
(1964) 04 MAD CK 0020
In the Madras High Court
Case No : Writ Petition No. 959 of 1961

A. Mohammed Zacheria and Co.	Vs	APPELLANT
The State of Madras		RESPONDENT

Date of Decision : 15-04-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 304

Citation : (1965) ILR (Mad) 397 : (1965) 16 STC 1049

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : R.S. Venkatachari, for the Appellant; S. Mohan, for the V. Ramaswamy, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The petitioner is a tanner. He took out a licence for the assessment year 1954-55 under the Madras General Sales Tax Act.

For that year, the net turnover was assessed at Rs. 70,871-6-0 and the assessment was completed on that basis on 30th March, 1960. In making

the assessment, the assessing authority followed the judgment of this Court in Noor Mohammed and Co. v. State of Madras [1956] 7 S.T.C. The

decision of this Court was reversed by the Supreme Court in The State of Madras and Another Vs. M.A. Noor Mohammed and Co., . As a

result of this decision, a dealer who had not taken out a licence or having taken out a licence had failed to fulfil the conditions laid down therein

became liable to tax at all points of sale and the benefit of the single point taxation was denied to him. The Commercial Tax Authorities thereafter

took up the assessment of this assessee in revision. Since the petitioner had obtained a licence only on 29th May, 1954, and not from the

commencement of the assessment year, the transactions in untanned hides and skins up to 29th May, 1954, were treated as those of an unlicensed

tanner. This part of the turnover was not taxed on the purchase value. It was brought to tax at the sales point on the estimated turnover of Rs.

1,79,849. After allowing exemption for export sales, the taxable sales turnover was fixed at Rs. 1,42,011 and this, added to the turnover already

determined at the original assessment, came to Rs. 2,12,882. It is to quash this order of assessment that the present writ petition has been filed. It

is contended by the petitioner that the authorities have no jurisdiction to revise the assessments, and that the licence taken by the petitioner was

valid for the whole year and not only from 29th May, 1954. It is urged that since the sales were effected only after the licence had been taken, no

tax could be levied at the sales point. It is also contended that in so far as the scheme of taxation subjected unlicensed dealers to a differential

treatment as compared with licensed dealers, those provisions offend Article 14 of the Constitution. It is claimed accordingly that the assessment is

illegal and has to be quashed.

2. In the counter-affidavit filed on behalf of the State of Madras the factual part of the case set out above is admitted. It is claimed that the

Commercial Tax Officer was justified in treating the petitioner as an unlicensed dealer for the period 1st April, 1954, to 28th May, 1954. As the

law was understood at that time, all the transactions of unlicensed dealers were regarded as exempt. It was only when the Supreme Court

rendered its decision in *The State of Madras and Another Vs. M.A. Noor Mohammed and Co.*, that the real position became clear. The effect of

that judgment is stated to be that when a dealer does not take out a licence or having taken out a licence fails to comply with the conditions, the

concession of single point taxation can be lawfully denied to him. It was in pursuance of this judgment that the case of the assessee along with

others was taken up in revision. It is claimed that the petitioner had a right of appeal to the Sales Tax Appellate Tribunal against the order of

assessment, which it did not avail of. It is accordingly the contention of the State that the extraordinary jurisdiction of this Court could not be

invoked.

3. On the merits, it is claimed that the licence was effective only from the date of

the grant and that the petitioner was unlicensed for the period 1st April, 1954, to 28th May, 1954. According to the State, in such a case, the purchases of raw hides and skins during unlicensed period could not be taxed at the purchase point and could be taxed only under Rule 16(3) on the sale value. It is denied again that the distinction between an unlicensed and a licensed dealer violates Article 14. The scheme of assessment does make a difference, but that is intended to prevent evasion of tax. The law had laid down that if a person fails to take out a licence, he cannot claim the benefit of single point taxation. It is also urged that the classification of dealers into licensed and unlicensed dealers had been upheld as valid by the decisions of this Court.

4. Mr. R. S. Venkatachari, learned Counsel for the petitioner, did not during the course of his arguments press his contention that the departmental authorities had no jurisdiction to reopen the matter in the exercise of their powers of revision. He principally contended that the licence that was issued must be regarded as valid for the whole year and not only with effect from 29th May, 1954. He claimed further that since the sales were effected after the petitioner became a licensed dealer, it cannot be denied the benefit of taxation on the purchase price. It has to be seen how far these contentions can be accepted.

