
(1959) 09 MAD CK 0031

In the Madras High Court

Case No : Tax Revision Cases No's. 196, 198, 209 and 210 of 1956

C.K.N.S. Nagarajan and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 23-09-1959

Acts Referred:

Citation : (1960) 73 LW 203 : (1959) 10 STC 605

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : V. Thyagarajan for A.R. Krishnaswamiand M.A. Rajagopalan, for the Appellant; The Government Pleader, for the Respondent

Judgement

The Order of the Court was pronounced by

Ramachandra Iyer, J.—For the assessment year 1952-53 each of the petitioners was assessed to sales tax on the turnover of the sales of

sugar-cane effected by him to the East India Distilleries and Sugar Factories Ltd., Nellikuppam, hereinafter referred to as the Factory. In the case

of two of the petitioners (T. R. C. Nos. 196 and 210 of 1956), it was a case of reassessment by recourse to Rule 17 of the General Sales Tax

Rules, after the original assessment on them had been completed. Since the questions that arise for determination in these petitions are identical

they can be disposed of together by a common order.

2. Supplies of sugar-cane to sugar factories are regulated by the Madras Sugar Factories Control Act (XX of 1949), The factory has to take out a

licence for crushing sugar-cane. After ascertaining the quantity of sugar-cane that would be required for such a factory, the authorities notify an

area as reserved area for that factory for the crushing season. u/s 10 of the Act,

before each planting season, any grower of sugar-cane in the reserved area may offer such quantity as he may specify of the sugar-cane grown by him to the factory in the crushing season immediately following it. The factory then enters into an agreement with the registered grower for purchasing the sugar-cane offered by him. Section 11 of the Act prohibits the sale of sugar-cane grown in the reserved area to a person other than the factory specified, unless the factory has refused to buy the sugar-cane. No one is permitted to export any sugar-cane out of the reserved area except where the sale of the sugar-cane to a person other than the factory is permitted. The factory generally enters into an agreement with a registered grower, allotting a particular acreage of land to him and undertaking to purchase the sugar-cane grown on the lands so specified. The petitioners were all registered suppliers to the factory at Nellikuppam. It was common ground that the books of the factory showed the correct amount for which the sugar-cane was sold in the year in question by the petitioners.

3. The petitioners contended that they were not liable to be assessed to sales tax on the sales of sugar-cane because such sales did not fall within the scope of "turnover" within the meaning of Section 2(i) of the Madras General Sales Tax Act (IX of 1939).

4. Section 2(i), as it stood in the relevant year, ran:-

"Turnover" means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

5. In the proceedings before the departmental authorities and before the Tribunal the substantial plea of the petitioners was that the sales of the sugar-cane in question came within the scope of the proviso to Section 2(i) of the Act, that is, that the sugar-cane was grown on lands in which the petitioners had an interest as defined by Section 2(i) of the Act.

6. In the proceedings before us a further plea had been taken, that, quite independent of the question, whether the proviso to Section 2(i) of the Act applied, none of the petitioners was a dealer at all as defined by the Act, and

therefore the sales effected by the petitioners fell outside the scope of the definition of "turnover".

7. Admittedly, the petitioners were not the owners of all the lands in respect of which they were registered in the books of the factory as growers

of sugar-cane. According to the petitioners the lands registered in their names in the books of the factory, on which sugar-cane was grown, which

sugar-cane was subsequently sold to the factory, fell into three categories, (1) lands owned by the petitioners, (2) lands held on lease by the

petitioners, and (3) lands the produce of which was sold benami. What precisely the petitioners meant by the expression "benami" is not clear. It

was not their case that the ostensible title to those lands vested in the petitioners, the real title being with somebody else. Indeed, the petitioners

admitted they had no possession of the lands that were included in the third category mentioned above. What the petitioners claimed was that they

were allowed to register in their own names with the factory those lands, though the owners themselves raised the sugar-cane on those lands. It

was the owners that raised the sugar-cane that supplied sugar-cane to the factory, but the supply was in the names of the petitioners as registered

growers. It was those owners, however, that obtained the sale price for the sale of that sugar-cane. This was evidently done with a view to obtain

the comparatively high price which the factory paid to the registered growers of sugar-cane. Whether such benami sales were in contravention of

the provisions of the Madras Sugar Factories Control Act is not really germane to the present proceedings, where the question for determination is

whether the proceeds of such sales of sugar-cane were liable to be included in the assessable turnover, if any, of the petitioners.

