

(1983) 07 MAD CK 0059

In the Madras High Court

Case No : Tax Case (Revision) No. 1472 of 1977 (Revision No. 330 of 1977)

The State of Tamil Nadu

APPELLANT

Vs

Prem Electrical Conductors (M.) Pvt. Ltd.

RESPONDENT

Date of Decision : 15-07-1983

Acts Referred:

Citation : (1984) 57 STC 29

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; N.V. Balasubramanian, for the Respondent

Judgement

Ramanujam, J.—The assessee in this case are dealers in electrical conductors. During the assessment year 1974-75 they sold a car TMZ 8143 and realised a sum of Rs. 23,048. The assessing authority included the said amount as part of the sales turnover of the assessee and brought it to tax. The assessee preferred an appeal to the appellate authority, seeking exclusion of the said sum of Rs. 23,048 from the sales turnover. The appellate authority came to the conclusion that the sum of Rs. 23,048 realised by the assessee by the sale of the car was liable to tax under the Tamil Nadu General Sales Tax Act, 1959, but found that the actual sum received by assessee, after allowing for depreciation and loss, was only Rs. 14,500 and that therefore the turnover by way of sale of the car should be taken to be only Rs. 14,500. Not satisfied with the decision of the appellate authority, the assessee went before the Tribunal. Before the Tribunal, it was contended by the assessee that the sum of Rs. 14,500 represented the sale proceeds of a capital asset and therefore it could not be taken to be a turnover as defined in the Tamil Nadu General Sales Tax Act. In support of this contention the assessee relied on the decision of the Supreme Court in Board of Revenue and Others Vs. A.M. Ansari and Others, , wherein it had been held that the sales made by the Government of Andhra Pradesh of forest produce only annually were not liable to be brought under the sales tax net on the ground that the

important element of frequency of sales was lacking and therefore the receipts realised on account of such sales of forest produce were not liable to be taxed. Relying on the said decision of the Supreme Court, the Tribunal held that the sale proceeds of the car could not be treated as turnover in respect of the assessee's business and therefore could not be brought to charge. Aggrieved by the said decision of the Tribunal, the State has come up before us.

2. The question for consideration before us is whether the sum of Rs. 14,500 realised by the assessee by the sale of the car is exigible to tax under the Tamil Nadu General Sales Tax Act, 1959. As already stated, the Tribunal has taken the view that the sum of Rs. 14,500, being the sale proceeds of the assessee's car, is not exigible to tax under the Tamil Nadu General Sales Tax Act, relying on the decision in Board of Revenue and Others Vs. A.M. Ansari and Others, . We, however, find that the view taken by the Tribunal in this case is contrary to the principle laid down by the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, , wherein the Supreme Court has held that receipts realised by the sale of scraps, like unserviceable oil drums, hose-pipes, jerry cans, etc., were in the course of the business of the company, and therefore the turnover in respect of those commodities, even though they were unserviceable, was liable to tax. In that case, the Supreme Court took into account the definition of the term "business" under the Tamil Nadu General Sales Tax Act, 1959 which was considered to be of the widest scope so as to take in all transactions of sales carried on in the course of business, though the articles sold may not be in the line of business undertaken by the assessee.

3. The decision in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, has been followed by this Court in a series of cases, the latest of them being the decisions in T.C. No. 1321 of 1977, State by Deputy Commissioner (CT), Madras Division v. Munoth Brothers, Madras and T.C. No. 890 of 1977, T. R. Aghoram Iyer, Firm, Akkur v. Deputy Commercial Tax Officer, Mayavaram. The decision of the Supreme Court in Board of Revenue and Others Vs. A.M. Ansari and Others, , which has been relied on the Tribunal in the present case in preference to the earlier decision of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, has been specifically considered by this Court in Deputy Commissioner (CT) v. Vijayalakshmi Mills Limited [1977] 40 STC 463, wherein this Court has held that the decision of the Supreme Court in Board of Revenue and Others Vs. A.M. Ansari and Others, does not run counter to the principle laid down by the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, and that therefore the decision in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, should be held to continue to hold the field even after the decision in Board of Revenue and Others Vs. A.M. Ansari and Others, . The scope of decision in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, was again considered by the Supreme Court in a

recent decision in State of Tamil Nadu Vs. Binny Ltd., Madras, . In that case the question arose whether the sales of provisions effected by Binny Ltd., Madras (a textile manufacturer) to their workmen were exigible to tax under the Tamil Nadu General Sales Tax Act, 1959. The Supreme Court, after referring to their earlier decision in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, , held that the activity of selling provisions to the workmen of the assessee, which was a textile mill, was incidental to the business of the manufacture of textiles, and that as such the sales were transactions falling within the definition of "business" under the Act and therefore those sales attracted liability to tax under the Act. Having regard to the fact that the Supreme Court in State of Tamil Nadu Vs. Binny Ltd., Madras, has reaffirmed its earlier view in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, the Tribunal in this case was not right in overlooking the decision of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, and in holding that the sale of the car by the assessee cannot be taken to be in the course of its usual business and therefore not exigible to tax. The decision of the Tribunal is clearly inconsistent with the decisions of the Supreme Court in State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. and Another, and State of Tamil Nadu Vs. Binny Ltd., Madras, . Hence the tax case is allowed, the order of the Tribunal is set aside and that of the appellate authority is restored. There will be no order as to costs.