chettiar and Co.

RESPONDENT

Date of Decision : 06-07-1990

Acts Referred:

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

Citation : (1990) 07 MAD CK 0068

Hon'ble Judges : Venkataswami, J;Raju, J

Bench : Division Bench

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

Judgement

Venkataswami, J.—The Revenue, aggrieved by the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai, in M.T.A. No. 29 of 1984 dated November 28, 1984, has filed this revision petition.

2. The Tribunal, by the order under revision, has set aside the penalty levied by the assessing officer u/s 22(2) of the Tamil Nadu General Sales Tax Act and confirmed by the Appellate Assistant Commissioner.

3. Briefly, the facts are, that the respondents are dealers in groundnut. They have been assessed on the purchase turnover of groundnut till 1978-79. For the assessment year 1979-80, the Revenue assessed the respondents to tax on the turnover of Rs. 26,42,086. For this assessment year, the respondents were advised to challenge the order of the assessing officer. Accordingly they preferred appeal to the Appellate Assistant Commissioner who, in A.P. No. 392 of 1980, allowed the appeal and held that the appellants were not liable to pay purchase tax. As a matter of fact, there was doubt on the liability of the respondents to pay purchase tax on the turnover of the purchase of the groundnut. In fact, the Appellate Assistant Commissioner, while allowing the appeal, has observed as follows :

"It is true that I have sustained similar assessment in respect of the same decortivating mill owners on the ground that there was no privity of contract between the agriculturists, principals and buyers. I have followed the then decisions which were holding the field and hence the appellants are liable to pay the tax on the purchase value of groundnut kernel. But subsequent to my order on these appeal petition for the previous years, the Sales Tax Appellate Tribunal (Main Bench), has held that privity of contract between the principal and buyer is not essential."

In the light of the nebulous position, the Tribunal has held that the appellants before it were not at fault in collecting the tax for the year 1979-80. It also held that from the transactions, it cannot be said that the appellants have violated the provisions of section 22(1) of the Tamil nadu General Sales Tax Act, 1959. Apart from this, we find from the order of the Tribunal that the respondents have been not only collecting the tax, but paying the same to the department, and the department quietly accepted the same till 1978-79. The fact that the assessing officer levied tax for the assessment year 1979-80 and on appeal, it was contested, will show that the department was also under the impression that the assessee was liable to pay tax on the purchase of groundnut. In the circumstances, it cannot be said that the respondents alone are responsible for the mistake. The mistake is on the part of the Revenue also. In State of Tamil Nadu v. Sasman and Company reported in [1984] 57 STC 160 this Court has observed that "when the assessing authority himself was of the view that the turnover relating to cloth bags is taxable at 4 per cent, the assessee cannot be said to have intentionally violated the provisions of the Act. On the special circumstances of this case, we are inclined to agree with the Tribunal that the penalty provisions will not stand attracted in this case". We are of the view that the above ratio will squarely apply to the facts of this case, and the Tribunal having applied the ratio of the said decision, we do not find any ground to interfere with the order of the Tribunal.

4. In the result, the tax case fails and the same is dismissed. No costs.

5. Petition dismissed.