

SUPREME COURT OF INDIA

Sree Krishna Electricals

Vs.

State of T.N.

(Arijit Pasayat and Lokeshwar Singh Panta JJ.)

21.04.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Madras High Court dismissing the writ petitions filed by the appellant. The appellant is a dealer registered under the *Tamilnadu General Sales Tax Act, 1959* (in short the `Act'). The appellant was assessed to tax on the sale of wet grinders. Though the appellant claimed that he was not selling wet grinder but only parts thereon, the claim was found to be untrue and tax and penalty were imposed for the Assessment years 1992-93 and 1993-94. Appellant's stand was that he was entitled to relief on the basis of a judgment of the High Court in *State of Tamil Nadu v. Suguna Agencies*¹. According to the Revenue authorities, the judgment was referred to in a later judgment of the High Court in *S. Durai v. Joint Commissioner of Commercial Taxes Chepauk, Madras*² where a different view was taken.

2. Both these cases are cases in which similar claims were made that though the assessee had purchased parts required to be put together to form wet grinder whatsoever has been sold by the assessee was not wet grinder but parts thereof. In the first case the High Court accepted the finding of the Tribunal that what had been sold was the parts of the wet grinder. In the later case the High Court found that the authorities had recorded a finding that what was sold was in fact was a complete wet grinder which was a new commodity and not merely parts thereof.

3. The High Court was of the view in the present case that the later decision apply to the facts of the present case. As regards the penalty the assessee took the stand that the penalty has been imposed mechanically and there was no warrant for it as the assessee had disclosed the turnover for which he had claimed exemption. The High Court was of view that there was not complete disclosure and the fact that he had disclosed the sale of what he has termed as parts does not amount to full disclosure. The assessments made in the case of the assessee were in fact the best judgment assessment which permitted the imposition of penalty. Accordingly the writ petitions were dismissed.

4. Learned counsel for the appellant submitted that the High Court should have compared the factual scenario and should have held that the decision in Suguna's case (supra) is applicable to the facts of the case.

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court.

6. We find that the authorities have factually adjudicated the issues. In *S. Durai's case* (supra) on which reliance was placed by the High Court to dismiss the writ petitions is held that what was sold was in fact a complete wet grinder which was a new commodity and not merely parts thereof. The High Court has observed that the factual scenario was identical. The conclusions arrived at by the revenue authorities and the High Court that in fact what was sold was a complete wet grinder which was a new commodity and not merely parts thereof. This being a factual finding, there is no scope for interference in these appeals so far levy of tax is concerned.

7. So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's accounts books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealers' turnover disallowing the exemption penalty cannot be imposed. The penalty levied stands set aside.

8. The appeals are accordingly disposed of.

¹(1991) 81 SCC 33

²(1994) 95 STC 372