5. It seems futile to argue at this point of time that the distinction between the licensed and unlicensed dealers is unreal in the sense that the classification is not integrally connected with the underlying purpose of the Act. It is conceded by the learned Counsel that in *The State of Madras and Another Vs. M.A. Noor Mohammed and Co.,* , the Supreme Court has decided against such a contention. At that time the Supreme Court determined this question, the Turnover and Assessment Rules provided by Rule 16(5) that the sales of hides and skins by dealers other than licensed dealers in hides and skins shall, subject to the provisions of Section 3, be liable to taxation on each occasion of sale. The principal point which their Lordships had to consider was whether this rule, which provided for multi-point taxation of unlicensed dealers, was inconsistent with Section 5 of the Act, which provided for a single point levy of tax in respect of the sales of hides and skins. Their Lordships point out that Section 5(vi) is a concessional provision for making sales of hides and skins liable to

taxation at a single point; but that is subject to the restrictions and conditions prescribed in the rules, and one of those conditions is the taking of a licence. Rule 16(5) only emphasises the consequence of non-observance of the conditions which Section 5(vi) prescribed. They also refer to Section 6-A which reiterated the position if any restriction or condition prescribed u/s 5 is contravened or is not observed by a dealer, or in case a condition so prescribed or notified requires that a licence shall be taken out, if a licence is not taken out, or if any of the conditions of a licence taken out are contravened, the sales of a dealer may be assessed to tax u/s 3 as if the provisions of Section 5 did not apply to such sales. The validity of Rule 16(5) was thus upheld. Their Lordships referred to *Syed Mohammed & Co. v. The State of Madras* [1952] 3 S.T.C. 367 and it was urged before their Lordships that Rule 16(5) had been held to be ultra vires. But they explained that decision by pointing out that the question was not really relevant for a decision in that case. It would follow, therefore, that the Supreme Court did in effect uphold the differential mode of treatment of licensed and unlicensed dealers.

6. Mr. Venkatachari, however, seeks to argue that the taking out of licence was only optional and so long as it was not made compulsory, a dealer, though unlicensed, should have the benefit of Section 5 of the Act. That argument seems to proceed on a misconception of the decision of the Supreme Court. It may be that neither the Madras General Sales Tax Act nor the Rules framed thereunder made the taking out of a licence compulsory. But the real effect of Section 5 and Section 6-A of the Act is, as their Lordships have pointed out, that a person who does not take out a licence is by the law denied the benefit of the single point tax and he cannot be heard to complain that just for the reason that the law did not make the taking of a licence compulsory in so many words, he should still be treated as a licensed dealer for all purposes by extending the beneficial mode of treatment of a single point tax to him. That was the very argument which was repelled in *The State of Madras and Another Vs. M.A. Noor Mohammed and Co.*, .

7. It was argued that the State of Madras deleted Rule 16(5) even before the commencement of the assessment year 1954-55. Mr. Venkatachari urges that there is no provision in rules 16(1) to (4) fixing the point of taxation.

But that again seems to me to stem from the same misconception.

The decision of the Supreme Court has clearly laid down that all the sales of any commodity would come within the scope of the general charging

section, Section 3 of the Act, which provides for a multi-point levy, and it is only where the law fixes a single point that the rules have to provide

for the prescription of that particular point. In the case of an unlicensed dealer, the question does not arise at all. An unlicensed dealer becomes

liable to tax u/s 3 of the Act. Rules 16(1) to (4), in so far as they purport to provide for a particular point of taxation as required by Section 5 of

the Act, can only relate to a licensed dealer. Reference in this connection was made by the learned Counsel to *Munuswamy Mudaliar & Co. v.*

State of Madras ILR 1956 Mad. 369. The purport of that decision can be gathered from that part of the headnote which reads thus:--

The essence of a single point taxation consists in the fixation of a single point either by the Act itself or under the rule-making power, if the Act so

prescribes. As the Act by Section 5(vi) directs the rules to prescribe a single point for taxation, no tax liability can accrue out of a sale of hides and

skins, whether tanned or untanned, unless the rule has prescribed such a single point.

