

(2009) 07 MAD CK 0455

In the Madras High Court

Case No : Tax Case (Revision) No. 2364 of 2008

State of Tamil Nadu

APPELLANT

Vs

S. Ramanathan and Others

RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(1)

Citation : (2010) 27 VST 198

Hon'ble Judges : F.M. Ibrahim Kalifulla, J;B. Rajendran, J

Bench : Division Bench

Advocate : Haja Naziruddin, Special Government Pleader for Taxes, for the Appellant;

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The State Government has come forward with this revision challenging the order of the Sales Tax Appellate Tribunal, dated February 7, 2002 in a batch of appeals. The question of law raised in this revision is as to the correctness of the order of the Tribunal in having set aside the revised order of assessment made u/s 16(1) of the Act, as confirmed by the Appellate Assistant Commissioner on the ground that the petitioner failed to establish the "escaped turnover" by merely relying upon extract issued by the Intelligent Wing of the Karnataka State. Admittedly, the only material relied upon for invoking Section 16(1) of the Act, by the assessing authority was the extract issued by the Intelligent Wing of the Karnataka State stating that the dealers of Tamil Nadu purchased groundnuts from the Karnataka State for the value mentioned in the extract, which was brought to State of Tamil Nadu, and which value was not disclosed in the turnover reported by them. The stand of the dealers before the Tribunal was that merely based on the extract reported by the other State officials, the liability ought not to have been fastened on them and that the onus was still on the Department to prove that based on such extract, the alleged purchases of groundnuts made by the dealers were conclusively proved. The

Tribunal accepted the stand of the dealers and as such arrived at its conclusion, which reads as under:

20. Finally, to sum up our findings, it is seen that the Department is in possession of the extract sent by the Karnataka Assistant Commissioner and not more than that. The payment details, if any, and the transport document verification are not available. It is also seen that the dealers in Tamil Nadu are going to Karnataka State and making purchases from Marketing Committee and the agents at Karnataka are arranging the purchases. The commission agent obtains the cess receipt and produced to the dealer his mediator invoice which mentions the description, quantity, etc. We have also perused one of the mediator invoice available in the assessment file. When the purchases are effected from marketing committee, the invoices raised by the marketing committee were not made available. Based on a commission agent's account and simply because the quantity, transport, lorry number and dealer's name are mentioned, the Department cannot make the assessment unless it is proved with other records. We have also taken a view that cross-examination is a must if no other evidence are available. When both are not available, then it is to be decided that the Department has not taken any material other than the extract to fix the liability on the dealers. We also quite agree with the learned authorised representative that even after the remand order of the Special Tribunal, no further evidences were produced on it is clearly an indication that the Department is not having any evidence other than the extract copy. By taking all these factors into consideration, we feel that the assessing officer is not equipped with any material to prove his claim that the dealers have purchased groundnut from Karnataka dealers and not accounted them. The business connection of the Karnataka commission agents with the dealers will not be a conclusive proof to show whatever the transactions accounted in the other State are genuine unless the purchasers' role has been proved beyond doubt. In none of the transaction, there is any check-post records produced. The assessing officer cannot simply brush them aside by stating that it is not his duty when heavy burden is cast upon the dealers and when the dealers are asked to prove the negative point. There is no other alternative except for the Department to provide all the required materials. Since the materials have not been provided after reasonable opportunity, we come to a conclusion that the alleged purchase omissions by the dealers are not proved beyond doubt. So we set aside the revision orders passed by the various assessing authorities in these batch of appeals as the suppressions are not proved. When we have not sustained the turnover in the revisional assessments, the penalty also gets automatically cancelled.

2. We are fully in agreement with the said conclusion and we do not find any good ground to take a different view. Moreover, in respect of the very same dealers, a similar extract for certain other period was relied upon for effecting a revised assessment by invoking Section 16(1) of the Act. The issue came before this Court in Tax Case (Revision) No. 2339 of 2008 (State of Tamil Nadu v. P. Elayaperumal [2009] 25 VST 613) and this Court affirmed the order of the

Tribunal by holding as under (at page 616):

6. As a matter of fact, the Tribunal has verified one such mediator's invoice and ultimately found that when the purchases were effected from the marketing committee, the invoices raised by the marketing committee were not made available. Based on the commission agent's account, an assessment cannot be framed against third parties in the absence of any materials without bringing the commission agent for cross-examination by the dealer. It is also further recorded that even after the remand order of the Special Tribunal, no further evidence was produced except the extract as nothing more than that was available with the Department and recorded an unassailable finding that the assessing officer was not equipped with any material to prove his claim that the dealers have purchased groundnuts from Karnataka dealers and not accounted them.

7. While the business connection of the assessee with the Karnataka commission agent cannot form basis to show that whatever transactions which were accounted in other States are genuine unless the purchasers' role has been proved beyond doubt by giving such unassailable reason, the revision of assessment has to be set aside. Consequently the penalty imposed was also set aside.

3. This Court ultimately declined to interfere with the order of the Appellate Tribunal and dismissed the Tax Case (Revision) No. 2339 of 2008 in its order dated April 1, 2009 (State of Tamil Nadu v. P. Elayaperumal [2009] 25 VST 613).

4. For all the above stated reasons, we do not find any scope to entertain the tax case revision. The revision fails and the same is accordingly dismissed. No costs.