

The State of Tamil Nadu

Vs

M. K. Kandaswami and Others

Civil Appeals Nos. 1040 to 1072 of 1973

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

15.07.1975.

JUDGMENT

SARKARIA, J. -

1. These appeals by the State of Tamil Nadu on a certificate granted by the High Court under Article 133(1) (c) of the Constitution raise a question as to the interpretation and scope of Section 7-A of the Madras General Sales-tax Act, 1959 (hereinafter called the Madras Act).
2. All the respondents are dealers against whom either pre-assessment proceedings have been initiated or assessments have been made under Section 7-A of the Act on the purchase turnover of certain goods.
3. The assessee-respondents in Civil Appeals Nos. 1040, 1041, 1042 and 1044 of 1973 are said to have purchased arecanuts from agriculturists, and thereafter transported those goods outside the State for sale on consignment basis.
4. The twenty assesseees in Civil Appeals Nos. 1046-48, 1054-1057, 1059-1060, 1061 to 1066, 1068 to 1072 of 1973 are alleged to have purchased Gingelly seeds from agriculturists. Gingelly seeds so purchased were crushed into oil by them.
5. The four respondents in Civil Appeals Nos. 1045, 1050, 1058 and 1067 of 1973 are alleged to have purchased butter from house holders and then converted it into ghee.
6. The three assessee in Civil Appeals Nos. 1051, 1052 and 1053 of 1973 purchased turmeric and grams from agriculturists and then transported those goods outside the State for sale on consignment basis.
7. The assessee in Civil Appeal No. 1043 of 1973 are alleged to have purchased castor seeds from (unregistered?) dealers on bought notes and thereafter crushed them into oil.
8. It will be convenient to take the last mentioned case as a model. There in, the Joint Commercial Tax Officer, Leigh Bazar, and Gugai Division, Salem issued a notice dated February 11, 1970 to the assessee in these terms :

You are liable to pay purchase tax under Section 7-A of the TNGST Act, 1959, on the purchase price of the castor seeds purchased and which was consumed in the manufacture of other goods for sales or disposed of otherwise.

The turnover of such purchases made from 27.11.1969 to 31.1.1970 amounts to Rs. 3,303,323.67 and the tax due works out to Rs. 9,099.69.

You are hereby requested to pay the amount as stated above within 10 days of the receipt of this notice.

9. This was followed by a memorandum dated March 5, 1970 in which it was inter alia stated :

Admittedly you have purchased the castor sees through your own bought notes from registered dealers whose transactions are not verifiable. As per Section 10 the burden of proof that any dealer or any of his transactions is not liable to tax under this Act shall lie on such dealer. Therefore, the purchases effected by you have suffered tax already, should be proved by you.

10. All the aforesaid deals (hereafter referred to as the assesseees) filed writ petitions under article 226 of the constitution in the High Court of Madras challenging the validity of the pre-assessment proceedings/assessments and the demand notices. The High Court accepted the contention of the assesseees that the circumstances contemplated by that provisions (Section 7-A) did not include the possibility or impossibility of verifiability of the transactions with the dealers from whom the petitioner had purchased, and further observed :

. . . that if the purpose of Section 7-A is as obviously it is, check evasion, the phraseology has fallen short of achieving that purpose. Section 7-A could have detailed the circumstances in which the tax liability under Section 7-A would arise. But, instead, the circumstances have been related by the section to sales or purchases which are liable to tax under the Act, but for some reason no tax is payable in respect of them. It appears to be a contradiction in terms, and we are unable to visualise the circumstances except what we have noticed above in which Section 7-A could be applied. In fact, we are unable to visualise the circumstances in which the two-fold requirement of the sale being liable to tax but for some reasons no tax is payable under Sections 3, 4 or 5 can arise, except in cases of exemption. Even there the difficulty arises whether one can say that the sale which is exempted is liable to tax, and then assume that because of exemption, the tax is not payable. To our minds the language of Section 7-A is far from clear as to its intention, and we think that the Joint Commercial Tax Officer was not justified in involving Section 7-A.

11. With regard to the purchases of butter, the learned Judges said :

We fail to see how this could be done under Section 7-A. Butter is taxable to multi-point tax and is levied on the sales. That being the case, we do not understand how purchase tax can also be levied at the purchase point of the sales which were also the subject-matter of charge. If the purchases were made from householders or other persons who are not dealers, even so, inasmuch as the transactions were not liable to tax at all under the Act, on that ground, Section 7-A could not be invoked.