8. There was no difficulty at any time about the sales of the sugarcane grown on the lands included in the first of the three categories mentioned

above, that is, sugar-cane grown on lands owned by the petitioners. The departmental authorities held that such sales came within the scope of the

exemption, for which the proviso to Section 2(i) provided. The Deputy Commercial Tax Officer, however, did not accept the assessee's case in its

entirety with reference to the lands included in the second category, that is, the lands leased to the petitioners. The plea of lease was accepted only

in respect of a portion of the extent, and that finding was ultimately confirmed

by the Tribunal. With reference to the sale of sugar-cane grown on lands proved to have been held on leases by the petitioners, exemption was granted under the proviso to Section 2(i), and, that is no longer in issue. With reference to the other lands in the second category, that is, lands which the petitioners failed to prove had been leased to them, and, with reference to the sales in the third category, which can be comprehensibly referred to as benami sales, the departmental authorities were of the view that the sales of sugar-cane by the petitioners did not come within the scope of the proviso to Section 2(i), as the petitioners had no interest in the lands on which that sugar-cane was grown. That view was confirmed by the Tribunal.

9. We have already referred to the fact that in the case of two of the petitioners (T. R. C. Nos. 196 and 210 of 1956), they were re-assessed on the sales of sugar-cane under Rule 17 of the General Sales Tax Rules on the ground that this turnover had escaped assessment in the original assessment for 1952-53. Mr. Thyagarajan, the learned Advocate for the petitioners, contended that that re-assessment was not valid as the reassessment undertaken after the notice issued on 18th March, 1955, was barred by limitation. Rule 17(1) provided that the assessing authority may, at any time, within the year or the two years next succeeding to which the tax or licence fee relates, determine the turnover which has escaped assessment." It is not disputed that if the latter period, that is the two years period applied, the proceedings would have been properly initiated. Learned counsel, however, contended that on a proper construction of Rule 17 it should be held that it prescribed two periods of limitation, and that in such a case the taxpayer would be entitled to the benefit of the shorter of the two periods; the further plea was that the proceedings initiated beyond the year of assessment were barred by limitation. We are unable however to accept this interpretation of the scope of Rule 17. Under the rule the assessing authority can assess a turnover, if it escapes assessment, within the year of assessment itself or within two years next succeeding that to which the tax related. In effect, the rule prescribed the latter period as the limit within which the assessing authority should take proceedings for assessing the escaped turnover. The former time limit was mentioned apparently only to emphasis the power of the

assessing authority to take re-assessment proceedings even during the year of assessment itself, when that authority came to know of the escape of

assessment after an assessment had been completed u/s 9. In the present case notice under Rule 17 was issued within two years following the year

of assessment. The proceedings were validly initiated and completed.

10. The question we have to determine now is, whether the sales of sugar-cane to the factory fell within the scope of the definition of "turnover

and whether each of the petitioners was liable to be assessed to sales tax on that turnover. That question is really limited to the sales of sugar-cane

grown on lands in which, the Tribunal held, the petitioner had no interest, that is, a portion of the lands in category (2) and the lands in category (3)

of the three categories mentioned above.

11. The learned counsel for the petitioners contended that the entire claim of the assessee under category (2) should have been allowed and that

all the leases pleaded by them should have been accepted by the Tribunal as true. We were taken through the evidence in this case. Apart from the

fact that the finding of the Tribunal on this question being one on a question of fact, and, that this Court should not normally interfere with such a

finding, we are of opinion that the finding of the Tribunal was fully justified by the evidence. It was for the petitioners to prove each of the leases

pleaded by them and with reference to the claim disallowed, they failed to prove those leases.

12. Before the departmental authorities and before the Tribunal the endeavour of the assessee-petitioners was that each of them was entitled to

the exemption for which Section 2(i) provided. As we pointed out earlier, before us an additional ground was taken, that none of the petitioners

was a dealer with reference to the sugar-cane sold by him or in his name to the factory, and that therefore there was no liability to be assessed to

sales tax. This question, whether with reference to those sales of sugar-cane any of the petitioners was a dealer, even the Tribunal had no occasion

to consider and decide.

