

(2009) 04 MAD CK 0028

In the Madras High Court

Case No : Tax Case (Revision) No. 1859 of 2008

State of Tamil Nadu

APPELLANT

Vs

Sri Alaggar Traders

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(2)

Citation : (2010) 28 VST 228

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Haza Nazirudeen, Special Government Pleader T, for the Appellant;

Judgement

K. Raviraja Pandian, J.—The Revenue is on revision against the order of the Tribunal made in Tribunal State Appeal No. 115 of 1999 in

respect of Sri Alaggar Traders, dated October 3, 2001 by formulating the following substantial question of law:

Whether, on the facts and circumstances of the case, the Tribunal is legally right in affirming the order of the first appellate authority in respect of

allowance of the claim of second sale exemption even when the registration number of the so-called seller belonged to some other dealer?

2. The material facts for disposal of this revision are that the assessee is the dealer in iron and steel and assessee on the file of the Commercial Tax

Officer, P.N. Palayam Circle, Coimbatore for the assessment year 1995-96. The assessee was originally assessed on a total and taxable turnover

of Rs. 50,82,359 and Rs. Nil. The assessment was over on February 26, 1997. It appears that on February 20, 1997, the enforcement wing

officers of the Commercial Tax Department caused an inspection on the business premises of the assessee and found that during the relevant year,

there was a purchase of C.I. scraps for Rs. 7,44,381 from one Tvl. Sri Karpaga Vinayaga Traders, 38A, Mahalakshmi Nagar, Kuniamuthur, Coimbatore. On subsequent verification, it was found that no such dealer is available in the said address. It was also found that the registration number of the said dealer relates to one Tvl. Kallazhagar Traders. On that basis, the enforcement wing officers formed an opinion that the assessee produced the sale bills of non-existing dealer and obtained second sales exemption in respect of the entire turnover. The assessing officer on receipt of B3 proposal from the enforcement wing officers, called upon the assessee to file an objection, and issued a notice to the assessee for the purpose of revision of assessment on the abovesaid ground. The assessing officer rejecting all the objections raised by the assessee, framed an assessment in levying of tax at four per cent in a sum of Rs. 71,771 and imposed a penalty at 150 per cent u/s 16(2) of the Tamil Nadu General Sales Tax Act, 1959 (in short, "the Act") in a sum of Rs. 1,07,657. That revision order was set aside by the Appellate Assistant Commissioner on appeal at the instance of the assessee on the ground that the selling dealer had been registered with the Department with effect from 1994-95 and had renewed the registration certificate for the subsequent assessment years 1995-96 and 1996-97. Though the said dealer had not filed A1 monthly returns for these years, the assessing officer has not taken any steps to trace out this seller but treated them as a bill trader and assessed the appellant, which is contrary to various decisions of this Court. The Revenue's further appeal to the Tribunal was also dismissed on the ground that the Department has issued form XX delivery note to the selling dealer and the registration certificate was valid for the relevant assessment years. In that circumstances of the case, the burden of proof cast upon the assessee has been discharged and it is for the Revenue to proceed further in accordance with the statutory provision against those dealers, who have sold the goods. The correctness of the same is put in issue in this revision by formulating the question of law as aforesaid.

3. Heard the learned Special Government Pleader (Taxes) for the petitioner and perused the materials on record.

4. On a perusal of the records, it is clear that the assessing officer sought to revise the original assessment order in which exemption has been