12. On the above reasoning, the High Court by a common judgment, dated May 28, 1971, allowed all the writ petitions and quashed the impugned proceedings and assessments. Hence these appeals by the State.

13. Section 7-A was inserted by the Tamil Nadu Amendment Act 2 of 1970 with effect from November 27, 1969. At the relevant time the material part of Section 7-A read as under :

(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under Sections 3, 4 or 5, as the case may be, and either -

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in Sections 3, 4 or 5 as the case may be whatever be the quantum of such turnover in a year :

Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods [the sale of which is liable to tax under sub-section (1) of Section 3] shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than twenty-five thousand rupees.

#(2) * * *(3) * * *##

14. On analysis, sub-section (1) breaks up into these ingredients :

(1) The person who purchases the goods is a dealer;

(2) The purchase is made by him in the course of his business;

(3) Such purchase is either from "a registered dealer or from any other person";

(4) The goods purchased are "goods the sale or purchase of which is liable to tax under this Act";

(5) Such purchase is "in circumstances in which no tax is payable under Section 3, 4, or 5 as the case may be", and

(6) The dealer either

(a) consumes such goods in the manufacture of other goods for sale or otherwise, or

(b) despatches all such goods in any manner other than by way of sale in the State, or

(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

15. Section 7-A(1) can be invoked if the above ingredients are cumulatively satisfied. The proviso to the sub-Section exempts a dealer (other than a casual trader or agent of a non-resident dealer), if his turnover for a year is less than Rs. 25,000 (which by a subsequent amendment was raised to Rs. 50,000).

16. The assessee prima facie falls within the definition of 'dealer' in Section 2(g) which includes not only a person who carries on the business of "selling, supplying or distributing" goods but also the one who carries on the business of "buying" only. Difficulty in interpretation has been experienced only with regard to that part of the sub-section which relates to ingredients (4) and (5). The High Court has taken the view that the expression "goods the sale or purchase of which is liable to tax under this Act" and the phrase "purchases . . . in circumstances in which no tax is payable under Section 3, 4, or 5", are "a contradiction in terms".

17. We are unable to accept this interpretation which would render Section 7-A(1) wholly nugatory. With due respect, it seems to us that in arriving at this erroneous interpretation, the learned Judges mixed up concept of goods liable to tax with the transactions liable to tax under the Act. The scheme of the Act involves three inter-related but distinct concepts which may conveniently be described as 'taxable person', 'taxable goods' and 'taxable event'. All the three must be satisfied before a person can be saddled with liability under the Act. Nevertheless, the distinction between them, if overlooked, may lead to serious error in the construction and application of the Act. 'Goods' is defined in Section 2(j) as all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes all materials, commodities, and articles (including those to be used in the fitting out, improvement or repair of movable property); and all growing crops, grass or things attached to, or forming part of the land which are agreed to be served before sale or under the contract of sale.

18. "Taxable person" is a 'dealer' as defined in Section 2(g). "Taxable event" is the 'sale or purchase' of 'goods' effected during the accounting period although the tax liability is enforced only after quantification is effected by assessment proceedings. 'Sale' is defined in Section 2(n) as every transfer of the property in goods by one person to another in the course of business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge.

19. Section 3(2) which is the main charging provision, enjoins that in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer, at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever be the quantum of turnover in that year.

20. The focal point in the expression, "goods, the sale or purchase of which is liable to tax under the Act" is the character and class of goods in relation to their exigibility. In a way this expression contains a definition of 'taxable goods', that is, goods mentioned in the First Schedule of the Act, the sale or purchase of which is liable to tax at the rate and at the point specified in the Schedule. The words, "the sale or purchase of which is liable to tax under the Act" qualify the term "goods", and exclude by necessary implication goods the sale or purchase of which is totally exempted from tax at all points, under Section 8 or Section 17(1) of the Act. The goods so exempted - not being "taxable goods" - cannot be brought to charge under Section 7-A.

21. The words "under the Act" will evidently include a charge created by Section 7-A, also. It is to be noted that Section 7-A is not subject to Section 3; it is by itself a charging provision. Section 7-A brings to tax goods the sale of which would normally have been taxed at some point in the State, subsequent to their purchase by the dealer if those goods are not available for taxation, owing to the act of the dealer in (a) consuming them in the manufacture of other goods for sale or otherwise, or (b) despatching them in any manner other than by way of sale in the State, or (c) despatching them to a place outside the State except as a direct result of sale or purchase in the course of inter-State

trade or commerce.