13. Obviously the exemption for which the proviso to Section 2(i) provides comes into play only if the sales are otherwise taxable. The taxability of

the sales depends on the question, whether the sales were by a dealer as defined by the Act. A sale even of agricultural or horticultural produce but

with nothing more is not enough to establish that the seller is a "dealer".

14. With reference to the sales of sugar-cane grown on lands owned by the petitioners and on lands proved by the petitioners to have been leased

by them, they were not charged to sales tax. It was immaterial to them whether that was on the ground that they were not dealers or on the ground

that, though they were dealers, the sales came within the scope of the exemption for which the proviso to Section 2(i) provided. It is with reference

to the other sales that the question becomes relevant, whether the petitioners or any of them were dealers at all. If they were dealers, then the

turnover would be liable to tax, because, in the absence of proof, that they had an interest in the lands as specified by Section 2(i), none of the

petitioners can claim the benefit of that exemption.

15. In deciding this question, it should be obvious that the two categories of lands stand practically on the same footing, that is, lands which the

petitioners failed to prove had been leased to them, and lands which admittedly were never in the possession of the petitioners, the produce of

which, however, was sold benami by the owners in the name of the petitioners. In neither case could the petitioners claim to have been in

possession of the lands, though the produce of these lands was sold in the name of the petitioners because they had been registered as the growers

of sugar-cane on those lands. Having regard to the provisions of Section 11 of the Madras Sugar Factories Control Act (XX of 1949) it would be

difficult to assume that the owners of those lands, who were the persons entitled to possession of those lands, and who actually grew the sugar-

cane would have sold the sugar-cane to the petitioners. But such a possibility cannot be excluded. The sugar-cane grown on such lands might have

been delivered by the respective growers to the factory, utilising the names of the registered growers, that is the petitioners, or it might have been a

case of the sale of the sugar-cane to the factory by the petitioners as the agents of the persons who grow the sugarcane. The Tribunal held that in

respect of these transactions the petitioners must have obtained some monetary advantage. The mere gaining of a monetary advantage would not

by itself and with nothing more make the petitioners dealers in respect of the sales of sugar-cane grown by others and sold in the name of the

petitioners. We have already pointed out that sales of even agricultural produce

with nothing more may not be enough to establish that the seller was a dealer as defined by the Act. What is taxable is the turnover of sales by a dealer and not every sale as such. Merely as an illustrative example we may point out that the petitioners could be held to be dealers if they bought the sugar-cane from the growers and subsequently sold it to the factory, or, if the petitioners acted as agents of the growers, which agency itself was part of the business of the petitioners as dealers. As we pointed out earlier, the question, whether with reference to these sales the petitioners were dealers at all, was not presented for adjudication at the earlier stages and the Tribunal had no occasion to go into it. As, however, the legality of the levy of the tax depends also on the decision of the question, whether each of the petitioners was a dealer with reference to his sales of sugar-cane to this factory, we consider that, though this question was not raised in this form at any stage before, it is necessary to have that question determined before the liability imposed on the petitioners is either affirmed or set aside. As the point was not raised before, it may be necessary to take further evidence on the question, whether the petitioners or any of them was a dealer. In these circumstances, we consider it proper to set aside the orders of the Tribunal and remand the appeals for consideration afresh of the questions at issue. In doing so, we would like to make it clear that we accept the finding of the Tribunal in regard to the extent of the lands owned by the petitioners and that of the lands proved to have been leased to them. The price of sugar-cane grown on those lands was excluded from the turnover of the petitioners held to be assessable. The remand is thus confined to the consideration of the question of the assessability of the sale price of the sugar-cane grown on the other two classes of lands, that is the lands which the petitioners failed to prove had been leased to them and the lands the produce of which the petitioners claim had been sold by the growers benami, that is, in the name of the petitioners.

16. The Tribunal will give further opportunities both to the petitioners and to the State to let in further evidence to decide the questions at issue, mainly the question whether each of the petitioners was a "dealer" as defined by the Act.

17. The petitions are allowed to the extent indicated above. There will however

be no order as to costs.