8. In that case the assessees were licensed tanners and dealers, who purchased raw hides and skins outside the State. Rule 16(2) provided that

such persons had to pay sales tax on their sales turnover, as they had not paid sales tax at the stage of their purchase. Whether this decision can

still be regarded as good law after the *The State of Madras and Another Vs. M.A. Noor Mohammed and Co.*, , it is not necessary to examine.

The present case is, however, wholly different on facts, for the petitioner here was an unlicensed dealer for the period up to 29th May, 1964, and

it is not its contention that untanned hides and skins were purchased from outside the State, which was the case in the decision referred to.

9. In so far as unlicensed dealers are concerned, there is no doubt that they cannot claim the benefit of single point taxation.

10. In *Abdul Shukoor & Co. v. State of Madras* ILR 1956 Mad. 1 it was held that a single point is fixed and the liability to tax is established only

under Rule 16. Under Rule 16(2)(i), it is only the sale of untanned hides and skins by a licensed dealer to a licensed tanner that gives rise to a tax

liability. Purchases of untanned hides and skins by tanners from persons other than licensed dealers are not within the taxing provision. In

computing the purchase turnover of a licensed tanner, only the sales to him from licensed dealers could be included. That is the purport of that

decision, according to the headnote. Here again, it was a case of a licensed tanner and dealer, and the question was whether his purchase from

unlicensed dealers could form part of the purchase turnover liable to tax in the hands of the licensed tanner. This decision has really no application,

for the present case is that of an unlicensed dealer.

11. In so far as this contention, that the petitioner cannot be taxed in respect of the goods purchased by it during the unlicensed period on the

estimated sale price of those goods, is concerned, I can find nothing in any of the authorities cited which supports that contention.

12. The Madras General Sales Tax Rules provide that every person who deals in hides and skins shall, if he desires to avail himself of the

exemption provided u/s 5, or to the concession of taxation only at a single point specified in Section 5, submit an application so as to reach the

authority not later than the 30th day of April of the year for which the licence is applied for. Rule 6(3) states that if the application for the grant of a

licence is received after the prescribed date, the licence shall not ordinarily be granted with effect from a date prior to the date of the receipt of the

application. The effect of these rules is clearly that the licence can be granted only from the date on which the application is received, except in

cases where such an application is made before the 30th day of April, in which event alone the licence could be granted effective from the 1st April

of that year. It is not the contention of the petitioner that the licence had been applied for before the 30th April, 1954. That point has not been put

in issue. Admittedly, the application was submitted after that date and from the circumstance that it was granted with effect from 29th May, 1954,

only, it can be assumed that that was the date on which the application reached the licensing authority. The contention that the licence should be

regarded as valid from 1st April, 1954, has not been based upon any facts which would support such a conclusion. It should follow, therefore, that

the view that the petitioner was an unlicensed dealer between 1st April, 1954, and 29th May, 1954, cannot be canvassed in this writ petition.

13. It was next contended that Article 14 of the Constitution stands infringed. It is really difficult to see how this can be established. There can be

no doubt that a licensing provision per se can be regarded as reasonable. It is undisputed that in view of the special place which hides and skins

occupy in the world market, the legislation sought to confer a reduced liability to tax by making transactions in hides and skins taxable only at single

point. But that concession was made dependent upon the taking out of a licence and upon the compliance with conditions of the licence. In

Guruviah v. State of Madras ILR 1958 Mad. 35, 63, a Bench of this Court had to examine whether the insistence upon a licence before the benefit

of a single point of taxation could be granted was an unreasonable restriction on the freedom guaranteed by Article 19(1)(g). The learned Judges

had no difficulty in holding that the power to levy a tax extends to the enactment of all incidental provisions for ensuring the collection or preventing

the evasion of tax. They say:--

If licensing was the machinery by which the Sales Tax Act is or can be enforced, this being the usual and well-recognised mode in which the

enactment could be worked so as to facilitate collection and check evasion, if licensing were a necessary adjunct to a tax system where only

certain commodities were taxed at a single point and that point is not the same for all the commodities so taxed, the system of licensing becomes,

so to speak, an integral and inseparable part of the tax measures. In such a situation the tests which such licensing ought to satisfy are not those set

out in Article 19(6) but would rather be ancillary to an exercise of the taxing power of the State. If the validity of such licensing system were

challenged, the enquiry would be whether or not the legislation regarding licensing is comprehended within the relevant taxation entry, which would

be answered in the affirmative if licensing were the usual method employed for gathering the revenue, i.e., if it were ancillary or incidental to the

taxing power.

