(1958) 10 MAD CK 0013

In the Madras High Court

Case No : O.S. No. 261 of 1952, Second Appeal No. 818 of 1956

The Indian Drugs Co. APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 10-10-1958

Acts Referred:
Constitution of India, 1950 — Article 286

Citation : (1959) 10 STC 322

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : T.V. Balakrishnanand N. Vanchinathan, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—In regard to an assessment under the Madras General Sales Tax Act, the appellant challenged the transaction by means of

a suit on the ground that it was bad and that it offended Article 286(2) of the Constitution, and Section 22 of the General Sales Tax Act, which

incorporates Article 286(2) of the Constitution. This contention was upheld by the trial court and on the ground that the assessment was bad on the

foot just now mentioned, the suit of the plaintiff was decreed.

2. On appeal the learned Subordinate Judge concurred with the trial court that the assessment was bad for the reason mentioned but held that the

suit is not maintainable by reason of Section 18-A of the General Sales Tax Act. That section provides:-

No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made

under this Act.

The defeated assessee appeals.

This appeal has got to be dismissed for two reasons.

3. First of all the suit is not maintainable by reason of Section 18-A: In S.A. No. 1186 of 1955, Palanisami Nadar v. State of Madras [1959] 10

S.T.C. 207, I have reviewed the cases on the subject and the relevant provisions and come to the conclusion that the jurisdiction of the Civil Court

is barred.

4. Secondly, the learned advocate for the Government points out that it has not been brought to the notice of the courts below that by reason of

the Sales Tax Continuance Order of 1950, published in the Gazette of India, Extraordinary, page 670, dated 26th January, 1950, any tax on the

sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of the

Constitution of India shall continue to be levied, notwithstanding that the imposition of such tax is contrary to the provision contained in Clause (2)

of Article 286 of the Constitution. This undoubtedly is a complete answer to the findings of both the courts below that the assessment is bad.

5. The net result is this appeal has got to be dismissed and is hereby dismissed and in the circumstances without costs.

No leave.