MYSORE HIGH COURT

State of Mysore

Vs

N.A. Saravathulla

Criminal Appeals Nos. 103, 104 and 105 of 1953

(H. Hombe Gowda and M. Sadasivayya, JJ.)

22.11.1957

JUDGMENT

H. Hombe Gowda, J.

1. The State of Mysore has preferred these three appeals against the acquittal of the accused in C. C. Nos. 857/52-53, 1342/51-52 and 1410/51-52 respectively, on the file of the First Class Magistrate, Civil Station, Bangalore. In each of the said three criminal cases the acquittal was in respect of an offence under Section 20 (b) of the Mysore Sales Tax Act, 1948. The accused in the said three cases were all unlicensed dealers in hides and skins and had contended that R. 23 (5) (of the Rules under the Mysore Sales Tax Act, 1948) which pertained to the sales of hides or skins by dealers other than licensed dealers in hides or skins, was ultra vires. The learned Magistrate took the view that this Rule was in conflict with Section 5 (vi) of the Act and was therefore ultra vires, and that the non-payment of the tax due under the assessment made under that Rule was no offence. Consequently he acquitted all the accused in the said three cases. The question of the validity of R. 23 (5) being common to all these three cases, these appeals were all heard together.

2. Rule 23 (5) runs as follows : "(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." This sub-rule clearly makes the sales of hides or skins by unlicensed dealers in hides and skins liable to taxation on each occasion of sale (subject to the provisions of Section 3). The view taken by the learned Magistrate is that this rule comes into conflict with Section 5 (vi). Section 5 (vi) runs as follows :

> "5. Subject to such restrictions and conditions as may be prescribed, including conditions as to licenses and license fee:
> (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."

The learned Magistrate having accepted the contention that according to this section the sales of hides and skins should be taxed only at such single point as may be prescribed, held that it would not be within the competence of the Government to make a rule like R. 23 (5) which would take away the benefit conferred under Section 5. Sub-rule (5) of Rule 16 of the Madras General Sales Tax Rules, which is similar to sub-rule (5) of Rule 23 of the Rules under the Mysore Sales Tax Act, 1948, was referred to by their Lordships of the Supreme Court in *V. M. Syed Mohammad and Co. v. State of Andhra*[1], but, the validity of the said R. 16 (5) was not considered and decided; because, the appellants in that case were licensed dealers who were unaffected by the said sub-rule, and also because the learned Advocate General of Madras did not dispute before the High Court and the Supreme Court that R. 16 (5) was repugnant to Section 5 (vi) of the Madras General Sales Tax Act. It may be stated that the contentions urged on behalf of the appellants are all based on grounds which have been accepted in a case reported in *Abdul Rahman v. State of Mysore*[2], (which was a case decided by the High Court of the former State of Mysore) and in a decision of the Andhra High Court, *V. M. Syed Mohamed and Co. v. State of Andhra, reported in*[3] Sri Ullal, the learned counsel appearing for the respondents has based his arguments on a decision of the Madras High Court reported in *M. A. Noor Mohamed and Co. v. State of Madras*[4], wherein the learned Judges have not agreed with the reasoning adopted by the Andhra High Court in the case of *V. M. Syed Mohamed and Co. v. State of Andhra,* referred to above, and have reached the conclusion that R. 16 (5) was ultra vires of the rules-making authorities as it contravened Section 5 (vi).

3. The contention advanced on behalf of the State in these appeals, briefly, is that under Clause (vi) of Section 5, the liability to tax only at a single prescribed point in a series of sales of hides and skins by successive dealers, is not a benefit which has been granted by the Legislature unconditionally or absolutely; it is urged that this benefit is governed by the opening words in Section 5 and that therefore the benefit under Clause (vi) regarding the liability to tax only at a single prescribed point is subject to such restrictions and conditions as may be prescribed or imposed by the rules. Therefore, it is urged, the benefit under Clause (vi) in regard to the liability to tax at only one prescribed point cannot be claimed independently of any restrictions and conditions that may have been prescribed in the exercise of the powers conferred by the opening words of Section 5. Sri D. M. Chandrasekhar for the Advocate General has argued that the restrictions and conditions subject to which the single point at which the sale of hides and skins is liable to tax, have been set out in Rules 22 and 23. Where the dealers in hides and skins choose not to subject themselves to such conditions and restrictions, then, the sales of hides and skins by them will be covered by sub-rule (5) of Rule 23. The contention of Sri Ullal on behalf of the respondents, is to the effect that the benefit of liability to be taxed at only a single prescribed point in a series of sales of hides ana skins, is a benefit which is available under Clause (vi) of Section 5 to all dealers in hides and skins and that no restrictions or conditions can be imposed in the rules so as to take away this benefit.

