

The Appellate Astd. Commissioner and Others

Vs

M/S. L. M. S. Sadak Tamby and Co. and Others

State of Tamil Nadu

Vs

M/S. A. M. Safiullah and Co.

Civil Appeals Nos. 1366, 1850-1863 and 2550-2551 of 1969, 1355-1356 of 1970 and 1292-1293 of 1973, S.L.P. (Civil) No. 1974 of 1970

(CJI A. N. Ry, K. K. Mathew, A. lagiriswmi JJ)

15.10.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. These appeals raise the question of the validity of Section 2(1) of Madras Act 37 of 1964. That section read as follows :

Special provisions in respect of tax on sale of dressed hides and skins in certain cases :

Notwithstanding anything contained in the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the said Rules), in respect of sale of dressed hides and skins (which were not subjected to tax under the said Act as war hides & skins), the tax under the said Act shall be levied from the dealer who in the State, is the first seller in such hides and skins not exempt from taxation under sub-section (3) of the said Act :

(i) for the period commencing on April 1, 1955 and ending on March 31, 1957, at the rate of one and nine-sixteenth per cent, and

(ii) for the period commencing on April 1, 1957 and ending on March 31, 1959, at the rate of two per cent, of the amount for which such hides and skins were last purchased in the untanned condition.

In order to understand the implications of this section it is necessary to refer to certain other provisions of law and two previous decisions of this Court. Rule 16 of the Madras General Sales Tax Rules made under Madras Act IX of 1939 read as follows :

In the case of untanned hides and/or skins the tax, under Section 3(1) shall be levied from the dealer who is the last purchaser in the State not exempt from taxation under Section 3(3) on the amount for which they are bought by him.

2(i) In the case of hides or skins which have been tanned outside the State the tax under

section 3(1) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from taxation under Section 3(3) on the amount for which they are sold by him.

(ii) In the case of tanned hides or skins which have been tanned within the state, the tax under Section 3(1) shall be levied, from a person who is the first dealer in such hides or skins not exempt from taxation under Section 3(3) on the amount for which they are sold by him.

Provided that, if he proves that tax has already been levied under sub-rule (1) on the untanned hides and skins out of which the tanned hides and skins had been produced, he shall not be so liable.

This rule was struck down by this Court on the ground that where a tanner buys raw hides and skins inside the state and sells them after tanning he pays the tax only on the purchase price of raw hides and skins whereas a dealer who purchases raw hides and skins from outside the State and sells the tanned hides and skins pays the tax on the price for which tanned hides and skins are sold and therefore pays more tax. The judgment of this Court in *Firm A. T. B. Mehtab Majid & Co. v. State of Madras* is reported in (1963) Supp 2 SCR 35 (AIR 1963 SC 921 : 14 STC 355). Thereafter the Madras Legislature passed Act 11 of 1963 to deal with the situation. Section 2(1) of that Act reads as follows :

Special provision in respect of tax on sale of dressed hides and skins in certain cases :

Notwithstanding anything contained in the Madras general Sales Tax Act 1939 (Act IX of 1939) (hereinafter referred to as the said Act), or in the rules made thereunder (hereinafter referred to as the said Rules), during the period commencing on April 1, 1955 and ending on March 31, 1959, in respect of sale of dressed hides and skins (which were not subjected to tax under the said Act as raw hides and skins) the tax under the said Act shall be levied from the dealer who in the State is the first seller in such hides and skins not exempt from taxation under sub-section (3) of Section 3 of said Act at the rate of two per cent of the amount for which such hides and skins were last purchased in the untanned condition.

It would be noticed that this section deals with the sales during the period between April 1, 1955 and March 31, 1959. From April 1, 1955 to March 31, 1957 the rate of taxation in Madras State was one and nine-sixteenth per cent. As this section provides a uniform rate of two percent for sales during the whole of the period between April 1, 1955 and March 31, 1959 it was struck down by this Court in *A. Hajee Abdul Shakoor & Co. v. State of Madras* ((1964) 8 SCR 217 : 15 STC 719 : 1964 SC 1729) on the ground that for the period from April 1, 1955 to March 31, 1957 there was discrimination between a tanner who tans from raw hides and skins purchased inside the State who would pay only one and nine-sixteenth per cent on the raw hides and skins purchased by him and a tanner who purchased skins and hides from outside the State who would have to pay at the rate of two per cent under this section. It is to get over this objection that the section first referred to has been passed.

2. Under the section the tax is leviable on the first seller of dressed hides and skins at the rate of one and nine-sixteenth per cent for the period between April 1, 1955 and March 31, 1957. For the period between April 1, 1957 and March 31, 1959 it is to be at the rate of two per cent. The tax is on the amount for which such hides and skins were last purchased in the untanned condition. It would be noticed that it does make any distinction between the purchase of raw hides and skins inside the

State and outside the State. The Tax itself is on the first sale of the tanned hides and skins but it is calculated on the basis of the purchase price of the raw hides and skins whether they were purchased inside the State or outside the State. The out of State purchase of raw hides and skins is not taxed. That would be subject to tax under the Central Sales Tax Act. But what is taxed under the impugned statute is not the purchase of raw hides and skins whether inside or outside the State. In both cases it is on the first sale of tanned hides and skins. Even if a person purchases raw hides and skins inside the State and sells it after tanning he pays the tax on the sale of the tanned hides and skins and not on the purchase of the raw hides and skins though the amount of tax payable is calculated on the amount for which such raw hides and skins were purchased. Similar is the position with regard to raw hides and skins purchased outside the State. Thus there is no discrimination between the sellers of tanned hides and skins whether the raw hides and skins out of which they were tanned were purchased inside the state or outside the State. The tax is not leviable even in the case of raw hides and skins imported from another State but on hides and skins tanned from those raw hides and skins. Only the tax is levied on the amount is used only for which the raw skins and hides were purchased. This amount is used only for the purpose of quantification of the tax. The tax is not on the purchase of the raw hides and skins. We do not, therefore, see how the tax levied on the sale of tanned hides and skins contravenes Article 286 of the Constitution. Actually as the value of hides and skins in their tanned condition is higher than the value of raw hides and skins from out of which they are tanned the person importing raw hides and skins from outside the State can have no grievance that the tax is levied not on the amount for which the tanned hides and skins are sold but on the amount for which raw hides and skins have been purchased. Nor does he pay a higher tax than the person who sells hides and skins tanned from locally purchased raw hides and skins. It was open to the State to have levied the tax on the sale price of tanned hides and skins in which case there could have been no argument that it was tax on the imported raw hides and skins. But the State chose to levy the tax on the basis of the purchase price of raw hides and skins which would mean lesser tax. It does not suffer from the vice of taxation of the imported raw hides and skins.

3. We are unable to understand the view of the High Court that if the sale price were taxed and rebate were given then there would be no objection to the tax. We do not understand how that can be done. We asked the learned Advocates appearing for the respondents to tell us how that can be done and they were not able to do so. The cost of conversion of the raw hides and skins to tanned hides and skins might differ from tanner to tanner. It is much easier to get figures for the purchase price of the raw hides and skins or the sale price of the tanned hides and skins than the cost of conversion. As the scheme of taxation is not on the basis of the sale price of tanned hides and skins the suggestion of the High Court cannot be adopted. We, therefore, hold that the High Court was in error in striking down the impugned provision of law.

4. In S.L.P. No. 1974 of 1970, special leave to appeal is granted and the appeal allowed.

5. The appeals are allowed with costs.

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