22. Ingredients (4) and (5) are not mutually exclusive and the existence of one does not necessarily negate the other. Both can coexist and in harmony. Ingredient (4) would be satisfied if it is shown that the particular goods were 'taxable goods', i.e., the goods the sale or purchase of which is generally taxable under the Act. Notwithstanding the goods being 'taxable goods', there may be circumstances in a give case, by reason of which the particular sale or purchase does not attract tax under Sections 3, 4 or 5. Section 7-A provides for such a situation and makes the purchase of such goods taxable in the hands of the purchasing dealer on his purchase turnover if any of the conditions (a), (b) and (c) of sub-section (1) of Section 7-A is satisfied.

23. The meaning and scope of the phrase "purchases . . . in circumstances in which no tax is payable under Sections 3, 4 or 5" and its co-existence with ingredient (4) can be understood by applying it to the cases in hand.

24. In all the forty appeals under consideration, the goods in question, namely, arecanuts, gingelly seeds, turmeric, grams, castor seeds and butter are "goods, the sale or purchase of which is generally taxable under the Act". That is to say, they are 'taxable goods'. The sales of arecanuts, gingelly sees, turmeric and gram were not liable to tax in the hands of the sellers as they were agriculturists and the goods were the produce of the crops raised by them. Similarly, butter was purchased by the assessee concerned directly from the house-holders whose sales are not liable to tax under the Act. Castor-seeds are said to have been purchased by the assessee concerned from unregistered dealers under bought notes. If this is a fact, then such sales may not be liable to tax under the Act.

25. Thus in all these cases, the purchases have been made by the dealers, of "goods the sale or purchase of which is generally liable to tax under the Act", but because of the circumstances aforesaid no tax was suffered in respect of the sale of these goods by the sellers. If it is a fact that the gingelly seeds (vide Civil Appeals Nos. 1046 to 1048, 1054 to 1057, 1059 to 1069/1973) and castor-seeds (vide Civil Appeal No. 1043/73) were crushed into oil and the butter (vide Civil Appeals Nos. 1049, 1050, 1058, 1067/73) was converted into ghee by the purchasers-dealers concerned, the condition in clause (a) of sub-section (1) of Section 7-A would be satisfied and Section 7-A would be attracted. If in the case of arecanuts (vide Civil Appeals Nos. 1040 to 1044/73), turmeric and gram (vide Civil Appeals Nos. 1051 to 1053/73), the purchasing dealers transported these goods outside the State for sale on consignment basis, their case would also be covered by clause (b) or (c) of Section 7-A(1) and such dealers would be liable to tax on the purchase-turnover of these goods.

26. It may be remembered that Section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the stature book, should be eschewed. If more than one construction is possible, that which preserves its work ability, and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of interpretation.

27. In *Ganesh Prasad Dixit v. Commissioner of Sales-tax* ((1969) 3 SCR 490 : (1969) 1 SCC 492) Section 7 of the Madhya Pradesh General Sales Tax Act, 1959 (for short, Madhya Pradesh Act) was under challenge. That section was as follows :

Every dealer who in the course of this business purchases any taxable goods, in

circumstances in which no tax under Section 6 is payable on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under Section 6 :

#Provided * * *##

28. The assessee therein was a firm of building contractors and was registered as a dealer under the Madhya Pradesh Act. The firm were purchasing building materials which were taxable under the Act and were using them in the course of their business. The Sale-tax Officer served a notice upon them to show cause why 'best-judgment assessment' should not be made against them. The assessee did not offer any explanation. The Sales-tax Officer assessed the turnover in respect of the sales as 'nil' and assessed the firm to purchase taxes under Section 7 on the purchase turnover. One of the questions that fell for decision was, whether in the facts and circumstances of the case the applicant was a dealer during the assessment period under the Act and the imposition of purchase tax on him under Section 7 of the Act was in order. Answering the question in the affirmative, this Court observed : [SCC P. 496, para 5]

The phraseology used in that section is somewhat involved, but the meaning of the section is fairly plain. Where no sales tax is payable under Section 6 on the sale price of the goods, purchase tax is payable by the dealer who buys taxable goods in the course of his business, and (1) either consumes such goods in the manufacture of other goods for sale; or (2) consumes such goods otherwise; or (3) disposes of such goods in any manner other than by way of sale in the State; or (4) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. The assessee is registered as a dealer and they have purchased building materials in the course of their business; the building materials are taxable under the Act, and the appellants have consumed the materials otherwise than in the manufacture of goods for sale and for a profit motive. On the plain words of Section 7 the purchase price is taxable.

