

# ANDHRA PRADESH HIGH COURT

Deputy Commissioner of Commercial Taxes

Vs.

Mohammad Azam Abdul Bari

Tax Revn. Cases Nos. 29 to 31 and 34 and 35 of 1956

(K. Subba Rao, C.J. Satyanarayana Raju and Jaganmohan Reddy, JJ.)

09.08.1957. 27.09.1957

## JUDGMENT

### **K. Subba Rao C.J.**

1. The following two questions have been referred to the Full Bench.

- "1. Whether a licensed tanner is liable to pay sales-tax on the amount for which hides and skins were bought by him from an unlicensed dealer.
2. Whether a licensed dealer, who purchases the said goods for export outside the state from an unlicensed dealer is liable to tax on the amount for which the said goods were bought by him".

It is not necessary to state the facts peculiar to each of the revisions as nothing turns upon them.

2. Presiding over a Division Bench of this Court and delivering judgment on behalf of the Bench in *Syed Mohammad and Co. v. State of Andhra*<sup>1</sup>, I summarized the scheme of taxation, thus at p. 709 : (of An LT) :

"Section 3 is the charging section. Under that section, tax is levied in the manner prescribed on the total turnover of a dealer. If the total turnover is less than Rs. 10,000/-, the dealer is exempted from taxation. The general scheme adopted is multi-point taxation. In the case of specified goods, they are made liable to a single point also in addition to the multiple point tax.

It also provides for a tax at a buyer's point or a seller's point but prohibits taxation in respect of the same transaction of both the buyer and the seller or the same person in respect of the same goods both at the purchase point and the sale point. Section 5 exempts certain commodities from taxation under Section 3 (1) and gives some concession in regard to other commodities, by providing a single point taxation instead of multiple point taxation under Section 3 (1). The said

concession of single point taxation is shown among others to sales of hides and skins. Rule 5 (e) of the

<sup>1</sup>1956 An LT 706

Madras General Sales Tax. Rules prescribes that every person, who deals in hides and skins, shall take out a license, if he desires to avail himself of the concession of taxation only at a single point as specified in Section 5 ..... The aforesaid provisions clearly indicate that, under the Act and the rules framed thereunder, the general scheme is multi-point taxation on the turnover of a dealer, it may be at the sale point or at the purchase point. In the case of hides and skins, the single point taxation at the purchase point is adopted. Even in the case of the same commodity, if the dealer has not taken the prescribed licence, he falls in line with the dealer of other commodities, i.e., his turnover is taxed at the sale point under the multi-point scheme of taxation." I need not cover the ground over again. If that be the scheme of taxation in the case of turnover relating to sales of untanned hides and skins, the question is whether the concession shown in respect of the said goods is confined only to sales in that commodity between licensed dealers or between dealers, one of whom is licensed and the other unlicensed.

3. Before I advert to the specific provisions and the rules on which special emphasis is laid by one or other of the parties, it may be useful to ascertain the object and the purpose for which single point taxation is adopted and the turnover of the purchase is taxed in the case of this particular commodity while multi-point taxation is provided for and the seller is made liable to pay the tax in the case of other commodities.

4. A Division Bench of the Madras High Court in *Syed Mohammad and Co. v. State of Madras*<sup>2</sup>. made the following observations in regard to the characteristics of this trade at page 609 (of Mad LJ) , thus:

"..... It is stated that the South Indian hides and skins command great popularity in the world markets being popularly known as "East India kips" and that there is considerable demand for them in foreign countries. They also stated at page 612 (of Mad LJ) , as follows:

"As already mentioned, these articles are much in demand in foreign markets and their export forms one of the main items in the foreign trade of the State. It also appears that this State enjoys considerable natural advantages for carrying on the business of tanning because the 'avaram bark', which is specially suited for tanning, grows in plenty in this State.

