

SUPREME COURT OF INDIA

Tvl. Koodal Industries

Vs.

State of T.N.

(S.P. Bharucha, N. S. Hegde and Ruma Pal JJ.)

02.02.2000

ORDER

S.P. BHARUCHA, J.

1. The appellant purchased wheat in gunny bags. It used the wheat to make flour, rava etc. It sold the manufactured products packed in the gunny bags in which it had purchased the wheat. The assessing authority sought to include the value of the gunny bags in the assessable value, for the purposes of sales tax, of the wheat products. The appellant challenged such inclusion before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner set aside the order of the assessing authority and remanded the matter to him to ascertain whether there was an implied contract for the sale of the gunny bags and determine the appellant's turnover accordingly. Remarkably, it was the appellant that challenged the order of the Appellate Assistant Commissioner before the Tamil Nadu Sales Tax Appellate Tribunal. The Tribunal found that there was no express agreement to sell the bags gunny containing the wheat products. Insofar as the implied agreement in this behalf was concerned, it said that the burden lay upon the assessing authority to prove the same and if, upon being asked, the appellant had declined to produce the relevant material, an adverse inference against it could have been drawn. In these circumstances, the Tribunal concluded that there was no implied contract either. The decision of the Tribunal was challenged before the High Court. The High Court found that there was an implied contract to sell the gunny bags. The appellant is here before us by special leave. The argument is that the Tribunal having reached a conclusion of fact, it was not open to the High Court to set aside the same.

2. The Tribunal does not appear to have noticed that the Appellate Assistant Commissioner had ordered a remand to the assessing authority to determine as a fact whether there was any implied contract for the sale of the gunny bags. This was the appropriate order to pass because it is the assessing authority which was required to determine facts in the first instance. The Tribunal did not notice that it was the appellant who had blocked such enquiry by preferring the appeal to the Tribunal. In the circumstances, it should have upheld the remand and not gone into the facts itself. The enquiry on fact having been blocked by the appellant itself, we decline to interfere with the High Court's order under appeal.

3. The appeal is dismissed. No order as to costs.