

(1995) 04 MAD CK 0030

In the Madras High Court

Case No : Tax Case Revision No"s. 1433 and 1434 of 1984

State of Tamil Nadu

APPELLANT

Vs

V. Balu Chettiar

RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Citation : (1995) 04 MAD CK 0030

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—In both these revisions, the State is the petitioner. The assessee is V. Balu Chettiar, who is a dealer in oil and oil cakes

at Thanjavur. The assessing officer while checking the accounts, has found that the gross profit disclosed was low. There was no separate account

maintained for first sale of oil. The assessee had purchased oil cake from one Rajamani Trading Corporation, Trichy, to the extent of Rs. 1,57,835.

The investigation revealed that there were no such dealers at Trichy and hence the assessing officer disallowed exemption for groundnut oil for Rs.

17,940 and Rs. 1,77,564 for groundnut oil cake. The inspection in the shop on August 18, 1979, revealed stock discrepancies. The inspection of

the shop on August 15, 1979 and October 16, 1979, revealed sales without issue of bills. The purchase bills of 9,640 tins of vanaspati and 368

bags of cotton seeds revealed that out of the 150 tins remaining, the value was ascertained and assessed above the total taxable turnover at Rs.

22,86,221 and Rs. 5,72,966 respectively. Penalty of Rs. 10,398 also was levied for the suppression.

2. Against the addition of Rs. 2,87,364 and levy of penalty of Rs. 10,398, the

assessee preferred an appeal before the Appellate Assistant

Commissioner. The Appellate Assistant Commissioner held that the transactions with Rajamani Trading Corporation by the assessee cannot be

termed as fictitious as the department has not proved that Rajamani Trading Corporation were bill traders. Hence the Appellate Assistant

Commissioner granted relief of Rs. 18,837 under groundnut oil and Rs. 1,86,442 under groundnut oil cake. Since the transactions were treated as

genuine, the Appellate Assistant Commissioner deleted the entire penalty.

3. Again the assessee preferred a second appeal before the Tribunal and the State filed an enhancement petition on the ground that the Revenue

established that Rajamani Trading Corporation were bill traders and hence the assessee had to pay tax on the transactions made with them and

requested the Tribunal to restore the assessing officer's order.

4. The Tribunal held that the assessee had not charged separately for the sale of packing materials, that there is no contract for sale of packing

materials, either implied or explicit, and that the sale of oil, vanaspathi and cotton seeds were second sales and not liable to tax in the assessee's

hands and as such set aside the addition of Rs. 48,554. Regarding the addition made for the defects, the Tribunal upheld the defects and additions

for the defects. Regarding the enhancement petition for the restoration of penalty and the turnover relating to transactions with Rajamani Trading

Corporation the Tribunal held that the Revenue had not proved that Rajamani Trading Corporation were bill traders, that they were available at

Virudhunagar and that the assessee had proved that there was an earlier taxable sale and that as per the judgment of the Madras High Court in

Deputy Commissioner (CT) v. Sivakumar and Company 1980 45 STC 436 the assessee had done whatever he could and as such the Appellate

Assistant Commissioner was right in deleting the turnover of groundnut oil for Rs. 17,940 and oil cake for Rs. 1,77,564. Regarding the penalty, the

Tribunal relying upon the decision in The State of Tamil Nadu Vs. Jakthi Veliyeetakam, held that when the penalty was set aside by the Appellate

Assistant Commissioner, there was no question of restoration. Thus, the enhancement petition was dismissed.

5. Aggrieved, the State filed two revisions. T.C. No. 1434 of 1984 relates to tax leviable on packing materials and T.C. No. 1433 of 1984 relates

to the enhancement petition filed by the department, and the estimate.

6. The learned Additional Government Pleader (Taxes) submitted that the enhancement petition ought not to have been dismissed by the Tribunal.

The dismissal is resulting in grant of deduction based on the bogus bills issued by the bill traders, namely, Rajamani Trading Corporation. The

Tribunal was not correct in accepting the certificate issued by the Chamber of Commerce to Andavar & Company, Virudhunagar, for the grant of

the exemption for the purchase made from a different concern, that was not in existence at all. The Tribunal failed to note that Rajamani Trading

Corporation was not in existence in the year of assessment and there was no registration held in 1979-80 under the abovesaid name and style of

business. The Tribunal ought to have rejected the evidence produced by the local purchaser of goods as the purchase bills from Rajamani Trading

Corporation are only make-believe affairs to avoid payment of single point tax. We have heard the learned Additional Government Pleader

(Taxes) and perused the records carefully.