The course of business appears to be that untanned hides and skins are acquired locally or by import from other states and are either tanned here or exported to foreign countries for tanning." These observations were made in regard to a case arising out of the West Godavari District, which was then part of the Madras State and is now in the Andhra Pradesh State. It is common knowledge that these raw hides are gathered by petty dealers and sold to a tanner or a big exporter of such goods to foreign countries. The State is therefore, interested to encourage the trade in order to capture foreign markets and to conserve foreign exchange. To achieve this object, without at the same time drying up the source of income from this commodity by way of sales tax, the Act adopts single point taxation and provides that the tax is payable on the purchase turnover by a tanner or the last dealer who purchases for export. This gives the necessary relief to

small dealers as the tanner or the purchaser for export as the

<sup>1</sup>1952-2 Mad LJ 598

case may be who buys from the various dealers pays tax on the purchase turnover. This process is also convenient from the stand point of the collection of the tax as the State, instead of proceeding against small dealers, who more often than not may come under the category of exempted dealers can collect the amount of tax from the tanner or the dealer for export as invariably he is a big business-man capable of maintaining regular accounts. The stage of collection is also appropriate as, after the tanning, the hides and skins become different commodities and after export they go beyond the reach of the State. The object in many cases may be frustrated if the tanner or the exporter purchases from unlicensed dealers. In the case of unlicensed petty dealers, the destination of the goods cannot be traced and this affords a loop-hole for evasion of tax. This can be plugged only by applying the alternative system of taxation to the turnover relating to transactions between licensed dealers. It is true that the Court cannot construe the express provision of a statute by the supposed policy of the Legislature underlying the statute. I will, therefore, proceed to consider the relevant statutory provisions to ascertain the express intention of the legislature and whether the aforesaid policy is implemented by it.

5. Every taxing statute must state with the utmost clearness what and whom and in what manner it is taxing. See *Menakshi Devasthanam v. Madura Municipal Council*<sup>2</sup>. For convenience of reference, the relevant sections of the Madras General Sales Tax Act and the rules made thereunder may be ground together under three heads : (i) Normal levy; (ii) qualified or concurrent levy and (iii) no levy.

(1) Normal Levy : Section 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. Section 3 (4): For the purpose of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed:

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly. Rule 4 (1) of the Madras General Sales Tax (Turnover and Assessment) Rules:

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 him.

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

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(c) Untanned hides or 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 16:

<sup>2</sup>ILR 51 Mad 301

(5) Sales 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.

(ii) Qualified levy:

Section 5 : Subject to such restrictions and conditions as may be prescribed, including conditions as to licenses and license 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.

Rule 5 of the Madras General Sales Tax Rules : Every person who

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(c) deals in hides and/or skins whether as tanner or otherwise shall if he desires to avail himself of the exemption provided in Sections 5 and 8 or of the concession of taxation only at a single point of taxation at the rate specified in Section 5, 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 30th April of the year for which the licence is applied for. Rule 4 (2) Madras General Sales Tax (Turnover and Assessment) Rules : In the case of the undermentioned goods the gross turnover of a dealer for the purpose of these rules shall be the amount for which the goods are bought by him.

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

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

Rule 16 (2):

No tax shall be levied on the sale of untanned hides or 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.

(3) Sales by licensed dealers of hides or skins which have been tanned within the State shall be exempt from taxation provided that the hides or skins have been tanned in a tannery which has paid the tax leviable under the Act. If such hides or skins have been

tanned in a tannery which is exempt from taxation under Section 3 (3) the sale of such hides or skins shall be liable to taxation as under the next sub-rule below dealing with hides or skins tanned outside the State.

4. Sales by licensed dealers in hides or skins which have been tanned outside the State shall be exempt from taxation except at the stage of sale by the dealer who is the first dealer not exempt from taxation under Section 3 (3) who sells them within the State. The tax shall be levied from such dealer on the amount for which he sells hides or skins.

(iii) No levy:

Section 6(1) : The State Government may, by notification in the Fort St. George Gazette make an exemption or reduction in rate in respect of any tax payable under this Act

(i) on the sale of any specified class of goods, at all points or at a specified point or points in the series of sales by successive dealers; or

(ii) by any specified class of persons in regard to the whole or any part of their turnover.

