

Shanmuga Traders And Ors. vs State Of T.N. And Ors. on 22 April, 1998

Equivalent citations: (1998)5SCC349, [1999]114STC1(SC), AIR 1999 SUPREME COURT 1516, 1998 AIR SCW 3908, 1998 (5) SCC 349, 1998 BRLJ 286, (1999) 114 STC 1, (1999) 47 KANTLJ(TRIB) 89

Bench: S.P. Bharucha, V.N. Khare

ORDER

1. The appeals and the writ petitions raise a common question of law relating to the validity of a circular dated 29-1-1993 issued by the 1st respondent's Commissioner of Commercial Taxes. It needs to be reproduced in extenso:

"In the reference first cited, it was clarified that since the first sales of ferrous scrap by the Tamil Nadu Electricity Board are exempt from tax, no tax is leviable on the subsequent local sales of the scraps purchased from the Tamil Nadu Electricity Board. This clarification was reiterated in the references second and third cited in individual cases. These clarifications were issued on the basis of TA No. 240 of 1986 dated 30-9-1988 in the case of India Metal Industries v. State of T.N. But the High Court, Madras in the case of Vasu General Traders v. State of T.N., (1987) 66 STC 358 held that since the exemption in relation to a particular sale would not be available to other subsequent sales, the taxing statutes had to operate in respect of other sales. The Government decided that the decision rendered by the High Court in the case of Vasu General Traders (Supra) can be restricted only to that case and need not be treated as a general proposition of law. The Government letter (MS No. 446 CT and RE dated 29-10-1991) in which the abovesaid decision was informed to the Commissioner of Commercial Taxes has been communicated to all DCs in the reference cited. On a further point raised by DC (OT) Madurai for reconsideration of the clarification issued in the reference cited that there was no need to revise the said clarification issued in the reference dated 30-7-1991.

2. The High Court of Madras in its judgment dated 13-3-1991 on TC No. 6 of 1991 filed by Royal Steel Traders, Madras, (1992) 1 MTCR 580 following its earlier judgment in the case of Vasu General Traders (Supra) has held that a sale has reference to taxable sale for the purpose of TNGST Act and not sales, which are exempted, and that since the Tamil Nadu Electricity Board was exempted, the first taxable sale was made only by the assessee. The clarification issued in the Commissioner of Commercial Taxes, reference cited are against the findings of the High Court of Madras in the case of Vasu General Traders (Supra) and Royal Steel Traders (Supra).

3. In the circumstances stated, it is held that when a person purchases scrap from the Tamil Nadu Electricity Board and sells, he is effectively the first seller liable for tax. This may be earlier purchase

tax under Section 7A of the Tamil Nadu General Sales Tax Act on this further sale depending on what that purchaser is doing with scraps. At any rate, it can no longer be considered second seller in not liable to tax. The Deputy Commissioners are requested to instruct the Assessing Officers that from the date of issue of this clarification, they will have to do all fresh assessments under this clarification and they need not open old assessments already completed under the earlier classification.

4. The clarification issued in this office reference cited, exempt the fourth reference, are hereby cancelled."

2. Writ petitions were filed in the High Court of Madras challenging the validity of the circular. They were dismissed and the appeals, by special leave, are filed thereagainst. The writ petitions filed in this Court also impugn the circular.

3. The goods in question are iron and steel and were sold by the Tamil Nadu Electricity Board to the appellants and petitioners. Being sold by the said Board, they were covered by a notification dated 1-12-1982 issued by the 1st respondent under the provisions of Section 17(1) of the State Act and, therefore, exempt from tax payable under the State Act.

4. Under Section 14 of the Central Sales Tax Act iron and steel are declared to be goods of special importance in inter-State trade and commerce. They are, by reason of the provisions of Section 15 of the Central Act, liable to tax at a rate that does not exceed 4% of the sale or purchase price thereof and "such tax shall not be levied at more than one stage". Section 3 of the State Act requires every dealer, subject to the turnover therein mentioned, to pay a tax for each year "in accordance with the provisions of this Act". Section 4 deals with the tax on declared goods and states that it would be payable "by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year".

The Second Schedule requires payment of tax on iron and steel as therein described "at the point of first sale in the State".

5. It is contended by learned counsel for the appellants/petitioners that iron and steel being declared goods, they are exigible only to single-point tax and that at the point of first sale, having regard to the provisions of the Central and State Acts aforementioned. The circular under challenge has the effect of shifting the incidence of tax on iron and steel sold by the said Board to the second or subsequent sale. This is impermissible since it would offend the statutory provisions which provide for the levy of the tax only at the point of first sale.

6. Learned counsel for the appellants/petitioners cited the judgment of this Court in *Pine Chemicals Ltd. v. Assessing Authority*, in support of the submission aforesaid. This Court said: "The exemption would not arise unless the goods are taxable at the point of their sale. Thus the effect of exempting their sale is that the said goods manufactured by them could not be taxed at the second or subsequent sales also as that would offend Section 4(1) which provides for single-point levy. In cases where there are no exemption orders and the State fixed the second or subsequent sale as

point of taxation the first or prior or subsequent sales are not exempted sales but are not taxable sales."

