

imperium Traders Vs. State of Madras

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Court : Chennai

Decided On : Oct-09-1974

Reported in : [1975]36STC6(Mad)

Judge : Ramanujam and ;V. Ramaswami, JJ.

Appeal No. : Tax Case No. 71 of 1969

Appellant : imperium Traders

Respondent : State of Madras

Advocate for Def. : K. Venkataswami, Additional Government Pleader I

Advocate for Pet/Ap. : R.S. Venkatachari, Adv.

Judgement :

Ramanujam, J.

1. The assessee is a dealer in watches and time-pieces. He was taxed on a turnover of Rs. 18,207.50 at 7 per cent representing sales of wrist-watches and Rs. 40 at 3 per cent being sales of pens for 1960-61. The assessee objected to the said assessment on the ground that his sales are not first sales as contemplated in items 2 and 22 respectively of the First Schedule to the General Sales Tax Act, 1959. But this objection was overruled by the assessing authority. An appeal to the Appellate Assistant Commissioner also failed. There was a

further appeal to the Sales Tax Appellate Tribunal. Before the Tribunal, it was contended by the assessee that the watches and pens, which were the subject-matter of his sales, had been sold by Murray & Co., as auctioneers, on behalf of the customs authorities, that the said auctioneers have themselves collected sales tax from him and that, therefore, the auctioneers should be taken to be earlier sellers. It was further contended that in any event the goods having been sold by the customs authorities, through their auctioneers, Murray & Co., the customs department should be taken to be the first sellers of goods within the State. In fact, the assessee's contention was that his sales were not liable to be taxed as first sales under items 2 and 22 respectively, as the case may be, of the First Schedule. The Tribunal rejected the assessee's contention holding that neither the customs department nor the auctioneers are dealers as defined in the Act and, therefore, the sales effected by them not being sales by dealers, the assessee's sale, being the first sale, is liable to be taxed. This view of the Tribunal has been challenged before us.

2. The learned counsel for the assessee raised three contentions : Firstly, he contended that Murray & Co., the auctioneers, who had sold the watches and pens and who had, in fact, collected sales tax on their sales, should be taken to be first sellers liable to be taxed on their sales. It is seen that the assessee's counsel conceded in the course of the argument before the Tribunal that the auctioneers cannot be considered to be dealers as defined in the Act. The learned counsel now submits before us that the said concession was made in the year 1968, when the legal position was not clear and that, therefore, the said concession made by him will not stand in his way of putting forward the true legal position as to the status of the auctioneer. Having regard to the statement made by the counsel that the concession was made on an erroneous basis before the Tribunal, we permitted the counsel to argue the point as to whether Murray & Co., in effecting the sales of wrist-watches and pens at the instance of the customs authorities, is a dealer as defined in the Act. However, on the facts we are not in a position to accept the contention of the learned counsel that the auctioneers in this case can be taken to be dealers as defined in the Act. The Appellate Assistant Commissioner has factually found that the auctioneers merely brought the seller and the buyer together and they had no dominion over or possession of the goods,

which they auctioned. As there was a concession before the Tribunal that the auctioneers were not dealers as defined in the Act, the Tribunal did not think it necessary to consider the factual position. But the facts as found by the appellate authority show that the auctioneers had neither dominion over, nor possession of, the watches and pens, which they auctioned at the instance of the customs authorities. Even before us, the learned counsel does not dispute the fact that the goods remained in the customs house and the auctioneers never had the custody or possession of the goods. In the light of these facts, the conclusion is inescapable that the auctioneers merely brought the seller and the buyer together. The fact that the auctioneers had collected sales tax cannot make them dealers. If, in fact, they are not dealers as defined in the Act, it may be that by way of abundant caution and with a view to protect their interest, they collected sales tax, even though they may not strictly be liable to pay the sales tax under the Act. Therefore, that circumstance alone cannot be taken to treat the auctioneers as dealers as defined in the Act.

3. The learned counsel then contends that the customs department, at whose instance the auctioneers auctioned the goods, are dealers, as they are effecting periodical sales of the confiscated goods. Notwithstanding the fact that the customs authorities are effecting periodical sales of confiscated goods, they cannot be said to be carrying on a business as defined in the Act. This has been so held in *Calcutta Dyeing and Bleaching Works v. State of Madras* [1964] 15 S.T.C. 812. In that case, the specific question whether the customs department, which comes into possession of confiscated goods from time to time and periodically sells them in auction, can be said to carry on business so as to come within the definition of a dealer came up for consideration. This court held that the customs department cannot be said to be a dealer as defined in the Act and that the sale by a dealer of goods purchased at the auction held by the customs department will be the first sale by a dealer. With respect we agree with the conclusion arrived at in that case. Therefore, the contention of the learned counsel that the customs department should be taken to be a dealer has to be rejected.

4. Thirdly, it is urged by the learned counsel that the assessee's sale is not factually the first sale in the State, that it is the sale by the customs department

which is factually the first sale within the State and that the requirement that there should be an anterior sale in the State by a dealer to enable the assessee to claim exemption in respect of his sales, is not contemplated by the provisions of Section 3(2) of the Act. According to the learned counsel under Section 3(2) it is the first sale inside the State by whomsoever that is taxable and all other sales are exempted. We are of the view that this contention is not tenable at all. If this contention of the learned counsel is accepted, it would be impossible for the tax authorities to levy any tax on the sales of goods, which are liable for single point, as such goods may pass on from one individual, who is not a dealer to another, who is also likewise not a dealer and, in such circumstances, the dealer, who actually effects a later sale, can successfully contend that his sale is not factually the first sale and, therefore, he is not liable to be taxed. We are clear that the legislature could not have intended such a situation. Section 3(2) of the Act contemplates only a sale by a dealer and the first sale referred to in Schedule I is the first sale by a dealer in the series of sales effected inside the State. As has been rightly pointed out by the Tribunal, when the statute in items 2 and 22 referred to the first sale inside the State, the word 'sale' cannot be dissociated from the definition of sale in Section 2(n). Section 2(n) defines 'sale' as a transfer of property in goods by one person to another in the course of business. This means that the first sale referred to in items 2 and 22 refers only to the first sale effected by a person in the course of his business. As we have already held that the customs department has not effected the sale in the course of any business, but it has effected the same in discharge of its statutory functions, we have to hold that the sale effected by the customs department cannot be treated to be in the course of business. We have to, therefore, uphold the order of the trial court in this case.

5. The tax case is, consequently, dismissed, with, costs. Counsel's fee Rs. 150.

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