Rule 16 (2):

No tax shall be levied on the sale of untanned hides or 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. In the case of normal levy, Section 3 (4) of the Act and Rules 4 (1) and 16 (5) of the Madras General Sales Tax (Turnover and Assessment) Rules clearly indicate the turnover to be taxed, the person liable to pay tax and the stage and the manner of levy. Under these provisions, sales tax is levied on a seller on each occasion of the sale on his gross turnover representing the amount for which the goods are sold by him. The second set of provisions provide for qualified levy. Under those provisions, licensed dealer is liable to pay tax on the purchase turnover at the stage at which the goods are sold to a tanner in the state or sold for export outside the State. The third set of provisions provide for the exemption or reduction in rate in respect of any tax payable under the Act on specified goods.

under Rule 16 (2), the payment of such tax is exempted in the case of hides and 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. We are now concerned in this case with the category of qualified levy and much of the argument centered round the said provisions. While the Government pleader contends that R. 4 (2) (c) and (d) prescribe the stage at which the tax is payable, learned counsel for the assessee contends that the said rules only provide that the turnover of the buyer is liable to tax and the stage at which the said tax is exigible is fixed by R. 16 (2).

6. The provisions extracted above provide a self-contained scheme of taxation in the case of the sale of hides and skins. Section 5, prescribes that the said commodity is liable to tax at such single point in a series of sales as may be prescribed. under Rule 5 of the Madras General Tax Rules, a dealer who seeks to take advantage of the concession, should take a licence thereunder. Rule 4 (2) (c) and (d) of the Madras General Sales Tax (Turnover and Assessment) Rules only define what is to be taxed. The sale turnover of the tanner or the exporter as the case may be is made the criterion for taxation. The learned Government Pleader seeks to read more into these provisions than the express words used therein could bear. As Clauses (c) and (d) do not indicate that a seller should be licensed seller, it is contended that for invoking the concession the sellers

need not be licensed dealers. But this argument ignores the fact that the said Rule is intended only to indicate that the purchase turnover of the licensed tanner or licensed exporter is to be taxed. The stage at which the tax becomes payable and the nature of the transaction in regard to which it is exigible are regulated by other rules. Rules 6 to 13 contain two alternative procedures of taxation in respect of all dealers in hides and skins. In regard to these dealers Rules 15 and 16 provide a special procedure for taxation. Rule 15 (1) makes it abundantly clear that the provisions of R. 15 and R. 16 shall apply to licensed tanners and other licensed dealers in hides and skins in respect of their dealings in hides and skins. Rule 16 in express terms says that in the case of hides and skins the tax shall be levied in accordance with the provisions of that rule. The sub-rule prescribes the point in the series of sales by successive dealers in regard to the said commodity. Under Sub-Rule (2) which is couched in negative form the tax is prohibited to be levied in the case of a sale by a licensed dealer except at a stage at which such hides and skins are sold to a tanner in the State or are sold for export outside the State. This sub-rule clearly fixes the stage and also the nature of the transactions liable to be taxed. Under it a sale subject to taxation is a sale between the licensed dealer and a tanner or exporter. But what is said is that Clauses (i) and (ii) of Sub-Rule (2) do not restrict the transactions only to those between licensed dealers and therefore reading those clauses along with R. 4 (2) it should be held that the liability to tax at a single point is not confined only to sales by licensed dealers. This argument in effect, seeks to dissociate or separate the sub-divisions from the main rule. Clauses (i) and (ii) are only illustrations of the main Sub-Rule (2). These two sub-clauses are preceded by a *dash* and it is a well-known device for introducing a list. The illustrations cannot obviously enlarge the scope of the main provision. When the main provision imposed a tax in regard to a transaction between licensed dealers, the illustrations cannot be construed to take in transactions between other persons. By the mere fact that the word "tanner" in Clause (i) and the word 'dealer' in Clause (ii) are not qualified by the word 'licensed' it cannot be said that transactions between unlicensed dealers or between licensed dealers and unlicensed tanners or exporters are also liable to single point taxation. R. 15 which introduces the other sub-clause of that rule and R. 16 in unambiguous terms say that the provisions of Rules 15 and 16 shall apply to licensed tanners and other licensed dealers in hides and skins in respect of dealings in hides and skins and, therefore, Rule 16 can only apply to transactions between such dealers. If the construction sought to be put upon the provisions of R. 16 by the State is accepted, it would frustrate the intention of the statute which under Section 5 of the Act read with R. 5 of the Madras General Sales Tax Rules intended to give concession to licensed dealers. If a licence is not taken the entire scheme of concession is withdrawn and the unlicensed dealers in hides and skins would fall in line with other dealers and is liable to multi-point taxation. There is no inconsistency between R. 4 (2) and R. 16 and they can both stand together without any artificial, and strained attempt to reconcile. The former only prescribes that the purchase turnover in the case of this particular commodity is taxable, whereas the latter fixes the stage and the nature of the transaction in regard to which the tax is payable.