7. Learned counsel drew our attention to the judgment of the Madras High Court itself in *State of Madras v. T. Narayanaswami Naidu*, (1965) 16 STC 29 (Mad) which had not been noticed in the cases of *Vasu Traders* (Supra) and *Royal Steel* (Supra) mentioned in the impugned circular. In *Narayanaswami Naidu Case* (Supra) the Madras High Court said: "As pointed out above, there may be marginal transactions where the exigible event and the exigible stage may fall in different years. But the remedy for dealing with such marginal cases must be by resort to other provisions of law, but they cannot be dealt with by giving an artificial meaning to the term 'last purchase in the State', which will offend the principle of single-point levy and lead to multi-point taxation, and a heavy price burden to the consumer of declared goods."

8. Our attention was also drawn to the brief order of a Division Bench of the Andhra Pradesh High Court which is apposite to the facts before us. The relevant portion reads thus: "In these tax revision cases, we are concerned with groundnut which is taxable at the last purchase point under the Andhra Pradesh General Sales Tax Act. The assessee herein, the dealers, sold groundnut to exporters who purchased the same within the State and exported it. The question is, who is the last purchaser. Evidently the exporter is the last purchaser in the State. But that purchase is getting exempted from tax by virtue of Section 5(3) of the Central Sales Tax Act and Section 30 of the Andhra Pradesh General Sales Tax Act. On this score the Department is seeking to tax the dealer (who sold the groundnut to the exporter) as the last purchaser. Evidently this is not correct as a fact. Just because the last purchase is getting exempted by virtue of Section 5(3) of the Central Sales Tax Act, it would not be permissible in law to shift the point of last purchase to the dealer who sold the groundnut to the exporter."

9. We may now look at the judgments in *Vasu Traders* (Supra) and *Royal State* (Supra). The case of *Vasu Traders* (Supra) did not deal with declared goods. It dealt with handmade matches which were covered by an exemption notification. The petitioner before the High Court had purchased matches from a manufacturer who was covered by that exemption notification. The petitioner contended that the point of levy being the first sale in the State and the first sale having been exempted from payment of tax, there was no tax liability in respect of subsequent sales of the same goods. The High Court rejected the contention on the ground that the specific exemption would then get converted into a general exemption. It said: "As we have already held that the exemption in relation to a particular sale will not be available to other subsequent sales, the taxing statute has to operate in respect of other sales and the petitioner's sale becomes taxable being the first taxable sale inside the State."

10. The judgment in the case of *Vasu Traders* (Supra) was followed in the case of *Royal Steel* (Supra) wherein iron had been purchased by the assessee from the said Board. The High Court framed this question: "The question to be decided is whether the taxable sale was the one made by the assessee or it was by second sale and the first taxable sale was made by the Tamil Nadu Electricity Board was exempted by a statutory notification issued under Section 17 of the Tamil Nadu General Sales Tax Act."

Following Vasu Traders (Supra) it was held that the first "taxable sale" was made by the assessee since the sale by the said Board was exempted.

11. Learned counsel for the respondent drew our attention to the judgment of the Madras High Court in R.M. Basha v. State of T.N., (1986) 62 STC 432 (Mad) but we find that it has no application. The High Court held on the material before it that the authorities below had not been right in proceeding on the basis that there had been a sale of old iron and scrap materials from the Life Insurance Corporation of India to the assessee, which sale would have been exempted from tax. The Corporation had sold the superstructure to the assessee for the purpose of demolition and clearance of debris. The sale of the old iron scrap obtained from the debris was, therefore, its first sale by the assessee.

12. We do not think that the conclusion reached by the Madras High Court in the order under appeal can be upheld. The goods with which we are concerned being declared goods, they can only be taxed at a single point, that is, only one sale in the State can be subjected to tax. It is for the State to determine whether the single point should be the point of first sale in the State or the last sale in the State or any intermediate sale in the State. If the single point is fixed by the State at, say, the point of first sale and the State exempts the first sale from payment of tax, either by a general provision or a specific provision applicable to a class of seller, the particular seller or the goods sold may not be subjected to tax at either that point of first sale or any subsequent sale in the State.

13. The Second Schedule of the State Act specifies the single point; it is "the point of first sale in the State". The first sale in the State was the sale by the said Board to the appellants/petitioners. That sale was exempt from tax by reason of the notification dated 1-12-1982 aforementioned. The iron and steel sold by the said Board to the appellants/petitioners was, therefore, not liable to tax either at the point of first sale or any subsequent sale in the State.

14. There is no warrant for the emphasis that would appear to have been "placed by the Madras High Court on the phrase "taxable sale". The State Act does not fix the single point of the levy at the first taxable sale; it fixes it at "the point of first sale". The impugned circular cannot validly shift the point of levy from the first sale to a subsequent sale and it is, therefore, bad in law.

15. The appeals and writ petitions are allowed and the circular dated 29-1-1993 is set aside. No orders as to costs.