(1975) 08 MAD CK 0040

In the Madras High Court

Case No : T.C. No''s. 433 of 1970 and 238 of 1971

The State of Tamil Nadu APPELLANT

Vs

K. Mariappa Chettiar RESPONDENT

Date of Decision : 07-08-1975

Acts Referred:
Central Sales Tax Act, 1956 — Section 10, 9

Citation : (1976) 38 STC 447

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

Bench : Division Bench

Advocate : K. Venkataswami, Additional Government Pleader No. I, for the Appellant; C. Natarajan, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—These two tax cases are filed by the revenue against the order of the Tribunal exempting a turnover of Rs. 23,203 in respect of the assessment year 1964-65 and a turnover of Rs. 48,802 in respect of the assessment year 1965-66. These turnovers related to sales of products of country oil chekkus. These goods are exempted from the levy of sales tax under the Tamil Nadu General Sales Tax Act by G.O. No. 1963, Revenue, dated 21st April, 1960. The assessments in this case were under the Central Sales Tax Act. There is no dispute now that the sales in question were in the course of inter-State sale. The assessee claimed that since the sales of these goods are exempted under the Tamil Nadu General Sales

2. Tax Act, u/s 9 of the Central Sales Tax Act they are also exempted from the levy of Central sales tax. The ground on which the assessee now claims exemption is that by Section 10 of the Central Sales Tax (Amendment) Act (28 of 1969) sales of goods in the course of inter-State trade and commerce effected during the period between 10th November, 1964, and 9th June, 1969, are exempted from the liability to pay Central sales tax if the conditions referred to in that section are complied with. This court, considering the provisions of

Section 10 held in Pioneer Match Works v. State of Tamil Nadu [1974] 34 S.T.C. 277. and Pioneer Match Works v. Deputy Commercial Tax Officer [1974] 34 S.T.C. 266 that if the assessee had not, in fact, collected tax and as per the provisions in Section 9 of the Central Sales Tax Act, as it stood prior to the amendment, no such tax could have been levied or collected if the amendment made by Act 28 of 1969 had not been made the assessee would be entitled to claim exemption. In this case, it is not in dispute that the assessee had not collected tax under the Central Sales Tax Act. The only question is whether u/s 9, as it stood prior to its amendment by Act 28 of 1969, the exemption given under the Tamil Nadu General Sales Tax Act would be available for the turnover under the Central Sales Tax Act as well. Though this court in a series of cases had taken the view that an exemption granted under the local law will not be automatically available for the assessment under the Central Sales Tax Act and that exemption could be claimed only under the provisions of the Central Sales Tax Act, the Supreme Court in State of Madras Vs. N.K. Nataraja Mudaliar, held that if the State law had given exemption to sales of any particular goods such exemption would be automatically available even for assessment under the Central Sales Tax Act. This decision was with reference to Section 9 of the Central Sales Tax Act before its amendment by Act 28 of 1969. The result therefore is exemption granted in respect of the sale of the goods in question by the local law would also be available for the Central sales tax assessment. Thus both the conditions referred to in Section 10 are complied with.

3. The learned counsel for the revenue contended that only if the assessee had not collected tax on the ground that such tax could not have been levied or collected in respect of such sale, he would be entitled to the exemption. He further contended that whatever may be the view of the other courts even after the decision in State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons, and State of Kerala v. Pothan Joseph [1970] 25 S.T.C 147 (S.C.)., this court took the view that an exemption granted under the local law is not automatically attracted by Section 9 of the Central Sales Tax Act and that, therefore, the law that stood prior to the amendment by Act 28 of 1969, so far as this State was concerned, was not of automatic application of the exemption provided under the local laws. We are unable to agree with this contention of the learned counsel. When the Supreme Court in Pothan Joseph''s case [1970] 25 S.T.C, 147 (S.C.) held that the view of this court in the earlier decision is no); correct it should be taken as the declaration of the law and that, therefore,he was entitled to say that the exemption was available u/s 9 prior to the amendment by Central Act 28 of 1969. Therefore, there could be no doubt that we have to refer that the non-collection was on the ground that no such tax could have been levied or collected in respect of such sales.

4. The learned counsel for the revenue then relied on the decisions of this court in Pioneer Match Works v. Deputy Commercial Tax Officer [1974] 34 S.T.C. 266. and Pioneer Match Works v. State of Tamil Nadu [1974] 34 S.T.C. 277. These two decisions related to the inclusion of the excise duty paid in the taxable turnover.

Excise duty paid was originally exempted from inclusion in the taxable turnover under Rule 6(f) of the Tamil Nadu General Sales Tax Rules. That was retrospectively deleted with effect from 1st April, 1959. When a question came up as to the applicability of Section 10 of the Tamil Nadu General Sales Tax Act this court took the view that in view of the omission of the exemption provision with retrospective effect from 1st April, 1959, excise duty could never be deemed to have been exempted from inclusion in the taxable turnover and that, therefore, no question of its exemption under the Central Sales Tax Act arose. If there was no exemption u/s 9 of the Central Sales Tax Act then Section 10 is not applicable at all. These two decisions therefore have no application to the present case. We accordingly hold that in view of the provision contained in Section 10 of Central Act 28 of 1969, the respondent-assessee is entitled to exclude the disputed turnover from the taxable turnover. These petitions accordingly fail and are dismissed with costs. Counsel''s fee Rs. 150 each.