
(1955) 04 MAD CK 0022

In the Madras High Court

Case No : Tax Revision Case No. 38 of 1954

A.K. Munuswamy Mudaliar and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 18-04-1955

Acts Referred:

Citation : AIR 1956 Mad 101 : (1956) ILR (Mad) 369 : (1955) 68 LW 961 : (1956) 7 STC 1

Hon'ble Judges : Rajagopalan, J; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Aiyar and T.T. Srinivasan, for the Appellant; V.K. Thiruvengkatachari, The Advocate-General, instructed by K. Veeraswami, The Assistant Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Rajagopala Ayyangar, J.—This is a revision by the assesseees against an order of the Sales Tax Appellate Tribunal and it relates to the assessment year 1951-52. This petition raises for consideration the proper construction of Rule 16(3) of the Turnover and Assessment Rules under the Madras General Sales Tax Act.

2. The assesseees were licensed tanners and dealers in hides and skins. For the assessment year the assesseees returned a gross turnover of Rs. 2,55,181-14-6 but claimed that no part of this turnover was liable to be taxed. The Deputy Commercial Tax Officer examined and scrutinised the accounts of the assesseees and found that during this year they had purchased 17,097 raw hides and had sold out of their tannery 26,882 1/2 tanned hides for Rs. 4,32,278-10-5. The assessing authority found that the assesseees had effected the purchase of these raw hides outside the State with the result that no tax was payable on the purchase price of this quantity of untanned hides and skins under Rule 16(2). He however held that when these goods were tanned in the assesseees' tannery and were sold by them as tanned hides and skins, the assesseees were bound to pay sales tax on their sale turnover on the ground that they had not paid sales tax at

the stage of their purchase. On the basis of the figures furnished and the price realised at the sales, the officer worked out the sale value of the hides tanned out of the 17,097 raw hides which had been purchased by the assesseees, at Rs. 2,77,006-1-0 and levied assessment accordingly. In doing so he overruled the objection raised by the assesseees that on the language of Rule 16(3) of the Turnover and Assessment Rules they were exempt from payment of any tax on their sale turnover. There was an appeal against this order of assessment to the Commercial Tax Officer but this was dismissed. A further appeal to the Sales Tax Appellate Tribunal was also dismissed. Hence this revision.

3. To start with, it might be mentioned that u/s 5(vi) of the Act, hides and skins-whether tanned or untanned-are liable to taxation only "at such single point in the series of sales by successive dealers as may be prescribed". Further under the terms of Section 3(5) of the Act, rules have to prescribe whether in respect of sales with reference to any particular commodity it is the seller or the buyer that is liable to pay the tax. The prescription by rules under the above provisions in regard to dealings in hides and skins is to be found in rules 4, 15 and 16 which run thus :-

4. (1) 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 the dealer.

(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 the dealer.

(a) groundnut,

(b) cashew, cotton including kapas bought by spinning mill or by dealer who exports outside the State,

(c) untanned hides and 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 or skins.

(3)...

15. (1) Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides or skins in respect of their dealings in hides or skins; but the provisions of this and the following rule shall apply to them in respect of such dealings.

(2) Every tanner or other dealer in hides or skins whose net turnover for a year has been or is expected to be not less than Rs. 10,000 shall submit to the assessing authority, on or before the last day of November 1939 (or the 25th day of the month following that in which he commences business) and thereafter on or before the 25th day of every month, a return in Form A-4 or, as the case may be, in Form A-5 showing his transactions for the preceding month. Along with the

return, he shall also submit a receipt from a Government treasury or a crossed cheque in favour of the assessing authority for the full amount of the tax payable for the month to which the return relates.

(3) On receipt of the return and of the receipt or crossed cheque referred to in Sub-rule (2) the assessing authority shall, after such scrutiny of the accounts and after making such enquiry as he considers necessary, satisfy himself that the return is correct and complete and that the correct amount of tax has been paid.

(4) If no return is submitted in respect of any month before the last day of the succeeding month or if the return is submitted without a receipt or crossed cheque for the full amount of the tax or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such inquiry as he considers necessary, and after giving the tanner or other dealer an opportunity as prescribed in Rule 9 of proving the correctness and completeness of his return where one has been submitted, determine the turnover, to the best of his judgment and assess the tax payable for the month and shall serve upon the tanner or other dealer a notice in Form B-1 and the tanner or other dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) If at the time of the receipt of the return referred to in Sub-rule (3) or of the issue of the notice in Form B-1, referred to in Sub-rule (4) or subsequently, it is found that the amount paid by the tanner or other dealer is in excess of the correct tax payable, such excess shall, at the option of the tanner or other dealer, be credited towards the tax, if any, payable by him for succeeding months or be refunded to him.

