
(1990) 04 MAD CK 0035

In the Madras High Court

Case No : Tax Case No"s. 671 to 675 of 1980 (Revision No"s. 367 to 371 of 1980)

V. Subramanian

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 17-04-1990

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 3

Citation : (1990) 04 MAD CK 0035

Hon'ble Judges : Venkataswami, J;Govindasamy, J

Bench : Division Bench

Advocate : Inbarajan, for the Appellant; Haja Naziruddin, Government Advocate (Taxes), for the Respondent

Judgement

Venkataswami, J.—All these tax cases are preferred by one assessee by name Subramanian in respect of assessment years 1973-74 to

1977-78. The common question that arises in all these cases is whether the wheat product sold by the assessee for all those assessment years in

question is eligible for exemption as second sale or exigible to tax as first sale.

2. Originally, the assessing officer accepted the case of the assessee that the turnover in question relates to second sales of wheat products and,

granted exemption from the tax. However, on the basis of report received from Intelligence Department, the assessments for the years in question

were reopened u/s 16 of the Tamil Nadu General Sales Tax Act (hereinafter called ""the Act"") by the assessing officer. The main reason given by

the assessing officer for reopening the assessment was that the seller, viz., Vasavi & Co., was not a registered dealer and was not traceable and,

therefore, the assessee must be deemed as first seller in wheat products and,

therefore, liable to pay tax. The assessing officer not only levied the tax but also levied penalty u/s 16(2) of the Act on the ground of non-disclosure of the turnover under taxable turnover. Aggrieved by the order of the assessing officer, the assessee preferred appeals to the Appellate Assistant Commissioner, who confirmed the orders of the assessing officer. Still aggrieved, the assessee preferred second appeals to the Sales Tax Appellate Tribunal. Before the Tribunal, it was contended that the assessee was not a manufacturer and he did not purchase the wheat products from outside the State. The assessee purchased the wheat products in question from M/s. Ganesh Trading Company, Dindigul and M/s. Vasavi and Company and the purchases from both the dealers were bona fide and proper. The sale bills issued by those two dealers had passed through the check-posts and as such, the onus is on the Revenue to establish that the assessee is the first dealer in wheat products. It was also contended that the goods had been purchased through brokers and the bills had been settled as and when the goods were delivered through brokers. The assessee should not be taxed simply because the department is not able to tax the first seller. It was further contended that there were several inspections during the years in question and the department had not been able to cite any evidence against the assessee or the bona fides of the assessee. The reopening of the assessment orders was attacked on the ground that the assessing officer had mechanically followed the Intelligence Wing Officer's report without himself applying his mind and deciding the case. Alternatively it was contended that as held by this Court in T.C. No. 55 of 1963 at least 50 per cent of the turnover should have been granted exemption on the ground of bona fide doubt. Before the Tribunal, a legal point was also raised regarding the jurisdiction of the assessing officer to proceed with the assessment when the detection was made by the Intelligence Wing. However, this legal point is not pressed before us. Therefore, we are not dealing with the same.

3. It was contended before the Tribunal on behalf of the Revenue that simply because the goods have passed through the check-posts, the assessee cannot contend that he is second dealer. There is every possibility of those cases coming from outside the State or from unregistered dealer or ryots. Therefore, the assessment u/s 16 of the Act as well as the

penalty was justified was the contention of the Revenue.

4. The Tribunal, on a consideration of the rival contentions, found as follows :

..... The appellant is not a manufacturer and he has also not purchased from outside the State. There is possibility of having first sales only if he

had purchased wheat from unregistered dealers or ryots direct. But in Tamil Nadu there are no ryots who can supply wheat to the extent the

appellant had purchased. It is clear that the appellant should have purchased the goods from dealers only whom the Revenue is not able to

apprehend. In most of the bills, the check-post seal is affixed, which shows that the goods had been received in bulk from another dealer. The

officers of the department cannot absolve their responsibility simply by saying that the seller is not apprehensible. Further the assessments relate to

the years 1973-74 to 1977-78 and it is unreasonable for the Revenue to call on the appellant to show the seller after such a long period especially,

when the transactions were cash transactions. It is not unusual among big traders to make cash purchases through brokers without themselves

knowing the actual sellers. The Revenue has not enquired the brokers involved in these cases. The Appellate Assistant Commissioner is not correct

in his observation that the appellant has failed to prove that all the sales are second sales. As argued by the learned counsel for the appellant, the

point of taxation cannot be shifted from first dealer to the subsequent dealers, simply because the first dealer is not available. The appellant has

purchased wheat products to the extent of more than Rs. 40,00,000, and he himself cannot personally supervise the purchase of wheat from

various dealers. He has to necessarily buy the goods through brokers and there is every possibility that the brokers would have cheated the

appellant. Out of the heavy purchases made from various dealers only the purchases from Vasavi & Co., had been found to be false by the

Intelligence Wing Officers and all other transactions from other dealers are found to be genuine. It is hard to believe that the appellant, such a big

dealer, would have connived with the Dindigul dealer to escape single point tax. The charge that the appellant had purposely created the purchase

vouchers in order to claim exemption, is not proved. The Revenue has not investigated the actual person who had been indulging in these

clandestine transactions at Dindigul and it is not correct on their part to make

the appellant completely responsible for non-payment of the tax on the disputed turnover. The appellant is also partly responsible in not establishing beyond doubt the existence of the first dealer who is liable to tax at single point at Dindigul.

5. Mr. Inbarajan, learned counsel for the assessee, submitted that in the light of the findings extracted above, the Tribunal should have allowed in toto the appeals and erred in accepting the alternative argument advanced before it on behalf of the assessee. According to the learned counsel, the assessee has complied with the requirements of section 3(2) of the Act and the mere fact that the Revenue was not able to trace the seller of the assessee will not lead to the conclusion that the assessee is the first seller. In view of the clear findings based on evidence and arguments advanced before the Tribunal, we are of the view that the assessee has prima facie established his case that his purchases were all taxable one and simply because the Revenue is not able to levy tax on the seller of the assessee, they cannot catch hold of the assessee to levy tax on the ground that the assessee is the first seller in the sale of wheat products. The Tribunal has given a finding as follows :

.... The Revenue has not investigated the actual person who had been indulging in these clandestine transactions at Dindigul and it is not correct on their part to make the appellant completely responsible for non-payment of the tax on the disputed turnover The assessing officer has failed in his duty in verifying the correctness of the claim for exemption at least at the time of final assessment. The purchase vouchers in respect of the disputed turnover also contain check-post seals which go in favour of the appellant

If that be so, there is no justification for making the assessee liable for 50 per cent of the turnover in dispute. We are inclined to think that the Tribunal has accepted the case of the assessee that his seller was the first seller of wheat products and, therefore, he is not liable to tax. If that be so, the question of making the assessee liable for 50 per cent will not arise. In these circumstances, we are of the view that the assessee has established that he is only a second seller of wheat products in question and as such, the tax liability will not arise on his sales. Accordingly, the assessment made u/s 16 for all these years in question cannot be sustained and

the common order of the Tribunal is set aside. The tax revisions are allowed. However, there will be no order as to costs.

6. Petitions allowed.