

The State of Madras and Another

Vs

M/s. M. A. Noor Mohammed and Co.

Civil Appeal No. 38 of 1959

(CJI B.P. Sinha, J.L. Kapur, P.B. Gajendragadkar, K. Subha Rao, K.N. Wanchoo JJ)

12.08.1960

JUDGMENT

KAPUR J. –

This is an appeal by special leave against the judgment and order of the High Court of Madras allowing a petition under Article 226 of the Constitution. The question there raised was the legality of the assessment of Sales Tax by appellant No. 2, the Deputy Commercial Sales Tax Officer, Saidapet, under the Madras General Sales Tax Act, 1939 (Act IX of 1939), hereinafter termed the Act.

The respondent was a partnership firm carrying on tannery business at Chromepet near the city of Madras. Before the year of assessment, i.e., 1952-53, it was taking out licences under the relevant provisions of the Act but it did not renew the licence for the assessment year. When called upon to make a return it did not do so nor did it raise any objection to the notice served on it on February 28, 1954. It was assessed to sales tax of Rs. 10,584 on a turnover of Rs. 6,77,374-4-4. It filed a petition under Art. 226 to quash the assessment order on the ground that the order was illegal and not supported by the authority of law. This contention was accepted by the High Court and the petition was allowed with costs. The consequence of the judgment is that the respondent firm which is not a licensed dealer under the Act is not liable to any sales tax in respect of its dealings in hides and skins. Against this judgment and order the appellants have come to this court by special leave.

The contention of the respondent firm in the High Court was that under s. 5, cl. (vi) of the Act, the liability to pay sales tax in respect of hides and skins could only be a single point; that the rule limiting the operation of this mode of taxation to licensed dealers was ultra vires and therefore r. 16(5) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, hereinafter called the Turnover and Assessment Rules, was void and inoperative and had been so held by the Supreme Court in *V. M. Syed Mohammed & Co. v. The State of Madras* ([1954] S.C. R. 1117); that accepting this interpretation the State of Madras had deleted cl. (5) of r. 16 by G. O. 450, Revenue, dated February 26, 1954, i.e., two days before the making of the assessment order under dispute; that r. 16(5) of the Turnover and Assessment Rules was the only provision imposing a multiple tax in respect of sales of hides and skins by unlicensed dealers and that the imposition of the sales tax after the repeal of that rule was illegal and the tax was without the authority of law. It was also contended that in the taxation scheme under the Act, hides and skins, because of their importance in the international market, were excluded from the direct operation of s. 3(1) of the Act which was the general charging section and were given special protection of the single point taxation under s. 5(vi). The argument, therefore, was that in the case of sales of hides and skins the general provision was inapplicable and a special rule for taxation was laid down by s. 5(vi) of the Act.

The High Court held that in the case of hides and skins "the charge levied by s. 3 is subject to the provisions of s. 5 and in the case of licensed dealers in hides and skins, the charging provision is r. 16 of the Turnover and Assessment Rules."

The High Court further held that r. 16(5) of the Turnover and Assessment Rules which restricted the benefit of single point taxation to licensed dealers was ultra vires as it contravened s. 5(vi) of the Act and s. 6-A was not applicable to the case of a dealer who did not take out a licence for dealing in hides and skins and further that if r. 16(5) was ultra vires as being in contravention of s. 5(vi), r. 5, of the Madras General Sales Tax Rules (hereinafter called the Sales Tax Rules) which requires the taking out of the licence in order to be able to get the benefit of single point taxation would also be ultra vires. Thus on a true construction of s. 3(1) and s. 5(vi) it was of the opinion that r. 5 of the Sales Tax Rules and r. 16(5) of the Turnover and Assessment Rules were ultra vires and s. 6A was inapplicable to a person who had not taken out a licence. As a consequence it quashed the order of assessment of the respondent firm.

In order to decide this appeal it is necessary to refer to and consider the relevant provisions of the Act and the two sets of Rules made thereunder. They are as follows :-

S. 3 (1) "Subject to the provisions of this Act, -

(a) every dealer shall pay for each year a tax on his total turnover for such year; and

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(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed;

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed;

S. 5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees.

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(vi) the sale of hides and skins, whether tanned or untanned shall be liable to tax under section 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed.