granted for the entire turnover on the premise that Sri Karpaga Vinayaga Traders, the selling dealer, was not available in the given address. The registration number pertaining to the Sri Karpaga Vinayaga Traders relates to one Kallazhagar Traders. For that reasoning, the assessee had filed his objection on July 2, 1998 stating that Kallazhagar Traders and Karpaga Vinayaga Traders are one and the same and that the purchase bills produced in support of their second sales were genuine. The assessee's objection though was rejected on the ground that the assessee has not discharged their onus of proving the first sale of the goods so as to enable them to claim the second sales exemption, the appellate authority, the Appellate Assistant Commissioner, has reversed the finding of the assessing officer by giving reason that the assessment of the assessee has been revised and the second sales have been exempted in the original assessment order and disallowed the claim for the reason that the seller, Karpaga Vinayaga Trader, had left the place without submitting the accounts for the year 1994-95, 1995-96 and 1996-97. Despite the fact that the registration certificate of Karpaga Vinayaga Traders has been renewed for the above said years, the said dealer did not file any monthly returns and had not submitted the accounts for the final check. The conclusion so arrived at by the assessing officer was totally incorrect that the selling dealer had been registered with the Department with effect from 1994-95 and further, the dealer had renewed the registration certificate for the years 1995-96 and 1996-97. Though the dealer did not file any AI monthly returns for these years, the assessing officer has not taken any steps to trace out this seller, but treated them as a bill trader and consequently assessed the appellant, which is contrary to the decision in National Iron Traders v. State of Tamil Nadu reported in [1997] 106 STC 42 (Mad).

5. The appellate authority, on appeal has also recorded a finding to the effect that the selling dealer was issued with form XX delivery note by the Department. The issuance of such delivery note itself is evident that the selling dealer carried on the business and whose identity was also known to the Department. It is also quite clear that the said selling dealer who happened to be the first seller was a registered dealer, whose registration certificate was found to be valid for the assessment year 1996-97. By giving these reasonings, the appellate authority affirmed the order of the first

appellate authority and set aside the order of the original authority, the assessing officer, who has branded the selling dealer as a bill trader and fictitious person.

6. In the given set of facts, we are of the view that the assessee has discharged the burden of proof by showing that the earlier sale was a taxable sale and the tax is really payable by the seller.

7. In similar circumstances, this Court in the case of *Govindan & Co. v. State of Tamil Nadu* reported in [1975] 35 STC 50, has held that to claim the benefit of tax on the ground that the sales effected by the assesseees are second sales, the assessee need not show that their sellers have in fact paid tax. It is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers.

8. Likewise, in the case of *State of Tamil Nadu v. Chamundeswari Enterprises* reported in [1983] 52 STC 124, the Division Bench of this Court

has held that if a sale effected by an assessee is not a first sale, which is only taxable under the Tamil Nadu General Sales Tax Act, 1959 then

under the provisions of the Act, that sale cannot be brought within the net of taxation and it is for the Revenue to search out the first seller and levy

tax on the first sale. It is not for the assessee, who is the subsequent seller, to show that the first sale has been taxed. The onus on the subsequent

seller is only to point out that there has been a first sale and the onus is not on him to show that the first sale has, in fact suffered tax.

9. In the case of *State of Tamil Nadu Vs. C.K. Gajapathy and Co.*, , also it was held that if the assessee was able to show that there had been

merely a taxable sale and its sale was only second sale, it was entitled to claim exemption of its sale as second sales. *Govindan and Co. Vs. The*

State of Tamil Nadu, has been carried on to the Supreme Court. The Supreme Court [1994] 93 STC 185, while confirming the decision in

Govindan and Co. Vs. The State of Tamil Nadu, , held that no duty is cast upon the assessee to show that his sellers have paid tax at first point. In

addition to that, the goods involved in the present case are declared goods, that is iron and steel, which are taxable at a specified point, such as the

first point and the State exempts that sale from payment of tax either by a general provision or a special provision applicable to a class of seller, a

particular seller and the goods sold may not be subjected to tax either at that

point of sale or at any subsequent sale in the State, is the law laid down by the apex court in respect of the declared goods in Shanmuga Traders v. State of Tamil Nadu reported in [1999] 114 STC 1.

10. From the totality of the facts and circumstances as stated above and the judgments referred to above, we are of the view that the Tribunal has come to the correct conclusion, which leaves no room for interference from this Court. Hence, the tax case revision is dismissed as devoid of merits.