(1956) 04 MAD CK 0025

In the Madras High Court

Case No : Tax Revision Case No. 6 of 1955

Tools and Machineries Ltd. APPELLANT

Vs

State of Madras RESPONDENT

Date of Decision : 05-04-1956

Acts Referred:

Madras General Sales Tax (Turnover and Assessment) Rules, 1939 — Rule 5(1)
Madras General Sales Tax Act, 1939 — Section 12B(1)

Citation : AIR 1957 Mad 22 : (1955) 2 MLJ 397 : (1956) 7 STC 740

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : T.R. Srinivasa Aiyangar, for the Appellant; Asst. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Rajagopala Ayyangar, J.—The assessee is the petitioner in this tax revision case. It is a private limited liability company which was carrying

on business in auto-parts and accessories. During the assessment year 1952-53, with which this petition is concerned, the assessee returned its

turnover as nil.

The Deputy Commercial Tax Officer, however, estimated its turnover at Rs. 96713-8-0 this being the amount for which the goods held by it

including its furniture were handed over to a proprietary consent by name Associated Trades. This transaction took place on 2-4-1932.

2. The contention raised on behalf of the assessee before the Deputy Commercial Tax Officer was two-fold. The first was that as the stock in

trade which the assessee had and which was sold to the Associated Trades was in discharge of liabilities due to this concern it was not a sale by a dealer in the course of his business and therefore did not attract the tax liability as not being a sale within the definition under the Madras General

Sales Tax Act.

The second contention that it raised was that it was exempted from ""tax under Rule 5(1)(h) of the Turn over and Assessment Rules. This rule

exempts from inclusion in the turnover of an assessee ""all amounts realised by the sale of a dealer of his business as a whole.

3. The Deputy Commercial Tax Officer rejected both these grounds for exemption and assessed the turnover we have mentioned above to tax

under the General Sales Tax Act. The assessee took the matter in appeal to the Commercial Tax Officer. The appellate authority confirmed the

assessment but in the order which it passed it did not refer specifically to the first of the grounds which we have mentioned above. It dealt merely

with the claim for exemption under Rule 5(1)(h) of the Turnover and Assessment Rules and held that as the assessee did continue in business, it

could not be stated that there was ""a sale of its business as a whole.

On this ground the exemption claimed u/s 5(1)(h) was rejected and as we stated before the other point about the transaction of sale not being

within the Act was not dealt with by it. It confirmed, the assessment ordered by the Deputy Commercial Tax Officer. The assessee took the matter

in further appeal to the Tribunal and in the order of the Tribunal also the only point dealt was in relation to the exemption wider Rule 5(1)(h) of the

Turnover and Assessment Rules.

The Tribunal affirmed the decision of the lower authorities, and held the exemption not applicable to the case of the assessee. It is from this order

that the present revision case has been filed.

4. Mr. Srinivasa Aiyangar learned counsel for the assessee-petitioner repeated before us the two grounds which had been taken before the Deputy

Commercial Tax Officer. So far as the claim for exemption under Rule 5(1)(h) is concerned we consider that on the materials placed before the

Tribunal and the assessing authorities, their decision is correct.

There was here a sale no doubt by this dealer, of its entire stock in trade, but there was ""no sale, of his business as a whole"" because (1) the seller

continued to be in business and (2) it was retaining in its hands certain of the assets of the business which would be included in the ""whole of the business."" For these reasons we consider that the decision of the Tribunal was correct.

5. So far, however, as the other point as regards the transaction in question not being a sale within the Madras General Sales Tax Act is

concerned, as we stated before, this point was not considered either by the Commercial Tax Officer or by the ''Tribunal on appeal. The Deputy

Commercial Tax Officer states the facts in relation to this matter thus:

Due to heavy liabilities the sales were stopped on 9-1-1952 and the business was suspended. At the time they had a stock of goods valued for

Rs. 96713-8-0. This stock was handed over to Messrs. Associated Trades, a proprietary concern on 2-4-1952 in discharge of heavy liabilities

due to them.

The question whether this is a sale in the course of business by a dealer has not been considered by the Tribunal. We consider that this matter

should be investigated by the Tribunal and the assessment should be decided after a decision is reached as regards this point.

This revision petition is allowed and the matter is remanded to the Tribunal for investigation of this point raised by the learned counsel for the

assessee and for disposal of the appeal before them alter considering this point. There will be no order as to costs in this revision case.

