(2009) 06 MAD CK 0166

Madras High Court

Case No: T.C. (Revision) No. 1 of 2009

M.R.S. Lucky Lottery Centre		APPELLANT
	Vs	
The State of Tamil Nadu		RESPONDENT

Date of Decision: June 17, 2009

Acts Referred:

- Constitution of India, 1950 - Article 366(29A)

Citation: (2010) 29 VST 16

Hon'ble Judges: F.M. Ibrahim Kalifulla, J; B. Rajendran, J

Bench: Division Bench

Advocate: Jayapratap, for S.N. Kirubanandam, for the Appellant; Haja Nazrudden, Special Government Pleader (T), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

F.M. Ibrahim Kalifulla, J.
The assessee has come forward with this revision. The question of law now raised before us is whether in the facts and circumstances of the case, the Sales Tax Appellate Tribunal is justified in confirming the levy of tax on sales of lottery tickets which cannot be considered as goods.

2. The assessee is a dealer in the sale of lottery tickets. Earlier, the Hon''ble Supreme Court in the decision reported in 1986 61 STC 165 in H. Anraj v. Government of Tamil Nadu took a view that the sale of lottery ticket involved sale of goods. The said question came to be considered by the Constitution Bench by way of reference in the decision reported in Sunrise Associates v. Govt. of NCT of Delhi, (2000) 10 SCC 420 The question which was referred for the consideration of the Constitution bench was "Whether the lottery tickets are goods and the decision in H. Anraj Vs. Government of Tamil Nadu, that

lottery tickets are goods for the purpose of Article 366(29A)(a) of the Constitution and the State Sales Tax Laws was correct. The Hon''ble Supreme Court ultimately took the view as under in paragraph 52 which reads as follows:

We are therefore of the view that the decision in H. Anraj (1980) 1 SCC 414 incorrectly held that a sale of a lottery ticket involve as sale of goods. There was no sale of goods within the meaning of the Sales Tax acts of the different states but at the highest a transfer of an actionable claim. The decision to an extent that it held otherwise as accordingly overruled though prospectively with effect from the date of this Judgment.

3. In the order impugned in this revision, the assessment related to the year 1989-90. The Constitution Bench having now taken a view that the sale of lottery ticket does not involve sale of goods within the meaning of the Sales Tax Act and at the highest, a transfer of an actionable claim, the impugned proceedings in so far as it held that the business turn over of the assessee by virtue of sale of lottery tickets can no longer be held to be a sale of goods attracting the provisions of TNGST Act for the future years.

4. With that observation, the Tax Case revision is disposed of. The question of law raised is answered in favour of the assessee.