(1971) 03 MAD CK 0065

In the Madras High Court

Case No : Tax Case No''s. 402 and 471 of 1970 and Revision No''s. 264 and 327

The Deputy Commissioner (C.T.)	APPELLANT
Vs	
Lakshminarayana Textiles (P.) Ltd. and Another	RESPONDENT

Date of Decision : 17-03-1971

Acts Referred:

Citation : (1971) 28 STC 288

Hon'ble Judges : Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Advocate : A.R. Lakshmanan, for First Assistant Government Pleader, for the Appellant; C. Venkatraman and Padmanabhan, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, C.J.—It seems to us that the Tribunal took the correct view. The facts found by the Tribunal are these. The assessee borrowed a certain amount of cotton from one Valliappa Textiles, which had imported the same under the actual user''s licence. The borrowing was permitted by the Textile Commissioner who directed that the loan should be returned in the shape of cotton and that neither of the transactions should be treated as a sale. It is not in dispute that the cotton imported under the actual user''s licence cannot be sold. That is apparently the reason why the Textile Commissioner gave permission to the assessee to take cotton on loan. The transaction now sought to be taxed consisted of the return of cotton to Valliappa Textiles. The transaction clearly does not amount to a sale and is not a sale. The Tribunal was right in finding that it was only a loan transaction. It may be, as contended by the department, money was paid by the assessee to Valliappa Textiles, Bangalore, in relation to the cotton borrowed. But this is for the purpose of clearing the security to which the cotton was subject in a bank. Without clearing the security, cotton could not be released and Valliappa Textiles, Bangalore, could not lend it. Such payment should not be taken as consideration for a sale. The tax case is dismissed. No costs.

2. T.C. No. 402 of 1970---In the same view, this tax case is also dismissed. No costs.

