

(1969) 01 MAD CK 0030

In the Madras High Court

Case No : Tax Case No. 190 of 1964 (Revision No. 129)

T.A. Kumarasamy Pathar

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 15-01-1969

Acts Referred:

Citation : (1970) 83 LW 26 : (1969) 23 STC 447

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : C. Venkataraman, for the Appellant; K. Venkataswami, for the Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—The short point in the tax case is whether the assessee in respect of the assessment year 1959-60 had the minimum turnover which would attract tax under the provisions of the General Sales Tax Act, 1959. The assessing authority proceeded as follows:-

2. The other authorities below accepted this process to be correct.

3. We think that position cannot be maintained. Section 3 of the Act, which is the charging section, imposes tax on every dealer "whose total turnover for a year is not less than ten thousand rupees." "Total turnover" is defined to mean the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax. "Turnover" is the aggregate amount for which goods are bought or sold and "sale" is the transfer of property in goods by one person to another in the course of business for cash or deferred payment. The Act itself confines the charge, as it should, to local sales or purchases because of the constitutional limitation upon the legislative power. "Sale" as defined in the Act should, therefore, be taken for the purpose of the Act to be the local sale or purchase. If that be so, turnover and total turnover can only relate to such sales or purchases and cannot include

what is an inter-State sale or export or import sale. It is true that in the definition of "total turnover" it is said to include turnover whether or not the whole or any portion of such turnover is liable to tax. This has no reference to inter-State sales which are outside the scope of the Act but has reference only to sales which are normally chargeable to tax under the Act but due to exemption are not subject to tax.

4. But Rule 6(g) of the General Sales Tax Rules is pressed into service for the revenue and it is contended that as it is within the contemplation of this rule to include in the turnover inter-State sales or purchases as well, the same idea should be imported into the computation of the minimum necessary to attract tax in Section 3 of the Act. This argument misses the distinction between the purposes of the two provisions. Section 3 deals with chargeability while Rule 6 is concerned with deduction. All that the rule means is that because the inter-State sales are not chargeable to tax under the local Act, they are entitled to deduction. More properly it should be viewed not as a deduction but as exclusion from the turnover on the ground that it cannot form part of the chargeable turnover. Turnover under the Act includes the chargeable sales or purchases which may or may not be subject to tax in view of the relevant statutory provisions. We do not think that *Guduthur Thimmappa & Son v. State of Andhra Pradesh* [1964] 15 S.T.C. 299, expresses any view to the contrary. On the other hand *A. V. Fernandez v. State of Kerala* [1957] 8 S.T.C. 561 pointed out the essential difference between exemption or deduction for purposes of tax and nonliability to tax. The Supreme Court observed, though in a different context, that "the Legislature cannot enact a law imposing or authorising the imposition of a tax on such sales (exempted sales) and they should be excluded from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed." We are of the view, therefore, that the computation made by the assessing authority is not authorised by the Act and the assessee's turnover below Rs. 10,000 did not attract tax.

5. The tax case is allowed with costs. Counsel's fee is fixed at Rs. 100.