7. A Full Bench of the Madras High Court in *Hajee Abdul Shukoor and Co. v. State of Madras*<sup>3</sup>, after a detailed consideration of the provisions of the Act and the rules framed thereunder came to the same conclusion. The learned Judges expressed their conclusion at p. 364 : (of STC) , thus:

"The conclusion we have reached as a result of the above discussion is that (1) the charging provision, Section 3, is subject in the case of transactions in hides and skins to the terms of Section 5 (vi) under which a single point of taxation in a series of sales has to be fixed by the rules : (2) R. 4 (2) is not the fixation of a single point within Section 5 (vi)

but is merely designed to determine whether it is the buyer or the seller that shall be liable to be taxed : (3) The single point is fixed and the liability to tax is established only under Rule 16; and (4) that under Rule 16 (2) it is only the sale of untanned hides and skins by a licensed dealer to a licensed tanner who tans the same that gives rise to a tax liability and that purchases of untanned hides and skins by tanners from persons other than licensed dealers are not within the taxing provision." With great respect, we entirely agree with the conclusions arrived at by the learned Judges.

8. The judgment of a Division Bench of the Madras High Court 1952-2 Mad LJ 598 , is pressed upon us in support of the contrary conclusion. That was a case which related to a licensed tanner who had also purchased from a licensed dealer. The present question therefore, did not directly arise for consideration. But, reliance is placed upon the following observations at page 612 (of Mad LJ) :

"Taking first the case of hides and skins which are tanned within the State, four possible situations might arise. There might be a sale by a licensed dealer either to a licensed tanner or to an unlicensed tanner; or there might be a sale by an unlicensed dealer either to a licensed tanner or to an unlicensed tanner. When the sale is by a licensed dealer, Rule 16 (2) (1) provides for a tax being levied on the tanner whether he is licensed or unlicensed.

But where the sale is by an unlicensed dealer, there is a difference in the incidence of taxation. If the sale is to a licensed tanner then under Rule 4 (2) (c) the purchaser has to pay the tax. But where the sale is to an unlicensed tanner R. 4 (1) will apply and the tax will fall on the seller." These observations proceed on the basis that both R. 4 and R. 16 are the charging provisions. For the reasons mentioned by us, we cannot accept this view.

9. Another Division Bench of the Madras High Court in *Noor Mohammad and Co. v. State of Madras*<sup>4</sup>, differed from the view expressed by the High Court of Andhra in 1956-7 STC 465 , in regard to the validity of R. 16 (5). Therein, the learned Judges observed at p. 807 (of STC) :

"Lastly they appear to doubt the correctness of the decision of the Full Bench in 1955-ft STC 352 : AIR 1955 Madras 686, though they have reserved their

<sup>3</sup>1955-6 STC 352 : AIR 1955 Madras 686

<sup>4</sup>1956-7 STC 792

final opinion on the law as enunciated in that case as regards the liability of tax of licensed dealers in regard to purchases from unlicensed dealers." The judgment of the Andhra High Court was delivered by me on behalf of the Bench. The point raised in that case was different from that covered by the Full Bench decision of the Madras High Court or raised in the present case. At p. 478:(of STC) , after giving the relevant extract from the judgment of the Full Bench we observed:

"In the face of such a clear and unambiguous statement made by the learned Judge in his

judgment, it is neither permissible nor possible to argue that the learned Judge has expressly or by necessary implication decided the question of the liability of an unlicensed dealer to tax under Section 3 (1) of the Act.