4. The benefit of liability to tax at only a single prescribed point, under Clause (vi), is not an unconditional or unrestricted benefit. The right to the said benefit being dependent on compliance with prescribed conditions and restrictions, it will be reasonable to make a distinction in the rules as between those dealers who, in order to

[1] 1954 SCJ 390 at p 393: (AIR 1954 SC 314 at p. 316)
[3] 1956-7 STC 465 (C)
[2] ILR 1956 Mys 266: AIR 1957 Mys 22
[4] AIR 1957 Mad 33

get the benefit are prepared to comply with the prescribed restrictions and conditions, and those

dealers who are not desirous of either complying with those restrictions and conditions or of availing themselves of the said benefit. This distinction has been achieved by classifying the dealers in hides or skins, into licensed dealers and dealers other than licensed dealers. The latter category of dealers, not being entitled to the benefit of taxation only at a single point in a series of sales, would be liable to tax under Section 3. This position results from the combined effect of Sections 3, 5 and 7 of the Mysore Sales Tax Act, 1948. Sub-rule (5 of Rule 23 is merely to the effect that the sale of hides or skins by this category of dealers shall, subject to the provisions of Section 3, be liable to taxation on each occasion of sale, and we are not convinced that a rule like this would be in conflict with the provisions of Section 5. To accept the contentions urged on behalf of the respondents would be to ignore the effect of the opening words of Section 5 and the inter-relation between Sections 3, 5 and 7. Having regard to the scheme of the entire Act and the combined effect of Sections 3, 5 and 7, we find much force in the contentions that have been put forward on behalf of the appellants. In these circumstances, we prefer to adopt the reasonings which have been accepted by the High Court of Mysore (of the former State of Mysore) in ILR 1956 Mys 266 : AIR 1957 Mysore 22, and by the Andhra High Court in 1956-7 STC 465 (C). We are satisfied that sub-rule (5) of Rule 23 is intra vires and that the learned Magistrate erred in reaching the conclusion that the said rule was ultra vires.

5. Certain other arguments have also been addressed by the learned counsel for the respondents. It is urged by him in regard to the respondent in Criminal Appeal No. 103/53 that the order of assessment is not a valid order, since it was made after the dissolution of the respondent-firm. The learned counsel relies on the statement of P.W. 1, in the course of his cross-examination, that the partnership firm was dissolved on 13-6-1951 and it is contended by the learned counsel that the order of assessment which was made on 10-7-52, subsequent to the dissolution, is illegal. We find it difficult to accept this contention. Rule 37 of the Mysore Sales Tax Rules requires that if a partnership is dissolved, every person who was a partner shall send a report of the dissolution to the assessing authority within 30 days of such dissolution.
It is not disputed in this case that no such report was sent within 30 days as required under Rule 37. When this rule has not been complied with, the party who failed to comply, cannot make a grievance of the result of such noncompliance. P.W. 1 is a clerk in the Sales Tax Office. Any knowledge on his part in regard to the alleged dissolution of this firm cannot be treated as a sufficient substitute either for the report required under Rule 37 or for the proper proof before the Assessing Authority of the dissolution of the firm. In the absence of compliance with Rule 37 and in the absence of proper proof of the alleged dissolution prior to the date of assessment, we do not find any substance in this contention.

6. In regard to the respondent in Criminal Appeal No. 105/53, it was urged that the order of assessment pertained to the taxes payable for more than four quarters and it was urged that on this ground the order of assessment is not valid. It is seen from the said order of assessment that the assessment of tux has been made separately in regard to the turnover of each quarter. The learned counsel was unable to show any provision, on the strength of which it can be said that an order of assessment like this would be invalid, merely because it pertained to more quarters than four, particularly when for the purpose of the assessment of the tax, the turnover of each quarter had been taken separately into consideration. The learned counsel was also unable to show how any prejudice was caused by this procedure which had been adopted by the Assessing Officer. In any event, this was a matter, which should have been agitated by the respondent before the proper authorities created under the Sales Tax Act and the Rules thereunder, if he felt aggrieved

in regard to the inclusion of the tax for more than four quarters in the order of assessment. We are not satisfied that the said order of assessment is illegal.

7. Lastly, it was contended on behalf of the respondents that the turnover of export sales or sales outside the State had also been taken into consideration by the Assessing Authority and that therefore the orders of assessment in these cases were not legal, but, it is seen that the turnovers in regard to these export sales in all these cases, are confined only to periods prior to 31-3-1951. When that is so, the levy of tax in regard to such sales, is rendered lawful by reason of the Sales Tax Continuance Order, 1950 which has been made by the President in exercise of the powers conferred by the proviso to Clause (2) of Article 286 of the Constitution. Therefore, this contention also has to fail.

8. For all the reasons mentioned above, we are satisfied that these appeals should be allowed Therefore, we allow these appeals and set aside the order of acquittal passed in each of these three cases and we sentence the accused in each of these cases to pay a fine of ₹ 50/-and in default to undergo simple imprisonment for a week.

9. Further, under Section 20 of the Mysore Sales Tax Act, 1948, we specify:

(1) a sum of ₹ 14,807-9-0 as the tax due from the accused in C. C. No. 857/52-53;

(2) a sum of ₹ 19,743-6-9 as the tax due from the accused in C. C. No.1342/51-52, and

(3) a sum of ₹ 13,494-1-3 as the tax due from the accused in C. C. No. 1410/1951-52.

Appeals allowed.