(1980) 02 MAD CK 0040

In the Madras High Court

Case No : Tax Case No. 91 of 1980 (Revision No. 16 of 1980)

The State of Tamil Nadu — APPELLANT

Vs

Prem Sankar Stores — RESPONDENT

Date of Decision : 25-02-1980

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 3(1)

Citation : (1984) 55 STC 217

Hon'ble Judges : M.M. Ismail, C.J;Ratnam, J

Bench : Division Bench

Advocate : P. Venkataraman, for Additional Government Pleader, for the Appellant;

Judgement

Ismail, C.J.—This tax revision case is to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Coimbatore, dated 7th August, 1979. There is no dispute in the case that the relevant turnover of the respondent-assessee was exempted from sales tax. The only other question that was considered by the Tribunal was whether the respondent was liable to pay surcharge under the provisions of the Tamil Nadu Sales Tax (Surcharge) Act, 1971. The Tribunal held that since the surcharge itself has to be calculated on the sales tax paid, when once the turnover is exempted from the payment of sales tax, surcharge cannot be levied. Section 3(1) of the Tamil Nadu Sales Tax (Surcharge) Act states that every dealer who is liable to pay tax under the Tamil Nadu General Sales Tax Act, 1959, on the sale or purchase of goods within the limits of the area in which the Act is in force shall, on and from the date of commencement of the Act, pay a surcharge on such tax at the rate of five per cent of such tax. Thus, the levy of surcharge assumes the liability to pay sales tax, and in this case when the turnover is statutorily exempted from sales tax, there was no liability to pay surcharge also. The result is that the order of the Tribunal cannot be said to be erroneous in law. The tax (revision) case is therefore dismissed.