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(1959) 11 MAD CK 0047

In the Madras High Court

Case No : Tax Revision Case No. 62 of 1957

The State of Madras APPELLANT

Vs

S.V. Shanmughan and Co. RESPONDENT

Date of Decision : 30-11-1959

Acts Referred:

Citation : (1960) 2 MLJ 66 : (1960) 11 STC 277

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

Bench : Division Bench

Advocate : G. Ramanujam, for The Additional Government Pleader, for the Appellant; K. Srinivasan and D.S. Meenakshisundaram, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The assessee-respondent was assessed to tax for the assessment year 1953-54 by the Deputy Commercial Tax Officer who was the "assessing authority ". The turnover exceeded Rs. 20,000. Subsequently, the Deputy Commercial Tax Officer took action under Rule 17(1) of the Madras General Sales Tax Rules, 1939 and assessed the assessee afresh to include both the original turnover and the turnover that had escaped assessment then. The turnover on which the assessee was ultimately assessed was Rs. 1,89,038. Against the revised order of assessment the assessee appealed to the Commercial Tax Officer, who rejected the appeal as not maintainable. The assessee appealed to the Tribunal against the order of the Commercial Tax Officer. The Tribunal held that the appeal to the Commercial Tax Officer was maintainable and remanded the appeal for disposal afresh by the Commercial Tax Officer. The State challenged the correctness of the order of the Appellate Tribunal by this application preferred u/s 12-B of the Sales Tax Act.

2. It is quite enough for us to rest our decision on Rule 13(1) of the Madras General Sales Tax Rules, though that was not'' specifically adverted to by the Appellate Tribunal. Rule 13(1) runs: "Subject to the provisions of Section 11, any person aggrieved by any original order of an assessing authority may appeal to

the Commercial Tax Officer concerned". It is not necessary to set out the proviso or the other Sub-rules of Rule 13. Rule 13(1) specifically makes any "original" order of an assessing authority appealable. The order passed under Rule 17(1) is an original order of assessment and, in this case, it is an order of the assessing authority, because, as we have pointed out, it was the Deputy Commercial Tax Officer who came within the scope of the definition of "assessing authority" in Section 2 (a) (2). Therefore, the order passed under Rule 17(1) was appealable under Rule 13(1), subject, of course, to the other conditions specified in Section 11. There was certainly nothing to indicate that any of the other provisions of Section 11 barred the appeal by the assessee. The view of the Tribunal that the appeal preferred to the Commercial Tax Officer was maintainable is correct.

3. The petition fails and is dismissed with costs. Counsel''s fee Rs. 100.

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