

(1983) 03 MAD CK 0064

In the Madras High Court

Case No : T.C. No. 103 of 1983 (Revision No. 56 of 1983)

The State of Tamil Nadu

APPELLANT

Vs

Gomathiammal

RESPONDENT

Date of Decision : 07-03-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(1), 16(2)

Citation : (1984) 55 STC 210

Hon'ble Judges : P. Shanmugam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : Additional Government Pleader, for the Appellant;

Judgement

Ramanujam, J.—In this tax case, the revenue challenges the decision of the Sales Tax Appellate Tribunal so far as it is against the revenue.

2. The assessee in this case is a dealer in steel furniture and clocks in Mettur Dam. The officers of the Intelligence Wing inspected the place of business of the assessee on 17th December, 1977, and during the inspection they recovered six account books. The said account books related to 1976-77. The account books recovered were treated as second set of accounts, as the assessee had already been assessed on another set of accounts produced by her. The second set of account books were examined with reference to regular accounts and it was found that the sales mentioned in the second set of account books were not accounted for in the regular accounts. Thereafter, on the basis of the entries in the second set of account books, the escaped turnover was taken at Rs. 40,295 for 1976-77 and a tax of Rs. 4,573 and a penalty of Rs. 6,859 were levied under sections 16(1) and 16(2) respectively of the Tamil Nadu General Sales Tax Act, 1959.

3. Against the said assessment, the assessee filed an appeal before the Appellate Assistant Commissioner, who, after hearing the parties, refixed the taxable turnover at Rs. 20,147 and reduced the penalty to Rs. 2,287, after apportioning

taxable and exempted categories of sales in the ratio of 50 : 50.

4. Aggrieved by the order of the Appellate Assistant Commissioner, the assessee filed an appeal before the Sales Tax Appellate Tribunal. The revenue also filed an enhancement petition questioning the ratio of 50 : 50 adopted by the Appellate Assistant Commissioner as between exempted and taxable sales. The Tribunal, however, sustained the order of the Appellate Assistant Commissioner both as regards assessment of escaped turnover as well as penalty. It found that there was sufficient material in the anamath account books recovered from the assessee's place of business to justify the determination of escaped turnover at Rs. 20,295. It also found that the Appellate Assistant Commissioner was also justified in applying the ratio of 50 : 50 for determining the taxable turnover.

5. In this revision petition filed by the revenue, the order of the Tribunal, in so far as it has rejected the revenue's enhancement petition, is questioned. According to the learned Government Pleader, neither the Appellate Assistant Commissioner nor the Tribunal had any justification to apply the ratio of 50 : 50 as between exempted and taxable sales and that, on the facts of this case, when there is no evidence adduced by the assessee to show that any portion of the suppressed turnover represented second sales, the revenue is entitled to proceed on the basis that the entire suppressed sales represented only first sales.

6. After due consideration of the matter, we are of the view that both the Appellate Assistant Commissioner and the Tribunal are justified in applying the ratio of 50 : 50 for determining the taxable and exempted turnover. In this case the turnover of Rs. 40,295 has been determined as escaped turnover for the year 1976-77. The assessee contended that the entire escaped turnover represented second sales of steel furniture, wall clocks and time-pieces and therefore no portion of the escaped turnover can be brought to charge. The revenue, on the other hand, contended that since the assessee had not shown that any portion of the escaped turnover represented second sales, the entire turnover should be taken to represent first sales. It is not in dispute before us and it has also been found by the Tribunal that the assessee is not a manufacturer of steel furniture or wall clocks or time-pieces and that she has not also purchased these goods from outside the State. Therefore it has to be presumed that the assessee had purchased these goods for sale only in this State. However, in view of the fact that the assessee has not given details of the dealers from whom she had effected the purchases, the Appellate Assistant Commissioner, having regard to the difficulty in tracing out the dealers from whom the assessee had purchased the goods, adopted the ratio of 50 : 50 as between first and second sales. In view of the fact that the assessee is only a dealer and not a manufacturer of steel furniture, that it is not shown that she has purchased the goods in question from outside the State, the assessee can be taken to have purchased the goods representing 50 per cent of the escaped turnover from local registered dealers and therefore to the extent of said 50 per cent, the sales should be taken to be second sales. Once it has been shown that the assessee is not a manufacturer of

the goods in question and she has not purchased the same from outside the State, we cannot assume that the entire escaped turnover represents first sales, as contended by the Revenue. On the facts and circumstances of this case the Appellate Assistant Commissioner and the Tribunal appear to be justified in adopting the ratio of 50 : 50 based on a decision of this Court in Govindan & Co. State of Tamil Nadu [1975] 35 STC 50 and also an unreported decision of this Court in K. P. Raja Mohamed v. State of Tamil Nadu (T.C. Nos. 1, 2 and 3 of 1981 - Madras High Court).

7. The tax case is therefore dismissed.