

A. Kannu Vs. the State of Madras

A. Kannu Vs. the State of Madras

SooperKanoon Citation : sooperkanoon.com/796996

Court : Chennai

Decided On : Mar-30-1970

Reported in : [1971]27STC25(Mad)

Judge : Ramaprasada Rao and ;Ramanujam, JJ.

Appeal No. : Writ Petition No. 956 of 1969

Appellant : A. Kannu

Respondent : The State of Madras

Advocate for Def. : K. Venkataswami, the Assistant Government Pleader

Advocate for Pet/Ap. : T.S. Viswanatha Rao and ;K. Venkataraman, Advs.

Judgement :

ORDER

Ramaprasada Rao, J.

8. This case has been posted for being spoken to at the instance of the Assistant Government Pleader (Tax). He referred us to a decision in Vaidyanatha Iyer v. State of Madras¹. There, the assessee who grew sugar-cane in his fields sold the sugar-cane as such in previous years. But, in the relevant year the assessee converted the sugar-cane into jaggery by a process of manufacture and sold the jaggery. In those circumstances, the revenue as well as the Appellate Tribunal

found, taking into account the organisation behind the sales, including the manufacture, that the assessee satisfied the requirements of the definition of 'dealer' in Section 2(b) of Act 9 of 1939, which is similar to Section 2(g) of the present Act. But it should be noted that the learned Judges in Vaidyanatha Iyer v. State of Madras [1954] 5 S.T.C. 94 were persuaded to accept the argument of the revenue that the assessee should be deemed to be a 'dealer', because they found that the assessee did not convert sugar-cane into jaggery in the previous years, that in fact he sold sugar-cane as such, and that there was a market for sugar-cane. In the instant case, the allegation is that there was no such market and that there was not even facility for transporting sugar-cane from the place where it was grown. This has not been denied in the counter-affidavit. But it is argued by the learned Assistant Government Pleader that, as the petition is for the issue of a writ of prohibition and as the matter is remitted to the assessing authority for reappraisal of the evidence, the revenue should be given an opportunity to prove that there was a market for sugar-cane in the vicinity, and that there were transport facilities available for carrying sugar-cane to places outside the place of its growth for being sold as sugar-cane. The request appears to be reasonable, as justice should not fail for want of evidence. Whilst allowing the request made by the learned counsel for the State, we make it clear that, if the attitude of the petitioner is indicative of the fact that he wanted to convert sugar-cane into jaggery not to earn the normal agricultural income but that the prime purpose was to get business income as a trader, then the petitioner would run the risk of being brought into the net of tax. This principle will also be borne in mind by the assessing authority. This addendum will form part of the judgment already delivered.