

(1982) 11 MAD CK 0012

In the Madras High Court

Case No : T.C. No. 1319 of 1977 (Revision No. 319 of 1977)

The State of Tamil Nadu

APPELLANT

Vs

Sri Velan Stores

RESPONDENT

Date of Decision : 03-11-1982

Acts Referred:

Citation : (1984) 57 STC 10

Hon'ble Judges : Ratnam, J; N.V. Balasubramanian, J

Bench : Division Bench

Advocate : K.S. Bakthavatsalam, Additional Government Pleader, for the Appellant; N. Inbarajan, for C.S. Chandrasekara Sastry, C. Venkataraman and C. Natarajan, for the Respondent

Judgement

Balasubrahmanyam, J.—This is a revision by the State of Tamil Nadu against the order of the Sales Tax Appellate Tribunal. The respondent

is a firm. It is an assessee under the Tamil Nadu General Sales Tax Act, 1959. As a dealer in ready-made garments and textiles, it is ordinarily

assessable to sales tax on the turnover in those articles of merchandise. During the assessment year in question, namely, 1974-75, the assessee

sold a car belonging to it for Rs. 5,000. The car was admittedly part of the business assets of the assessee. The assessee, however, objected to the

inclusion of the amount of realisation on the sale of this car as part of the taxable turnover for the year in question, on the ground that it was not a

dealer in old or second-hand cars. This objection was overruled by the assessing authority and the sum of Rs. 5,000 was included in the taxable

turnover. When the matter was taken up in appeal, the Tribunal deleted the amount from the taxable turnover on the ground that it could not be

said that the sale of the car was a dealing in the course of the assessee's trade.

The Tribunal expressed the view that the expression "business" does not take in, within its ambit, sporadic and isolated transactions which are not in the line of trade pursued by the assessee. Another ground on which the Tribunal relieved the assessee from tax liability on the sale value of the car was that the vehicle had earlier suffered tax at an earlier point of sale.

2. The learned Government Pleader urged before us that the decision of the Tribunal is erroneous in point of law. He urged that the Tribunal had gone against the principles laid down by the Supreme Court in *State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd.* and *Another*. In that case, it was laid down that when once a person is found carrying on a business as a dealer, namely, in the buying and selling of goods of any description, any sale effected by him in the course of trade of any commodity of whatever description would be exigible to sales tax. In that case, used-up drums, rubber hoses, old furniture, and bric-a-brac were sold by the assessee, who however, was a regular dealer only in petrol and oil. The Supreme Court held that the sales turnover other than the turnover in oil and petrol was also properly chargeable to sales tax. The Tribunal in this case was therefore not right in making a point of the fact that the assessee concerned is only a dealer in ready-made garments and not a dealer in old cars, overlooking the fact that the old car was a business asset of the assessee and had been sold and realised by the assessee in the course of trade.

3. We do not also accept as tenable the other ground on which the Tribunal had excluded the sum of Rs. 5,000. They said that the car had already been subjected to tax at an earlier point of sale between other parties. The order of the Tribunal does not clearly state whether on a point of evidently fact, they were satisfied about the earlier sale transaction having taken place of the self-same vehicle. It does not appear from the Tribunal's order that the assessee produced even the registration certificate appertaining to the vehicle in proof of earlier dealings. We, therefore, hold that the Tribunal's decision is fundamentally lacking in any factual basis for relieving the turnover in question from liability for tax.

4. Even otherwise, assuming that the car had been sold as a new one at the earliest point of time, we do not see how it can be regarded as the

self-same commodity it was at the time when it was sold in its brand new condition. It is the common experience of those who deal in or go in for

jalopies of this kind that second-hand cars are a class apart and the market for old and second-hand cars is quite a distinct sector from that for

new cars, from many points of view, including the type of clientele, the nature of the bargain, the quality and the degree of warranty of

performance, and so on. In every sense of the word, therefore, second-hand cars are a different commercial commodity from new automobiles.

We, therefore, hold that the question of applying a single point levy and exempting sales of old cars, tracing to them historically a first sale when

they were new once cannot be a proper way of applying the provisions of single point taxation to this particular kind of commodity.

5. For all the above reasons, we set aside the order of the Tribunal and restore that of the assessing authority and the Appellate Assistant

Commissioner. The State will have its costs from the assessee. Counsel's fee Rs. 250.