

SUPREME COURT OF INDIA

T. Stanes and Company Limited

Vs.

State of Tamil Nadu

S.L.P. (Civil) Nos.25843 to 25845 of 2004

(S. N. Variava and H. K. Sema JJ.)

24.01.2005

JUDGMENT

S. N. Variava, J.

1. Heard Mr. Gopal Subramaniam, learned Senior Counsel, at great length.
2. These special leave petitions are against the judgment of the High Court of Madras dated 16th September, 2004 wherein the High Court has dismissed the writ petition filed by the appellant refusing to follow another judgment of the High Court in the case of *Metal Sales Corporation v. Joint Commercial Tax Officer reported in¹* and preferring to follow a judgment of the same High Court in the case of *Swastik Household and Industrial Products v. State of Tamil Nadu reported in²*.
3. The question involved is whether section 22 of the Madras Sales Tax Act bars the appellant from collecting in any manner amounts paid by them to the seller by way of tax. The relevant portion of section 22 reads as follows:

"22. Collection of tax by dealer.-(1) No person who is not a registered dealer shall collect any amount by way of tax or purporting to be by way of tax under this Act; and no registered dealer shall make any such collection except in accordance with the provisions of this Act and the Rules made thereunder :

Provided that nothing in this sub-section shall apply to the collection of an amount by a registered dealer, towards the amount of tax already suffered under this Act, in respect of goods, the sale or purchase price of which is controlled by any law in force."

4. The wording of the section is very clear. The term " collect" would include in its ambit collection in any manner. Purported recoupment or recovery would be nothing else but collection. Once the dealer is prevented from collecting, it is not open to say that he is not collecting but is only recouping. We find ourselves unable to accept the reasoning given by

the High Court in the Metal Sales Corporation's case. Mere case of a different nomenclature or language cannot be allowed to defeat the clear provision of the section. If the reasoning of the High Court in Metal Sales Corporation's case is accepted, section 22 would be rendered nugatory. It would enable dealers to collect by just terming the collection as recoupment, recovery, etc. The recoupment, recovery, collection is nothing else but the amount paid by the assessee to its seller towards the tax liability of the seller. Further recovery, recoupment or collection from their buyers is what is prevented by section 22. In our view, the High Court is absolutely right in the reasoning given in the impugned judgment. The law laid down in the Metal Sales Corporation's case is not good law and stands overruled. Accordingly, the special leave petitions stand dismissed. There will be no order as to costs.

¹1982 Indlaw MAD 97

²1995 Indlaw MAD 144