7. According to the assessee, the packing materials sold along with the goods, which are exempt from tax, are not liable to be taxed as per the

provisions of rule 6(cc)(ii). It was submitted that the estimated value of Rs. 48,554 being the sale value of packing materials, is not liable to tax.

The assessing officer has estimated the sale value of seeds and packing materials involved in the second sale of oil, vanaspati and cotton seeds. It

was pointed out by the Tribunal that the assessee had not charged separately for the sale of packing materials. According to the provisions of rule

6(cc)(ii) in respect of goods not liable to tax at the hands of the assessee, the cost of packing materials and the cost of labour are not liable to be

assessed whether or not, such amounts are specified and charged for by the assessee separately. In this case, the assessee had admittedly sold oil,

vanaspati and cotton seeds, which are second sales and not liable to be taxed at his hands. The assessee pointed out that during the first sale, the

tax has been paid. It is not necessary for the assessee to prove that during the first sale, the tax was paid. It is sufficient if the assessee pointed out

that during the first sale, the tax was paid and in the hands of the assessee, it was only a second sale. In order to support the contention that the

packing materials are charged separately and price collected by the assessee

does not include the sale value of the packing materials, evidence was produced. Whether packing material was subject to any agreement, express or implied, needs to be determined and would depend upon the nature of the transaction. The evidence on record would go to show that packing materials were sold along with the oil. If the sale value of the packing material is included in the sale value of the content then the sale value of the packing material is taxable. This was the view expressed by this Court in *A. R. Manickam Chettiar & Sons v. State of Tamil Nadu* 1992 87 STC 134; 1992 2 MTCR 6. This decision is based upon the principle laid down by the Full Bench of this Court in *State of Tamil Nadu v. V. V. Vanniaperumal & Co.* 1990 76 STC 203. Thus, considering the facts, arising on this aspect, we have to hold that the estimated packing materials to the value of Rs. 48,554 is liable to be taxed under the provisions of rule 6(cc)(ii).

8. In so far as the enhancement petition is concerned, it relates to the purchases made from Rajamani Trading Corporation. The assessee produced purchase bills of groundnut oil for Rs. 15,600 and the groundnut oil cake for Rs. 1,57,835 from Rajamani Trading Corporation. The bill gives the R.C. number and C.S.T. number, etc. The address of the head office was also shown in the bill. All the sales are noted as second sales.

Enquiries have been made by the officers at Virudhunagar regarding the genuineness of the R.C. applied for by the dealers. Letters given by Kerala

Trading Corporation, Virudhunagar, S. A. Nataraja Nadar, Virudhunagar and Virudhunagar Chamber of Commerce and Industry, Virudhunagar,

certifying that the above dealers are genuine dealers and are available at Virudhunagar. On the enquiry, it was found that K. Andavar & Company

was later on changed as Rajamani Trading Corporation as per the letter dated April 29, 1978 of V.S.P. They were also having a branch at

Virudhunagar. The change of name was noted in the registration certificate with an endorsement made thereon. Therefore, the Tribunal came to the

conclusion that the Revenue has failed to prove that Rajamani Trading Corporation is a non-existent firm. When the assessee has proved that he

has purchased goods from Rajamani Trading Corporation, which was in existence at that time, no further proof is necessary for proving the first

sale. Therefore, the second sale exemption granted with regard to the sale

turnover on groundnut oil cake appears to be in order. Since the assessee is entitled to exemption on the second sale of oil and oil cake on the turnover of Rs. 17,940 and Rs. 1,77,564, the Tribunal came to the conclusion that there is no wilful suppression warranting levy of penalty. Therefore, on the merits, the Tribunal came to the conclusion that the penalty is not leviable in the case of the assessee. No doubt, the Tribunal pointed out that since the Appellate Assistant Commissioner had cancelled the penalty in its entirety, no enhancement petition would lie. In view of the fact that the penalty was cancelled on consideration of the merits, we are not making any pronouncement on this question, namely, whether the enhancement petition can be filed while the Appellate Assistant Commissioner cancelled the penalty in its entirety.

9. In that view of the matter, the revision filed in T.C. No. 1434 of 1984 relating to the levy of tax on the sale value of packing materials, stands allowed, after setting aside the order passed by the Tribunal on this aspect and T.C. No. 1433 of 1984 filed against the enhancement of penalty and expected turnover, stands dismissed.

10. T.C. No. 1434 of 1984 allowed.

11. T.C. No. 1433 of 1984 dismissed.