

(1977) 04 MAD CK 0049

Madras High Court

Case No: T.C. No. 324 of 1974 (Revision No. 177 of 1974)

Deputy Commissioner
(C.T.), Coimbatore
Division

APPELLANT

Vs

The Vijayalakshmi Mills
Limited

RESPONDENT

Date of Decision: April 21, 1977

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 10, 2, 38

Citation: (1977) 40 STC 463

Hon'ble Judges: Sethuraman, J; Balasubrahmanyam, J

Bench: Division Bench

Advocate: Additional Government Pleader, for the Appellant; S. Swaminathan and K. Ramagopal, for the Respondent

Final Decision: Allowed

Judgement

Sethuraman, J.

This revision petition has been filed u/s 38 of the Tamil Nadu General Sales Tax Act against the order of the Sales Tax Appellate Tribunal dated 4th October, 1973. There are two items of turnover which are disputed in the present revision petition. The first is a sum of Rs. 51,000 for which the assessee sold carding machines and drawing frames. The assessee is a manufacturer of cotton yarn and he claimed that he did not carry on any business in carding machines and drawing frames, etc. He had purchased these goods for use in the manufacture of yarn. According to the assessee, he did not purchase them with the intention of carrying on any business in these goods and that they were not by-products or subsidiary products as these goods were the assets of the assessee and, as they were sold when they were not serviceable, the sale could not be said to be a sale in the course of business. The Sales Tax Appellate Tribunal accepted this submission of the assessee and held that the assessee could not be taxed on the said amount. The

question that requires to be considered is whether the said sum of Rs. 51,000 is taxable in the hands of the assessee.

2. There is no dispute that these carding machines and drawing frames had been purchased and had been utilised for the purpose of the assessee's business. The amounts realised from the sales were also credited to its machinery account. We consider that in view of the fact that these goods have been acquired in the course of business and have also been sold because they became unserviceable and had to be replaced, the assessee is liable to be taxed under the Tamil Nadu General Sales Tax Act. Section 2(d) defines the word "business" as including any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture or any adventure or concern. In the present case, the sale is incidental or ancillary to the trade. Having regard to the language of Section 2(d)(ii), the turnover in the present case was liable to be taxed under the Tamil Nadu General Sales Tax Act. The decision of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Co. Ltd.* [1973] 31 S.T.C. 426 applies to the present case. The learned counsel for the assessee brought to our notice a decision of the Supreme Court in *Board of Revenue v. A. M. Ansari* [1976] 38 S.T.C. 577 and submitted that the present case is governed by the said decision. In that case, the Supreme Court was concerned with the assessability or otherwise of the sales effected by the forest department of the Government of Andhra Pradesh in annual auctions. The Supreme Court held that though in view of the amendment introduced to the Andhra Pradesh General Sales Tax Act, the consideration of profit-motive could not be regarded as an essential constituent of the term "business" in Section 2(l)(bbb) of the Andhra Pradesh General Sales Tax Act, but still the other ingredients of the term "business", viz., volume, frequency, continuity and regularity of transactions of sale and purchase, must be satisfied in order that a person could be said to be carrying on the business of selling goods. In our opinion, the Supreme Court had no occasion to consider the case of a trader or a manufacturer who, in the course of his trade or manufacturing activity, had to sell certain goods as part of or incidental to his trade. As the Supreme Court was dealing with a Government department and as it did not deal with any trader or manufacturer, we consider that the principle laid down in the said decision does not apply to the facts here. In the present case, the goods were acquired admittedly for the purpose of business. The goods have also been sold only because they became unserviceable and they were replaced by other goods. The amounts were credited to the machinery account. There is also a certain amount of periodicity in the sense that such goods came to be sold as and when necessary. In these circumstances, we do not consider that the principle laid down by the Supreme Court has any scope for application here. It may be further stated that, in the present case, in addition to the turnover with which we are concerned, there are other items of turnover which arose as a result of the assessee carrying on the business. As the present item of turnover is only incidental to the said admitted carrying on of the business, the present case falls squarely within the scope of the definition in Section 2(d)(ii). We, therefore, set aside the order of the Sales Tax Appellate Tribunal on this point and hold that the said amount was rightly brought to tax.

3. The second Item of turnover that is now in dispute amounts to Rs. 16,300. This amount represents the sales of electrical goods which had been assessed at 9 per cent. The assessee appealed to the Appellate Assistant Commissioner. The Appellate Assistant Commissioner held that Section 10 of the Tamil Nadu General Sales Tax Act stipulated that the burden of proving that any dealer is not liable to tax in respect of any of his transactions shall lie on such dealer and that, in the present case, the assessee had not adduced any proof. Therefore, he confirmed the assessment. On further appeal, the Tribunal, after referring to the above aspect stated by the Appellate Assistant Commissioner in his order, held that the assessee was not a dealer in electrical goods and that, therefore, it stood to reason that they must have purchased the electrical goods from some other dealers and they should be the second dealers. For the said reason, the Tribunal held that the turnover was not taxable.

4. In this case, the Tribunal has not given any finding on the question as to whether the assessee purchased the goods locally and, therefore, is a second dealer. In *Govindan and Co. v. State of Tamil Nadu* [1975] 35 S.T.C. 50, this court pointed out that to claim the benefit of relief from single point tax on the ground that the sales effected by the assesseees are second sales, the assesseees need not show that their sellers have in fact paid tax and that it is enough if they show that the earlier sales are taxable sales and that the tax is really payable by the sellers. It is this aspect which requires to be examined by the Tribunal. The Tribunal has only assumed that the goods must have been purchased locally and that they must have been taxed earlier. This is an erroneous approach. It is necessary for the Tribunal to find as to whether the goods were purchased locally and whether the sales effected by the assessee were second sales. On this aspect, the Tribunal not having given a finding, we send the matter back to the Tribunal for consideration of the question afresh. The tax revision case is allowed accordingly. There will be no order as to costs.