S. 6A. If any restrictions or conditions prescribed under section 5 or notified under section 6 are contravened or are not observed by a dealer, or in case a condition so prescribed or notified requires that a licence shall be taken out or renewed, if a licence is not taken out or renewed, by the dealer or if any of the conditions of a licence taken out or renewed by him are contravened or are not observed, the sales of the dealer, with effect from the commencement of the year in which such contravention or non-observance took place, may be assessed to tax or taxes under section 3, as if the provisions of section 5 or of the notification under section 6, as

the case may be, did not apply to such sales and notwithstanding that a licence, if any, taken out or renewed by the dealer continued or continues to be in force during the year".

MADRAS GENERAL SALES TAX (TURNOVER AND ASSESSMENT) RULES.

Rule 4(1). "Save as provided in sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by the dealer.

(2) In the case of the undermentioned goods turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by the dealer.

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(c) untanned hides and skins bought by a licensed tanner in the State, and

(d) untanned hides and skins exported outside the State by a licensed dealer in hides and skins.

Rule 15(1). Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides and skins in respect of their dealings in hides or skins; but the provisions of this and the following rule shall apply to them in respect of such dealings.

Rule 16(1). In the case of hides and skins, the tax payable under section 3(1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides and skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the State or are sold for export outside the State;

(i) in the case of all untanned hides or skins sold to a tanner in the State, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him;

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the State but are exported outside the State, the tax shall be levied from the dealer who was the last dealer not exempt from taxation under section 3(3), who buys them in the State on the amount for which they were bought by him.

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(5) Sale of hides or skins by dealers other than licensed dealers in hides or skins shall, subject to the provisions of section 3, be liable to taxation on each occasion of sale".

Rule 5(1) of the Sales Tax Rules provides :-

"Every person who
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(d) deals in hides and/or skins whether as a tanner or otherwise, or

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shall, if he desires to avail himself of the exemption provided in sections 5 and 8 or of the concession of single point taxation provided in section 6, submit an application in Form 1 for a licence in respect of each of his places of business to the authority specified in sub-rule (2) so as to reach him not later than the 15th day of October, 1939".

The scheme of taxation under the Act is this. Section 3 is the general charging section under which tax is levied in the manner prescribed in the turnover of a dealer, except that a dealer whose turnover is less than Rs. 10,000/- is exempted from sales tax. Section 3 envisages multipoint taxation on the total turnover of a dealer. In the case of the sale transactions of certain specified goods set out in s. 5 of the Act an exception is made. That section provides for single point taxation subject to certain prescribed restrictions and conditions. By sub-s. (vi) of that section sales of hides and skins are liable to tax under s. 3, sub-s. (1), at one single point in the series of sales by successive dealers. The language of the section (s. 5) shows however that this exemption applies subject to certain restrictions and conditions which include conditions as to licences. The rule, which deals with licences is r. 5 of the Sales Tax Rules, the relevant portion of which has already been set out. It lays down that if a dealer desires to avail himself of the exemption provided in ss. 5 and 8 or of the concession as to taxation in s. 5 only at a single point, then he must obtain a licence as prescribed in that rule. If the restrictions and conditions contemplated by s. 5 read with the rules are not complied with certain consequences follow as a result of s. 6-A of the Act which specifically states that where a condition prescribed or notified requires the taking out or the renewal of a licence, then in the case of contravention of such conditions or restrictions the tax is to be levied under s. 3 as if the provisions of s. 5 did not apply to such sales. This, therefore, is a clear provision which makes the single point imposition of sales tax on hides and skins to be conditional on observing the condition of taking a licence.

