

MADRAS HIGH COURT DRAWS THE DISTINCTION BETWEEN TAX PLANNING AND TAX EVASION [Dated : 13-06-2009]

The Madras High Court has ruled that tax planning as opposed to tax evasion has legal sanction, and if a dealer plans his transactions in such a manner that he pays less tax, it is not open to the revenue authorities to subject him to a conscience audit or moral assessment. The power to lift the veil has to be exercised with great care and caution.

Justice V Ramasubramanian allowing petitions by a registered dealer, challenging the orders of assessment passed by the Assistant Commissioner, Coimbatore, under the Central Sales Tax Act for assessment years 2001-02, 2002-03 and 2003-04. Associated Cement Companies Limited, Coimbatore, claimed that the cement manufactured at Madukkarai was dispatched as stock transfer to its warehouses and depots in Kerala, Karnataka and Puducherry. Thereafter, it was sold in the respective states after paying local sales tax there. The company claimed exemption on the turnover relating to branch / stock transfer. Suspecting the petitioner's claim, the Assistant Commissioner (AC) issued pre-assessment notices stating that the company was moving goods to states from the factory site itself to reach the ultimate buyers there. The company filed Form 'F' declarations with proof of payment of taxes in other states. The AC passed orders for the assessment years on the ground that the petitioner had failed to file the other statements and records as stipulated in Central Sales Tax (Tamil Nadu) Rules.

Aggrieved, the present petitions were filed. Setting aside the assessment orders, Mr Justice Ramasubramanian said the dealer has a factory in Tamil Nadu and claimed exemption in the state on stock transfer made to his branches in other states. Another dealer having a factory in another state may make similar claim in that state on the basis of the stock transferred to a branch in Tamil Nadu and the tax paid here. While the state was deprived of revenue in the former situation, it benefited in the latter. Justice Ramasubramanian said the AC had erred in arriving at an ad hoc conclusion without an inquiry under the Act that the transactions were inter-state sales, merely on account of the goods not getting unloaded at Palakkad but proceeding further in its journey to the buyer's place. The Judge remitted the matter back to the AC for an inquiry after which the official should complete assessment and pass an order.