16. (1) In the case of hides and skins the tax payable u/s 3(1) shall be levied in accordance with the provisions of this rule.

(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 u/s 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 u/s 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 u/s 3(3) who sells them within the State. The tax shall be levied from such dealer on the amount for which he sells such hides or skins.

(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.

4. In the light of these relevant provisions we might set out the respective contentions raised on behalf of the assesseees and on behalf of the State as regards the tax liability on the assesseees' sale turnover of tanned hides.

5. The argument urged on behalf of the assesseees is this : u/s 5(vi) of the Act, hides and skins tanned or untanned are subjected to tax only at such single point as may be prescribed. The assesseees are licensed tanners and in their case tax may be levied upon them as a buyer only in respect of untanned hides purchased by them within the State under Rule 4(2)(c) of the Turnover and Assessment Rules. In the case of licensed tanners brought within Rule 4(2) they could not also be brought within Rule 4(1) in respect of any of their transactions. The only provision in the Act for the fixation of a single point in dealings in tanned hides and skins by licensed tanners is to be found in Rule 16(3) under which all sales of tanned hides and skins are exempted from tax provided the tax payable by the tanners is paid and the tanner is not exempted u/s 3(3) of the Act by having an annual turnover of less than Rs. 10,000. The term "tannery" in the first sentence of Sub-rule (3) of Rule 16 must be understood as a "tanner" since under the Madras General Sales Tax Act no tax is payable by a tannery as such but only by tanners on their dealings. Further the words which follow in that sentence "which has paid the tax leviable under the Act" have to be understood in the normal sense as meaning "the tax if payable has been paid". Where no tax is payable under the Act on the purchase made by a tanner either because the sale transaction takes place outside the State and so a tax on it is not within the legislative competence under the Government of India Act, 1935, or the Constitution of India or because the Madras General Sales Tax Act exempts such transactions of sale or purchase from tax, the tanner on whose purchase no tax is leviable cannot be said to have "not paid the tax leviable under the Act" so as to bring him within the class of people who are subjected to tax on the turnover of the tanned hides and skins sold by them. It is further urged that the tax levied in the present case cannot be sustained unless Rule 16(3) were read as "provided that the hides and skins have been tanned by a tanner who is liable to tax on the purchase turnover of the untanned hides and skins and has paid the tax leviable on it" and that there is no principle or authority by which words could be read as these into a taxing enactment as the Madras General Sales Tax Act.

6. On the other hand, the contention of the learned Advocate-General who appeared on behalf of the State was briefly this : The scheme and purpose of the Madras General Sales Tax Act is to impose a tax on each transaction of sale which occurs within the State ; in other words the general rule is multiple point taxation. This is however subject to an exception in the case of dealings in hides and skins by reason of the express provision as to single point taxation u/s 5(vi). The principle underlying the Act is that in the case of hides and skins where transactions have taken place in these commodities within the State they are intended to be subjected to tax at one stage. The scheme of the rules and the forms prescribed is to keep track of the particular goods, trace them through the transactions of successive dealers and impose a tax on them at some single point. The relevant forms of returns prescribed under the Act to be submitted by licensed dealers achieve this purpose. Form A-5 is that prescribed for the return of turnover to be submitted by dealers in hides and skins. It runs:

7. In column No. 1 the dealer sets out the amount for which goods have been sold to the tanneries in the State. This will be taxed in the hands of the tanner on his purchase price [vide Rule 4 (2) (c)] and this is the stage at which tax is leviable under Rule 16(2). Where goods have been sold to other dealers in the State no tax will be levied either on the buyer or on the seller but this will form part of the stock-in-trade of another dealer and will be subjected to tax only when in the series of sales it is sold to a tanner in the State when it would be included in column 1 of the return of such dealer. When the goods purchased have been sold for being exported outside the State the tax is levied upon the dealer but on his purchase price. The fact that these goods have been exported is ascertained by the department by reference to the entries in column No. 3. It may now be convenient to refer to Form A-4 which is prescribed for the return of the turnover in the case of tanners. Under column 3 the amount for which the hides and skins were purchased for tanning is to be stated. Where the goods have been purchased from dealers in the State, this can be gathered from the entries in column No. 1 of the return in Form A-5 of other dealers. When a tanner does not tan but sells them in their untanned state, he would be a dealer and these sales would figure in the return by him under Form A-5 in column 2. It is stated that by this process the identity of the goods is traced through the books of the several dealers and that under this scheme if the goods have not been taxed at any previous untanned state, the tanner who sells the tanned hides pays a tax on his sale, no tax on the purchase of the raw hides having been paid under the Madras General Sales Tax Act at any previous stage.

