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(2012) 02 MAD CK 0001

In the Madras High Court

Case No : Tax Case (Revision) No. 323 of 2011

State of Tamil Nadu APPELLANT

Vs

Sathya Steels RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 17, 17(1), 3, 3(2)

Citation : (2013) 63 VST 149

Hon'ble Judges : P.P.S. Janarthanaraja, J;Darmar Murugesan, J

Bench : Division Bench

Advocate : Manoharan Sundaram, Special Government Pleader, for the Appellant;

Judgement

Darmar Murugesan, J.—The Revenue has filed this revision challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal

(Additional Bench) Coimbatore, dated August 29, 2001 in CTSA. No. 463/1998, raising the following substantial questions of law:

(i) Whether, in the facts and circumstances of the case, the Appellate Tribunal is right in law and having regard to the provisions of section 3(2) of

the Tamil Nadu General Sales Tax Act, 1959, the sale of laminated sheet scraps from TNEB amounts to first sale taxable within the State, even

though the said laminated sheet scraps purchased from TNEB is exempted u/s 17 of the Tamil Nadu General Sales Tax Act, 1959 ?

(ii) Whether, in the facts and circumstances of the case, the Appellate Tribunal was right in holding that laminated sheet scraps is a second sale and

hence exempted without considering sub-section (2) of section 3 of the Tamil Nadu General Sales Tax Act, 1959 ?

The assessee is a dealer in iron and steel scraps. The assessment year involved

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is 1992-93. The assessee purchased laminated scraps from Tamil

Nadu Electricity Board. As per notification dated December 1, 1982 issued u/s 17(1) of the Tamil Nadu General Sales Tax Act, 1959, the Board

was exempted from payment of tax for the sale of iron and steel to the dealers. There is no dispute that the challenge to the said notification was

unsuccessful before this court and it was also upheld by the Supreme Court. The assessing officer declined to grant exemption to the dealer solely

on the ground that the dealer after purchase of the iron and steel from Tamil Nadu Electricity Board has sold to another dealer and it amounts to

second sale and therefore the goods are not entitled for exemption of tax in accordance with the second proviso to section 3(2) of the Tamil Nadu

General Sales Tax Act. The said order was challenged before the Additional Appellate Assistant Commissioner. The Additional Appellate

Assistant Commissioner accepted the contention of the Revenue as to the applicability of the second proviso and partly allowed the appeal by

setting aside the penalty. This order was again taken on appeal by the assessee before the Tribunal. The Tribunal observed that once the

exemption was allowed for the purchase of iron and steel, that would be applicable to the successive dealers as well. In support of the said finding

the Tribunal relied upon the judgment of this court reported in The State of Tamil Nadu Vs. Raichael Chacko, holding as follows (page 146 in The

State of Tamil Nadu Vs. Raichael Chacko,

... So long as the assessee''s purchases are second purchases from a person or persons who were then registered dealers, the assessee cannot be

made liable to tax u/s 3(2) of the Act. Once there has been an earlier purchase inside the State, it is for the Revenue to proceed against the first

purchaser and merely because the first purchaser has not paid the tax, they cannot proceed against the second purchaser when the statute

admittedly exempts the second sales from tax.

2. The Tribunal following the said principle held that levy of tax on the second sales of laminated scraps is illegal and thereby allowed the appeal.

Hence the present revision.

3. Mr. Manoharan Sundaram, learned Special Government Pleader (Taxes), would submit that in the wake of the second proviso to section 3(2)

of the Tamil Nadu General Sales Tax Act, exemption is only in respect of first sale

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and in case of second sale, the dealer would be liable to pay

tax.

4. We have carefully perused the above provision and that proviso is applicable only in case of goods mentioned in the First Schedule, which are

taxable at the point of first sale and the tax under this Act shall be payable by the first or earliest of the successive dealers in the State.

5. In terms of section 3(2) of the Act, if the sale effected by the assessee is not the first sale, then under the provisions of the Act that sale cannot

be brought within the net of taxation and the assessee is entitled to claim exemption on the ground that his sale is not the first sale even if the first

sale has not suffered tax. In view of the above, we do not find any ground to entertain the revision on the questions raised by the Revenue. Hence,

the tax case revision is dismissed. No costs.

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