14. It is true that in this case, the impact of the licensing provisions upon Article 14 was not considered. There is no doubt, however, that the

above decision is an authority that a licensing system is a reasonable restriction upon the freedom guaranteed by Article 19(i)(g).

15. Mr. Venkatachari has referred to *Rai Ramkrishna and Others Vs. The State of*

Bihar, , and to certain observations contained therein. That was really a case which dealt with the question as to how far a levy of tax on goods and passengers offended the freedom guaranteed by Part XIII of the Constitution. Their Lordships observe here that taxing statutes are not beyond the pale of constitutional limitations prescribed by Articles 19 and 14, and that the taxing power is an essential attribute of the Government, and the Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which the Government thinks it expedient to do so. They proceed :

The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all

matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article

19, Courts would naturally be circumspect and cautious. Where, for instance, it appears that the taxing statute is plainly discriminatory, or provides

no procedural machinery for assessment and levy of tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute

as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that Courts would feel justified in taking

the view that, in substance, the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purposes.½

16. But the question, however, is whether the provisions impugned in the present case can be regarded as so plainly discriminatory that the

principle of this decision would apply. Another decision referred to by the learned Counsel is *Firm A.T.B. Mehtab Majid & Co. v. State of*

Madras [1963] 14 S.T.C. 355, 362. In that case, Rule 16(2) of the Madras Turnover and Assessment Rules as amended, which purported to

discriminate against hides and skins imported from other States, was considered in the light of Article 304(a), and it was struck down as violative

of that guarantee. Reliance is placed upon the following observations:

Hides and skins tanned within the State are mostly those which had been purchased in their raw condition in the State and therefore on which tax

had already been levied on the price paid by the purchaser at the time of their sale in the raw condition. If the quantum of tax had been the same,

there might have been no case for grievance by the dealer of the tanned hides

and skins which had been tanned outside the State. The grievance arises on account of the amount of tax levied being different on account of the existence of a substantial disparity in the price of the raw hides or skins and of those hides or skins after they had been tanned, though the rate is the same u/s 3(1)(b) of the Act. If the dealer has purchased raw hides or skins in the State, he does not pay on the sale price of the tanned hides or skins; he pays on the purchase price only. If the dealer purchases raw hides or skins from outside the State and tans them within the State, he will be liable to pay sales tax on the sale price of the tanned hides or skins. He too will have to pay more for tax even though the hides and skins are tanned within the State, merely on account of his having imported the hides and skins from outside, and having not therefore paid any tax under Sub-rule (1). It is true that dealers, though few, selling hides and skins which had been tanned within the State, will also have to pay similar tax if no tax had been paid previously, they having not purchased the raw hides and skins at all as they were from the carcasses of animals owned by them ; but this does not affect the discriminatory nature of the tax as already indicated.

17. Relying upon this passage, Mr. Venkatachari contends that in the present case also the tax on the sale price of the goods is far higher than the tax at the purchase point and that since the tax at the higher rate has to be paid by an unlicensed dealer, the substantial disparity in the taxes is sufficient to warrant the conclusion that the guarantee of Article 14 is infringed. It is exceedingly difficult to assimilate the reasoning of their Lordships, which relates wholly to the validity of the rule in so far as it affected the freedom of trade and intercourse in India and the prohibition against the discriminatory levy of tax on goods imported from other States, to a position which relates to Article 14. Article 14 has been explained in numerous decisions. It has been held that a classification germane to the purpose of the enactment is not prohibited by Article 14. If such a classification has a real connection and is necessary to carry out the purpose of the Act, the classification cannot be attacked as discriminatory. Enough has been said with regard to the classification of dealers as licensed and unlicensed to show that classification is necessary for the purpose of the Act and has an integral connection with its underlying policy. It is

impossible, therefore, to agree that the distinction between licensed and unlicensed dealers and the different rates of tax imposed upon transactions by them can be hit by Article 14.

18. The contentions of the petitioner fail. The petition is accordingly dismissed. There will, however, be no order as to costs.