8. In a very general sense no exception could be taken to this analysis. But the theory that under the Madras General Sales Tax Act the transactions of sale in hides and skins are intended to bear tax at some one stage and that for that reason if the goods have not borne tax at an earlier stage and are not likely to bear the tax at subsequent stages, a tax liability accrues on any particular sale is obviously fallacious and cannot be accepted. 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. In the present case as the Act by Section 5(vi) directs the rules to prescribe the 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.

9. The question raised in this case must be considered under two aspects, firstly the proper construction of the words used in Rule 16(3) and secondly whether under the general scheme of the Act the point of a sale by a tanner is fixed by the rules as the point at which the tax liability attaches.

10. The reasoning on the basis of which the Sales Tax Appellate Tribunal decided in favour of the State and which though in another form has been presented to us by the learned Advocate-General may now be briefly stated. Under Rule 4(2) (c) of the Turnover and Assessment Rules the purchase of untanned hides and skins by a licensed tanner is made liable to sales tax but the terms of Rule 4(2) (c) confine this to purchases made within the State. So where licensed tanners purchase these goods outside the State, their purchases are not within Rule 4(2) (c) and consequently they cannot claim to be taxed on their purchase turnover. Every dealing which is not specifically covered by Sub-rule (2) of Rule 4 is governed by the general residuary provisions in Rule 4(1) under which a dealer is liable to tax on his sale turnover. If Rule 4 were the sole governing provision, every sale by a tanner of tanned goods would be liable to sales tax. It is in the light of this fundamental taxation pattern that the terms of Rule 16 have to be understood. If the purchase is chargeable with duty as it would be in the case of what might be termed inside purchases the tanner is entitled to deduct this purchase price from the sale turnover of the tanned hides and skins under Rule 16(3). If his purchase turnover has not been taxed for the reason that such sales are not comprehended within taxable sales under the Act, there is no purchase turnover which the tanner could deduct and his liability to pay" tax on such turnover imposed by Rule 4(1) has to be given full effect and therefore his entire sale turnover without any deduction becomes taxable. This conclusion is reinforced by a reference to the form in which the Rule 16(3) is couched, namely, the provision assuming the existence of a tax liability and providing merely for a deduction of a previously taxed turnover.

11. The matter is not easy to decide and we have given careful thought to the question. The draftsmanship of the rules is far from satisfactory and apart from ambiguity in language, its several provisions are not easily reconcilable and in their framing sufficient attention does not appear to have been bestowed on the essential purposes to be effected under the several provisions to carry out which they have been framed. We hope that in the light of the several decisions which have been rendered by the Tribunal as well as by this Court on the validity and interpretation of the several rules, they would be re-drafted to bring out clearly the exact intention which they seek to achieve.

12. We are of the opinion that the reasoning of the Tribunal is erroneous and that the contentions raised on behalf of the assesseees have to be accepted. The

