
(1960) 04 MAD CK 0003

In the Madras High Court

Case No : Tax Revision Case No's. 50, 51, 91 and 112 to 117 of 1958

S.V. Nannuswami and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 05-04-1960

Acts Referred:

Citation : (1960) 73 LW 711 : (1960) 11 STC 726

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : R. Gopalaswami Ayyangar, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The question of law that arises for determination in each of these petitions is the same and all the petitions can be disposed

of by a single order.

2. The petitioners were dealers liable to be assessed on their turnover under the Madras General Sales Tax Act, IX of 1939. They were dealers in

textile goods and the goods handled by them in the relevant assessment years included cloth of superfine quality. T.C. No. 113 of 1958 arose out

of the assessment proceedings for 1954-55 and the others related to the assessment year 1955-56. But the turnover of the petitioners on which

they were taxed was all subsequent to 23rd August, 1954. The provisions of Section 3(2) of Act IX of 1939 were amended by Section 2 of

Madras Act 23 of 1957 and u/s 1(2) of the Amending Act, the amendment was given retrospective effect from 23rd August, 1954.

3. The statutory provision which we have to consider now is the first proviso to

Section 3(2) of the Act and that proviso as amended by Act 23 of 1957 ran :

Provided that, in the case of goods imported into the State of Madras either from outside the territory of India or from any other State in India, the tax shall be levied on the first sale effected in the State of Madras by a dealer who is residing in the State of Madras and who is not exempt from taxation under the next succeeding sub-section, after the import of the said goods into the State of Madras.

4. The question for determination was whether the sales effected by the petitioners, who were certainly dealers resident within the State of Madras, were the first sales effected within the State of Madras, after the import of the said goods into the State of Madras. The Tribunal answered that question in the affirmative and against the petitioners. It is the correctness of that decision that has been challenged by the petitioners.

5. In paragraph 5 of its order the Tribunal pointed out :

The appellants (petitioners before us) purchased mill cloth from non-resident dealers who send the goods by train, with themselves as consignor and " self " as consignee. In some cases the railway receipts are delivered to the appellants by banks against payment of the consideration. In other cases, the non-resident dealers send the railway receipts to certain agents called " indenting agents " who had canvassed for the orders from the local dealers and these railway receipts are delivered by the indenting agents to the local dealers; but the appellants admit that such delivery of railway receipts by the indenting agents is not against payment of price.

6. The indenting agents were residents within the State of Madras. From the material placed before us it is clear that only a slight modification of what has been set out by the Tribunal is necessary. The indenting agents procured the orders of the petitioners and forwarded them to the non-resident mills which sold the goods. The order itself provided for alternative modes of delivery of the railway receipts for the consigned goods. The railway receipts could be sent through bank or sent "direct ". The railway receipts sent direct again apparently fell under two categories, railway receipts delivered to the petitioners as buyers through the indenting agents and railway receipts forwarded to the buyers direct. The expression "direct" was apparently used in contradistinction to delivery through bank against

payment of price. When railway receipts were forwarded direct, that is, whether they were sent direct, or whether they were delivered through indenting agents, it was not against payment of price. The price was paid later.

7. In paragraph 7 of its order the Tribunal rejected the alternative contentions of the assessee that (1) the bank should be deemed to be a dealer

who sold the goods to the petitioners when the bank collected the money and delivered the railway receipts and (2) the indenting agents must be

deemed to have sold the goods to the petitioners when the railway receipts were handed over to the petitioners.

8. In our opinion the Tribunal was right. Merely because the bank advanced money to the seller and eventually adjusted its advance out of the

moneys collected by the bank on the delivery of the railway receipt to the buyer, the bank does not become a dealer. It did not buy the goods and

sell them to the petitioners. Nor did the bank become an agent of the seller for the sale of the goods to the buyers. In the case of the indenting

agents the mere fact that they delivered railway receipts to the buyers did not make that a transaction of sale independent of the sale by the non-

resident dealer.

9. The learned counsel for the petitioners urged that in reaching its conclusions the Tribunal did not take into account the further material placed

before the Tribunal and that the Tribunal's findings were vitiated by its failure to comply with the request of the petitioners to give them an

opportunity to adduce further evidence. There was no express reference in the order of the Tribunal to the further documents filed by the

petitioners along with the memorandum of additional grounds of appeal, necessitated by the amendment of the proviso to Section 3(2) effected by

Act 23 of 1957, which was during the pendency of the appeals before the Tribunal. These documents have been placed before us and these

documents, which it is unnecessary for us to set out in detail, do not bear out the contention of the learned counsel for the petitioners, that the

indenting agents sold the goods to the petitioners on behalf of the non-resident principals. Though before the Tribunal in the additional

memorandum of appeal it was claimed that the documents placed at that stage were only representative and that a further opportunity should be

given to let in further evidence and though there was no express reference in the judgment of the Tribunal negating that request, the position is, the

learned counsel for the petitioners was unable to tell us what further evidence was available to prove that antecedent to the sale of the imported

goods by the petitioners there was a sale to them within the State of Madras by a person resident within the State of Madras, a sale which was

after the goods had been imported. The requirements of the proviso are (1) that there must be a sale within the State of Madras and (2) that that

sale must be after import. All that has been established in this case is that there was a sale by the non-resident dealer to the petitioners, a sale

completed by delivery of the goods within the State of Madras. The import of the goods within the State of Madras was part of that transaction of

sale and was in the course of that sale.. There was no sale by the non-resident dealer or by his resident agent after the goods had been imported

into Madras. As we said the Tribunal was right in the view it took that the assesseees were the first dealers after the goods had been imported and

that as such they were liable to pay the additional tax u/s 3(2). The correctness of that conclusion is in no way affected by an examination of the

further documents which were filed before the Tribunal, which, as we have pointed out, were not expressly adverted to by the Tribunal in its order.

The Tribunal, in our opinion, was not in error either when it did not grant a further opportunity to the petitioners to place further evidence.

10. Each of the petitions is dismissed with costs. Counsel's fee in each of the petitions Rs. 50.