The argument of inconsistency between r. 16(5) of the Turnover and Assessment Rules and s. 5(vi) of the Act which was accepted in the High Court receives no support from the language of that section which is a concessional provision for making the sales of hides and skins liable to taxation at a single point; but that, as the opening words of the section show, is subject to restrictions and conditions prescribed in the rules and one of these conditions is the taking of a licence. All that r. 16(5) does is to emphasise the consequences of non-observance of the conditions which ss. 5(vi) & 6-A have in clear terms prescribed. We find no inconsistency between the rule and the sections of the Act. But it was submitted that this Court on appeal from a judgment of the Madras High Court had held r. 16(5) to be ultra vires to the Act. That contention is based on the judgment of the Madras High Court in *V. M. Syed Mohammed & Company v. The State of Madras* ((1952) 3 S.T.C. 367) which on appeal was affirmed by this Court (*V. M. Syed Mhammed and Company v. The State of Andhra*, [1954] S.C.R. 1117). This contention is not well-founded. In that case, when it was in the Madras High Court, it was contended that the rules did not properly carry out the policy underlying the Act, which was to keep the price of hides and skins at a competitive level for the world market. It was there argued that hides and skins were articles much in demand in the foreign markets and their export was one of the main items of the foreign trade of the State of Madras which enjoyed considerable natural advantage in tanning because of the plentiful supply of "Avaram bark" which

was specially suited for the purpose. It was also argued that untanned hides and skins were acquired locally or by import from other States and were either tanned in the State or exported and therefore the scheme of taxation was to levy the tax at a single point, i.e., at the stage when articles were tanned in the State or exported to foreign countries for tanning. For this reason multiple taxation was violative of s. 5(vi) of the Act. This, it appears, was not disputed by the Government and it was therefore held that r. 16(5) of the Turnover and Assessment Rules was ultra vires. But the question was really not relevant to the issue as was pointed out by Venkatarama Ayyar, J., at p. 394, where he said :-

"Now the contention of the petitioners is that where there are sales by unlicensed dealers to unlicensed tanners or unlicensed dealers, there is the possibility of multiple taxation and that would be in violation of section 5(vi). It is not disputed on behalf of the Government that Rule 16(5) is repugnant to section 5(vi). It must therefore be held to be ultra vires. But this can bring no relief to the petitioners, as they are all licensed tanners and are in no manner hurt by the operation of r. 16 (5). This was conceded by the learned Advocate for the petitioners".

This case was then brought in appeal to this Court and S. R. Das, J. (as he then was), observed at p. 1121 :-

"Lastly, the learned advocate urges that rule 16(5) clearly contravenes the provisions of section 5(vi) of the Act. This sub-rule has been held to be ultra vires by the High Court, and indeed, the learned Advocate General of Madras did not in the High Court, as before us, dispute that rule 16(5) was repugnant to section 5(vi). That sub-rule, however affects only unlicensed dealers and the appellants who are admittedly licensed dealers are not affected by that sub-rule".

This judgment does not show that the repugnancy of the rule was in controversy or the court pronounced its opinion upon the merits or it was necessary to do so.

The learned Solicitor-General then contended before us that in their counter-affidavit filed in the High Court the appellants had accepted the position that r. 16(5) of the Turnover and Assessment Rules was ultra vires. But that will not carry the matter any further, because on a construction of the provisions of the Act this argument of repugnancy is not sustainable.

The Andhra Pradesh High Court rightly did not accept the view that r. 16(5) was ultra vires of the rule making authority : Syed Mohamed & Company v. State of Andhra ((1956) 7 S.T.C. 465, 472). The same view was taken by the Mysore High Court in the State of Mysore v. Sarvatula & Co. ([1957] 9 S.T.C. 593)

A consideration of the relevant provisions of the Act and the rules made thereunder shows that the charging section is s. 3(1) and the general rule is taxation at multiple points on the total turnover of the dealer, but in the case of sale of certain specified articles a departure has been made and tax at single point is leviable provided certain conditions and restrictions as to licences which are envisaged in s. 5 and laid down in the rules are complied with and that r. 16(5) of the Turnover and Assessment Rules is not ultra vires.

It was then contended that the provision as to licensing and taxation in the case of licensed dealers and tanners at a single point and a taxation at multiple point in the case of unlicensed dealers were

violative of Art. 14 of the Constitution. But we did not allow this point to be taken because it was not raised in the High Court and was raised for the first time in this Court. In our opinion the judgment of the High Court in regard to the ultra vires nature of r. 16(5) and the inapplicability of s. 6-A of the Act was erroneous and appeal must, therefore, be allowed, the judgment and order of the High Court set aside and the respondent's petition dismissed. The respondent will pay the costs of the appellants in this Court and in the courts below.

Appeal allowed.

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