arguments addressed on behalf of the assesseees before the Tribunal in regard to the scope and interpretation of Rule 4 were mainly two, viz., (1) that the function of Rule 4 was merely to determine whether in respect of any particular transaction it was the seller or the buyer that was to be liable, that is, whether it was the purchase turnover or sale turnover that was to be the subject of assessment under the Act and which has to be determined by rules under the first proviso to Section 3(5); and (2) that Rule 4 applied and could apply to sales which were taxable under the Madras General Sales Tax Act. In other words, Rule 4(1) or 4(2) does not impose and was not designed to impose a theoretical tax liability on transactions outside the Madras General Sales Tax Act either because such tax was beyond the competence of the State or had not been authorised by the Act. The Tribunal rejected both these contentions, in our opinion, erroneously. No doubt in the case of commodities liable to multi-point taxation, that is, those not provided within the items enumerated in paragraphs (ii), (iv) and (vi) of Section 5, the prescription by rules u/s 3(5) would automatically impose tax liability upon the transactions of sale u/s 3(1) of the Act subject to any exemptions that might have been provided by the Act or the rules. But in the case of commodities like hides and skins in respect of which a tax can be levied only at a single point to be fixed by the rules, there can be no tax liability accruing until and unless the rules prescribe a single point for taxation. Therefore apart from other grounds there can be no tax liability imposed on hides and skins by Rule 4(1) of the Turnover and Assessment Rules. The effect of that rule would be that, as and when the single point is fixed in respect of commodities or transactions falling within the Act, the seller would be liable on the turnover and not the buyer. It is not therefore correct to regard Rule 4(1) as by itself imposing a tax on every seller of tanned hides and skins and on every dealing in untanned hides and skins not falling within Rule 4(2)(c) or (d). This much is conceded by the learned Advocate-General that in the case of dealings in tanned hides and skins which fall within Rule 4(1) no tax can be levied on their sales if there were no other rules fixing the single point since such a tax would be in violation of the express provision in Section 5(vi). We have therefore to eliminate Rule 4(1) as imposing a tax liability in the case of hides and skins which are liable to tax only at a single point. Further the construction which the Tribunal sought to place on the function and purpose of Rule 4 in the scheme of taxation of hides and skins has now been authoritatively rejected by the Full Bench of this Court in *Hajee Abdul Shukoor Company v. The State of Madras*, T.R.C. No. 20 of [1955] 6 S.T.C. 352, and the view which we entertain is in accordance with this ruling which is binding on us. We therefore proceed on the basis that the single point for taxation of hides and skins tanned or untanned is to be gathered only from Rule 16 of the Turnover and Assessment Rules.

13. This naturally reflects upon the construction which has to be placed on Rule 16(3). Rule 16(1) is emphatic in that there can be no taxation in respect of hides and skins except in accordance with the provisions of Rule 16. In other words, it affirms that the provisions in the sub-rules following determine the

single point for taxation of dealings in these commodities. Sub-rule (2) deals with untanned hides and skins and can therefore be ignored. It is only Sub-rules (3) and (4) that touch on and relate to dealings in tanned hides and skins. There is no difficulty in regard to the purchase of tanned hides and skins from outside the State, for such cases are dealt with by Sub-rule (4). The rule is clear that in these cases the first dealer who having purchased tanned hides and skins from outside the State sells them within the State is liable to tax on his sale turnover. Sub-rule (3) deals with licensed tanners within the State who sell the products of their tannery. In their cases the sub-rule starts with providing an exemption and exempts those tanners who have paid such taxes as are leviable under the Act. It proceeds to make a special provision in regard to tanners whose turnover is less than Rs. 10,000 u/s 3(3) and directs the tax to be paid by the dealer who purchases the goods from them on such buyer's sale turnover. In the construction of this sub-rule the whole controversy hinges round the expression "paid the tax leviable under the Act". The normal and the grammatical meaning of the words would be "paid such tax if any as has been levied under the Act". As this a taxing enactment it must be construed strictly. As Lord Cairns stated in *Cox v. Rabbits* (1878) 3 App. Cas 473 "a taxing Act must be construed strictly; you must find words to impose the tax, and if words are not found which imposed the tax, it is not to be imposed". If a licensed tanner has paid such tax as was payable by him on his purchase turnover, the words of Sub-rule (3) would confer upon him exemption from payment of tax on his sale turnover.

14. There is another and more formidable objection raised against the construction sought to be put upon this sub-rule by the State and this is that if the sub-rule were so read as to impose a tax liability on the sales of assesseees as the present, there is no single point at all fixed to exempt from tax the series of sales which might take place within the State subsequent to the purchase from this tanner assessee and that as the rules have not fixed a single point for fixing tax liability in respect of such series of transactions, the imposition of the tax by Sub-rule (3) would be invalid as contravening the specific direction in Section 5(vi). There has been no satisfactory answer to this objection and we hold that on this ground also no tax can be levied on sales by licensed tanners, when they have not paid tax on their purchases because such purchases are not subject to taxation under the Madras General Sales Tax Act.

15. It follows that the sale turnover of the assessee was not liable to tax under the provisions of the Madras General Sales Tax Act. This revision petition succeeds and the order of the Tribunal against the assesseees is set aside. The assesseees are entitled to their costs. Counsel's fee Rs. 100.

16. There is no dispute that the assessee is liable to tax on a turnover of Rs. 2,118-5-9 which represented sales of tannery refuse. The tax is payable on this item.