

(1991) 08 MAD CK 0026

In the Madras High Court

Case No : Tax Case (Revision) No. 825 of 1982

State of Tamil Nadu

APPELLANT

Vs

Shah Trading Corporation

RESPONDENT

Date of Decision : 12-08-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 6(1A), 8(2A)
Tamil Nadu General Sales Tax Act, 1959 — Section 17

Citation : (1991) 08 MAD CK 0026

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

Bench : Division Bench

Advocate : D. Srinivasan, Additional Government Pleader Taxes, for the Appellant; V. Ramakrishnan, for S. K. Ramamoorthy, for the Respondent

Judgement

1. This is a revision filed by the Revenue against the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 4th

February, 1982.

2. The assessee had purchased cotton-seeds from Tamil Nadu Sarvodaya Sangh, Tirupur, for Rs. 66,170. By virtue of a Notification G.O.Ps. No.

1378 dated 5th May, 1972, issued u/s 17 of the Tamil Nadu General Sales Tax Act, 1959, exemption had been granted in respect of sale of the

commodity by Sarvodaya Sangh, Tirupur. The assessee had purchased cotton-seed from Sangh, and in view of the notification referred supra, the

commodity was exempt from tax, and no tax was paid at the time of the first sale to the assessee. The assessing officer, however, chose to assess

the inter-State sales turnover holding that since the cotton-seeds had not suffered tax in this State, the inter-State sale was liable to tax. The appeal

by the assessee on that aspect failed before the Appellate Assistant

Commissioner. In the second appeal, the Tribunal allowed the plea of the assessee, and the assessment on the turnover of Rs. 73,900 representing the sale by the assessee of cotton-seeds purchased from the Sangh in inter-State sales was set aside. The order of the Appellate Assistant Commissioner with regard to the remand of the case for considering the entertainability of "C" forms was, however, not interfered with by the Tribunal. The Revenue is in revision before us.

3. In our opinion, the view taken by the Tribunal cannot be found fault with. Both the assessing authority as well as the Appellate Assistant

Commissioner appear to have completely ignored the provisions of section 8(2A) of the Central Sales Tax Act, 1956. That section reads as under

:

Notwithstanding anything contained in sub-section (1A) of section 6 or in sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name) shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation. - For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State, if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

The provision noted supra provides that where under the sales tax law of the State, the turnover of the sale of the particular commodity is exempt from tax generally, then the tax payable by the assessee under the Central Sales Tax Act on such part of the turnover shall also be nil. The

explanation to section 8(2A) provides that although under the State law, the sale of a particular commodity by a particular dealer may, in no circumstances, attract the payment of sales tax, it would still be not considered

that the sale of such goods by him is exempt from tax generally, if the goods sold belonged to the class of goods specified therein, viz., (1) if under the State law, the sale of such goods is exempt only in specified circumstances or under specified conditions, or (2) if under the State law, the sales tax is payable on the sale of such goods at the specified stages or otherwise than with reference to the turnover of the goods. In the instant case, it is not the case of the Revenue that the sale of the goods which was exempt by the notification referred to supra, was only in specified circumstances or under specified conditions, and not generally. That being the position, the explanation to section 8(2A) would not be attracted, and in view of the notification which rendered the sale exempt under the State Act, tax on the transaction in the course of inter-State sale would be nil. The view of the Tribunal, therefore, does not require any interference. In the view that we take we are fortified by the decisions of the Allahabad High Court in Hindustan Safety Glass Works (P.) Ltd. v. State of Uttar Pradesh [1974] 34 STC 209 and Central Food Storage v. Commissioner of Sales Tax [1977] 40 STC 529. The tax revision case, therefore, fails and it is dismissed with costs. Counsel's fee Rs. 200.

4. Petition dismissed.