
(1973) 04 MAD CK 0014

In the Madras High Court

Case No : Tax Case No. 248 of 1969 (Revision No. 173 of 1969)

The State of Madras

APPELLANT

Vs

Raman and Co. and Others

RESPONDENT

Date of Decision : 25-04-1973

Acts Referred:

Citation : (1974) 33 STC 1

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Ramanujam, J.—The assessee in this case, dealer in scrap iron, during the assessment year 1964-65 purchased condemned railway coaches sold in auction by the railway department and also components of Nissen huts from the Director of Supplies and Disposals, Madras, also sold in auction. He later dismantled the condemned railway coaches as also the Nissen huts and sold the resultant timber and iron materials in bulk. The assessing authority proposed to assess the entire turnover of the assessee's business of Rs. 1,99,411.32 as the first sale of scrap. The assessee's contention was that the sale by the railway department and the Director of Supplies and Disposals of the condemned coaches and the Nissen huts should be considered as first sale of scraps and that his sale should be treated as second sale in scrap not liable to tax. The assessing authority overruled the contention of the assessee and assessed the said turnover as representing first sales of scrap. There was an appeal to the Appellate

Assistant Commissioner but without success. On a further appeal to the Tribunal it was held that the sale by the railway department and the

Director of Supplies and Disposals of the condemned coaches and Nissen huts respectively should be taken to be of scrap and that, therefore, the

assessee's subsequent sale of scrap should be treated as second sale. The Tribunal purported to follow the decision of this court in T.C. No. 17 of

1964.

2. Therefore, the only question that has to be considered in this case is whether the turnover relating to the assessee's sale of scrap iron is a second

sale as contended by the assessee or whether it is a first sale as contended by the revenue. If it is only a first sale of scrap iron it could be taxed

under the provisions of the Madras General Sales Tax Act. It is seen that the assessee purchased in auction the condemned railway coaches and

Nissen huts which could not be put to any further use. Any purchaser of such condemned articles could not have entertained any idea of putting

those articles to any further use. He could not in fact use them except for dismantling and selling the resultant scrap. No doubt the sales by the

railways and the Director of Supplies and Disposals are not sales of scrap iron as such. But the intention of the sellers and buyers can easily be

taken to sell or buy condemned coaches and condemned Nissen huts only for the purpose of acquiring the property in the old materials contained

in those condemned articles. In view of the fact that both the contracting parties had contemplated the dismantling of the coaches and huts and

getting the resultant scrap for sale later by the buyer, it has to be taken that the railways as well as the Director of Supplies and Disposals had

intended to sell only the scrap iron and the wooden scraps found in the condemned articles sold by them in auction. The Tribunal, therefore,

appears to be right in holding that what the assessee purchased in public auction is scrap and that when he sold the scrap later he was only a

second seller.

3. A similar question came up for consideration in T.C. No. 17 of 1964. In that case, certain condemned machineries which cannot be put to use

had been sold which was claimed to be scrap iron falling within the Second Schedule of the Act. The revenue contended that the said condemned

articles cannot be treated as scrap. But the court rejected that contention and

held that any condemned article made of iron which is of no further use can be regarded as iron scrap and that iron scrap in any form wherever it comes from is of special importance to the industry in the country.

The court observed thus:

In our view, the condemned articles fall within the description of iron scrap in item 4 of the Second Schedule. It appears to us also impossible to

hold that condemned articles come within the purview of item 23 in the First Schedule which relates to machinery including hardware, iron and

steel. Hardware, iron and steel referred to there must be in the form of machinery. Iron scrap consisting of condemned articles can hardly be

described as machinery under item 23 of the First Schedule.

4. We have therefore to uphold the view taken by the Tribunal in this case. The tax case is, therefore, dismissed with costs. Counsel's fee Rs. 150.