29. The impugned Section 7-A is based on Section 7 of the Madhya Pradesh Act. Although the language of these two provisions is not completely identical, yet their substance and object are the same. Instead of the longish phrase, "the goods, the sale or purchase of which is liable to tax under this Act" employed in Section 7-A of the Madras Act, Section 7 of the Madhya Pradesh Act conveys the very connotation by using the convenient, terse expression, "taxable goods". The ratio decidendi of Ganesh Prasad (supra) is therefore, an apposite guide for construing Section 7-A. Unfortunately, that decision, it seems, was not brought to the notice of the learned Judge of the High Court.

30. Section 5-A of the Kerala General Sales Tax Act, 1963 (for short, the Kerala Act) which is identical with the impugned provision, runs thus :

5A. Levy of purchase tax. - (1) Every dealer who in the course of his business purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under Section 5, and either -

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

- (b) disposes of such goods in any manner other than by way of sale in the State; or
- (c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

31. The validity of Section 5-A was challenged by a writ petition before a learned Judge (Subramaniam Poti, J.) of the Kerala High Court in *Malabar Fruit Products Company, Bharananganam Kottayam v. Sales Tax Officer, Palai* ((1972) 30 STC 537 (Ker)). It was contended, inter alia :

- (1) The object sought to be achieved by the introduction of Section 5-A of the Act had not been accomplished because the section is vague;
- (2) Assuming that the section is clear enough and can be treated as a charging section, the section imposes tax not on the sale or purchase of goods but on its use or consumption;
- (3) That the State Legislature had no competency to impose tax on the use and consumption of goods and so section is ineffective.

32. Holding that Section 5-A was valid and intra vires the State Legislature, the learned Judge explained the scheme of the section, thus :

Though normally a sale by a registered dealer or by a dealer attracts tax, there may be circumstances under which the seller may not be liable as, for example, when his turnover is below the specified minimum. In such case the "goods" are liable to be taxed, but the sales take place in circumstances in which no tax is payable at the point at which tax is levied under the Act. If the goods are not available in the State for subsequent taxation by reason of one or other of the circumstances mentioned in clauses (a), (b) and (c) of Section 5A(1) of the Act then the purchaser is sought to be made liable under Section 5A.

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Another instance I can conceive of is a case of a dealer selling agricultural or horticultural produce grown by him or grown in any land in which he has interest, whether as owner, usufructuary mortgagee, tenant or otherwise. From the definition of "turnover" in Section 2(xxvii) of the Act it is evident that the proceeds of such sale would be excluded from the turnover of a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise, though merely by such sales he satisfies the definition of a "dealer" in the Act. Thus, such a person selling such produce is treated as a dealer within the meaning of the Act and the sales are of goods which are taxable under the Act but of the Act and the sales are of goods which are taxable under the Act but when he sells these goods, it is not part of his turnover. Therefore, it is a case of a dealer selling goods liable to tax under the Act in circumstances in which no tax is payable under the Act. In such a case, the purchaser is sought to be taxed under Section 5A provided the conditions are satisfied. The case of growers selling good to persons to whom Section 5A thus applies is covered by this example.

33. The judgment of the learned Judge was affirmed in appeal by a Division Bench of the same High Court (vide Yusuf Shabeer v. State of Kerala ((1973) 32 STC 359 (Ker))). The Bench expressly dissented from the view taken by the Madras High Court in the judgment now under appeal.

34. In our opinion, the Kerala High Court has correctly construed Section 5-A of the Kerala Act which is in pari material with the impugned Section 7-A of the Madras Act. "Goods the sale or purchase of which is liable to tax under this Act in Section 7-A(1)" means 'taxable goods', that is, the kind of goods, the sale of which by a particular person or dealer may not be taxable in the hands of seller but the purchase of the same by a dealer in the course of his business may subsequently become taxable. We have pointed out and it needs to be emphasised again that Section 7-A itself is a charging section. It creates a liability against a dealer on his purchase turnover with regard to goods, the sale or purchase of which though generally liable to tax under the Act, have not due to the circumstances of particular sales, suffered tax under Sections 3, 4, or 5, and which after the purchase, have been dealt by him in any of the modes indicated in clauses (a), (b) and (c) of Section 7-A(1).

35. For the foregoing reasons, we allow these appeals, set aside the judgment of the High Court and dismiss the writ petitions. In the circumstances, we would leave the parties to bear their own costs. All the cases will now go back to the taxing authority concerned for such further investigation, proceedings or action as may be necessary in the particular case, in accordance with law as clarified above.

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