(1956) 04 MAD CK 0038

In the Madras High Court

Tools and Machineries Ltd. APPELLANT

Vs

The State of Madras RESPONDENT

Date of Decision : 05-04-1956

Acts Referred:

Tamil Nadu General Sales Tax (Turnover and Assessment) Rules Validation Act, 1959 — Rule 5(1)(h)

Citation : (1956) 2 MLJ 397

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

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. 96,713-8-0 this being the amount for which the goods

held by it including its furniture were handed over to a proprietary concern by name Associated Trades. This transaction took place on 2nd April,

1952.

2. The contention raised on behalf of the assessee before the Deputy Commercial Tax Officer was twofold. 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 Turnover and Assessment Rules. This rule exempts from inclusion in the turnover of an assessee ""all amounts realised by the sale by 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 with was in relation to the exemption under 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 Ayyangar 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 9th January, 1953 and the business was suspended. At the time they had a stock of goods

valued for Rs. 96,713-8-0. This stock was handed over to M/s. Associated Trades, a proprietary concern on 2nd April, 1952, in discharge of

heavy liabilities due to him.

6. 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 after considering this point. There will be no order as to costs in this revision case.