That decision is only authority for the position that the purchases of a licensed tanner from an unlicensed dealer cannot be included in the turnover of the former and that conclusion was based upon an interpretation of R. 16 (2) of the Madras General Sales Tax (Turnover and Assessment) Rules. It is not necessary in this case to express our opinion on the correctness of that decision, for that point does not arise for consideration before us." We did not express any doubt on the correctness of the Full Bench decision for the simple reason that we did not consider in that case the question now raised before us. There, we held that even in the case of hides and skins, if the dealer has not taken the prescribed licence, he falls in line with dealers of other commodities, i.e., his turnover is taxed at the sale point under the multi-point scheme of taxation. That decision does not constitute any link in the chain of reasoning which led me to the conclusion on the present question. The learned Judge, who delivered the judgment on behalf of the Full Bench of Madras High Court in 1955-6 STC 352 : AIR 1955 Madras 686, observed at P- 367 (of STC) , thus:

"The only reservation which we desire to make is that the conclusion does not really flow by reason, of the invalidity of R. 16 (5) but because of the proper construction of R. 16 (2) for R. 16 (5) has to do with the taxation of unlicensed dealers whereas the question now under issue is in the transactions of licensed dealers though their purchases are from unlicensed dealers. R. 16 (5) could have no bearing either as imposing or exempting any tax liability in such a case." The present view expressed by me is, therefore, not inconsistent with the earlier decision of this High Court nor is it intended to affect its validity in any way.

10. Many anomalies and incongruities, it is said, would arise in the working of the Act, if we should hold that the concession of single point taxation applied only to transactions inter se between licensed dealers. It may be, the argument proceeds, that in a chain of transactions some may be licensed dealers, some unlicensed dealers and they may intervene alternatively in a series of transactions leading to a final purchase by a licensed tanner. To illustrate: The first may be licensed dealer; the second an unlicensed dealer; the third a licensed dealer and the fourth a licensed tanner. To change the positions, the first may be an unlicensed dealer, the second licensed dealer, the third an unlicensed dealer and the fourth a licensed tanner. To change them over again, the first two may be unlicensed dealers, the third a licensed dealer and the fourth a licensed tanner. If the principle is that a transaction between a licensed dealer and a licensed tanner or a licensed exporter is only entitled to a concession, many of the alleged anomalies would disappear. If the entire series maintain continuity of transactions between licensed dealers, they would come under the scheme of single point transaction. But if the entire series are not between licensed dealers, only that part which maintains the continuity of transactions between licensed dealers would come under single point taxation and the rest would fall under multipoint taxation.

In the first illustration, there is no scope for the application of single point taxation. The last dealer i.e., the tanner is an unlicensed one. In the second illustration, as the licensed tanner

purchases from an unlicensed dealer, the series also is taken out of the scheme. In regard to the third illustration, the first two dealers are subject to multi-point scheme of taxation and the other two fall under the single point scheme of the taxation. The anomaly, if any, is not the result of a statutory provision but the effect of the neglect of the dealer either to take out a license, or to transact only with licensed dealers. We do not see, therefore, any anomaly and even if there is one, it cannot override the express provisions of the statute.

11. To summaries : Section 3 is the charging section. Section 5 exempts certain commodities from taxation under Section 3 (1) and gives some concession in regard to other commodities by providing single point taxation instead of multi-point taxation under Section 3 (1). One of such commodities is hides and skins. under Rule 5 (e) of the Madras General Sales Tax Rules, the accrual of the concession is conditioned by the taking of a license. If the license is not taken or renewed, the concession is withdrawn. R. 4 (2) of the Madras General Sales Tax (Turnover and Assessment) Rules says nothing more than that, in the case of the said commodity, the amount for which the goods are bought by the dealer is the turnover on which tax is livable. It does not either in express terms or by necessary implication localize the stage or the transaction in regard to which the tax becomes exigible. That is expressly done by Rules 15 and 16, which provide for the levy and collection of taxes. They indicate beyond any reasonable doubt that the levy of sales tax is on the turnover representing the price for which a licensed tanner or exporter purchases from a licensed dealer. Rule 16, therefore, fixes the stage and levies the tax, where there are a series of transactions between licensed dealers, on the last licensed dealer whether he is a tanner or exporter. In the present case, as a licensed tanner and a licensed exporter purchased goods from an unlicensed dealer, their purchase turnover is not liable to sales tax.

12. Both the questions are answered in the negative.

**P. Satyanarayana Raju J.**

13. I agree.

**Jaganmohan Reddy J.**

14. I agree.

Revision petitions dismissed.