

(1972) 09 MAD CK 0023

In the Madras High Court

Case No : Tax Case No. 223 of 1967 (Revision No. 124 of 1967)

Subramaniam Brothers

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-09-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 7, 8

Citation : (1973) 32 STC 139

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Advocate : K.C. Rajappa, for the Appellant; K. Venkataswami, First Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The petitioner-firm is a dealer in papers and boards. For the assessment year 1963-64 it has been assessed under the

Central Sales Tax Act. In the course of the assessment, the assessee claimed that a turnover of Rs. 3,98,029.63 represented the second or

subsequent inter-State sales by transfer of documents of title to the goods during the movement of the same from this State to the State of Andhra

Pradesh and that, therefore, the entire turnover is exempt from tax u/s 6(2) of the Central Sales Tax Act, 1956. It also contended that in any event

the said turnover is liable to be taxed at the concessional rate of 2 per cent and not at the general rate of 10 per cent as it has produced the D form

certificate from the buying department. This claim was rejected both by the assessing as well as appellate authority. The Tribunal has, however,

upheld the claim of the assessee to the concessional rate of two per cent; but it rejected the claim for exemption of the entire turnover on the

ground of the sales being second and subsequent inter-State sales. According to the Tribunal, the mere fact that the sales in question are second or subsequent inter-State sales will not be sufficient to attract the provision for exemption contained in Section 6(2) and that for getting the exemption u/s 6(2), the assessee must show that the second and the subsequent inter-State sales were to a registered dealer. The Tribunal has found that the goods in respect of all these transactions have been supplied to the text-books department of the Andhra Pradesh Government and that the said department has not been registered as a dealer under the Central Sales Tax Act either u/s 7(1) or u/s 7(2). In view of the fact that the buying department was not a dealer registered under the Central Sales Tax Act, the Tribunal held that the assessee is not entitled to the benefit of complete exemption u/s 6(2) in respect of the inter-State sales in question. The decision of the Tribunal that the assessee is not entitled to the benefit of Section 6(2) is being challenged in this case.

2. The learned counsel for the assessee contends that Section 6(2), which provides for exemption in respect of second and subsequent inter-State sales, should be reasonably construed so as to confer the benefit of the exemption to dealers who deal with Government departments who do not normally register themselves as dealers under the Act. According to the learned counsel, Section 7(2) gives only an option to the Government department to register and it is not obligatory on the part of the Government departments to register themselves under the Act and in such cases, the selling dealer cannot be deprived of the benefit of the exemption merely because the Government departments have not registered themselves under the Act. We are not in a position to accept the above contention advanced on behalf of the assessee. Section 6(2) is very categoric and it is as follows:

Notwithstanding anything contained in Sub-section (1), where a sale in the course of inter-State trade or commerce of goods of the description referred to in Sub-section (3) of Section 8-

(a) has occasioned the movement of such goods from one State to another; or
(b) has been effected by a transfer of documents of title to such goods during their movement from one State to another;

any subsequent sale to a registered dealer during such movement effected by a

transfer of documents of title to such goods shall not be subject to tax under this Act.

3. The above Section provides for an exemption from tax only to a subsequent inter-State sale to a registered dealer. It is a well-established canon

of construction of statutes that a provision providing for exemption has to be construed strictly. Admittedly, the buyer in this case, namely, the text-

books department of the Andhra Pradesh Government is not a registered dealer. Therefore, Section 6(2) cannot be applied to the sales in question

as the sales were not to a registered dealer. The fact that Section 7(2) gives some option to certain dealers to register or not to register themselves

as dealers under the Central Sales Tax Act is quite irrelevant for the purpose of finding out whether the buying dealer is a registered dealer or not.

As a matter of fact, the same statute, while dealing with the concessional rates of tax in respect of inter-State sales, specifically provides u/s 8(1)

that the benefit of concessional rate of tax will be available to all sales made to Government or to registered dealers other than the Government.

Section 8(1) also specifically directs that the concessional rate of tax will be applicable to all inter-State sales made either to Government or to

other registered dealers. But Section 6(2) restricts the exemption only to inter-State sales made to registered dealers. Whether the Legislature has

made the above distinction deliberately between cases of exemption and cases where the concessional rate of tax is levied, is not clear. But we

cannot adopt the so-called liberal interpretation of Section 6(2) as contended by the learned counsel and extend the scope of exemption in relation

to sales made to persons other than registered dealers. As it is, Section 6(2) does not allow any exemption in respect of subsequent and second

inter-State sales made to Government departments which are not registered as dealers under the Central Sales Tax Act. The tax case is, therefore,

dismissed with costs. Counsel's fee is Rs. 150.