
(1967) 03 MAD CK 0008

In the Madras High Court

Case No : Tax Case No. 57 of 1964 and T.C.M.P. No. 1 of 1967 (Revision No. 24)

D.H. Shah and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 28-03-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 9

Citation : (1968) ILR (Mad) 763 : (1967) 80 LW 469 : (1967) 20 STC 146

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry, C. Venkataraman and G. Subramaniam, for the Appellant; K. Venkataswami, for Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, J.—This is to revise an order of the Tribunal upholding validity of the levy of penalty u/s 9(3) of the Central Sales Tax Act,

1956, read with Section 12(3) of the Madras General Sales Tax Act, 1959. The matter relates to the assessment year 1959-60. The assessee was

provisionally assessed for the year on a turnover of Rs. 17,002.96 on the foot of the return filed by it in Form A. There was an inspection of the

place of business by a Special Deputy Commercial Tax Officer (Detection), Thanjavur, along with a certain other officer on 8th October, 1959,

and certain secret accounts in Gujarati language were recovered. They are claimed to relate to the years 1954-55 to 1959-60 and transactions

relating to the assessee's business. On a scrutiny of the accounts a further turnover of Rs. 5,63,053.42 was discovered for the year in question,

and eventually there was an assessment of a net turnover of Rs. 3,86,099.26. At

the same time a turnover of Rs. 1,76,954.16 was charged to tax under the provisions of the Central Sales Tax Act. On the view that the assessee failed to disclose the turnover so brought to tax a penalty of Rs. 18,580.17 was levied u/s 9(3) of the Central Sales Tax Act read with Section 12(3) of the Madras General Sales Tax Act. We are not mentioning the tax to which the turnover was assessed, because no point has been made before us in regard to it. An appeal and a further appeal failed except to the extent of Rs. 8,070, the Tribunal as we said, having upheld that part of the penalty.

2. It is contended before us for the assessee that Section 9(3) of the Central Sales Tax Act does not attract Section 12(3) of the Madras General Sales Tax Act and, therefore, the penalty levied on the assessee is illegal. Secondly, it is urged that as u/s 9 of the Madras General Sales Tax Act, 1939, there was no provision at all for levying penalty, in any case the order relating to penalty u/s 9(3) of the Central Act cannot be sustained. We are of the view that both the points are of substance. Sub-section (3) of Section 9 adopts the procedure for assessment, collection and enforcement of tax obtaining under the State Act to assessment, collection and enforcement of tax under the Central Act. The sub-section states that adoption of the State procedure includes "any penalty payable by a dealer under this Act." That clearly means that what the sub-section intends is that the local procedure is applied to recovery of assessment, collection and enforcement of penalty, which is payable by a dealer under the Central Sales Tax Act. Unless, therefore, a penalty can be levied under the provisions of the Central Sales Tax Act, like the tax on turnover under that Act, there will be no liability to penalty only by reason of the provisions of the Madras General Sales Tax Act, 1959. In other words, Section 12(3) of the Madras General Sales Tax Act is not adopted for purposes of Sub-section (3) of Section 9. The only provision in the Central Sales Tax Act providing for penalty is Section 10 and that does not cover a penalty of the type contemplated by Section 12(3) of the Madras General Sales Tax Act, 1959. In our view, therefore, the penalty levied in this case cannot be held to be valid.

3. On the other point too, as we said, the assessee is entitled to succeed. There is clearly no provision in the Madras General Sales Tax Act, 1939,

providing for penalty as does Section 12(3) of the 1959 Act. If that be so, as we find it is, we cannot impute the intention to Section 9(3) of the

Central Act to adopt the provision of a State law which did not exist at the time the Central Act was made but came after it. It is a well-known

legislative practice for Legislatures to make enactments adopting the frame of another law, either Central or State. But in doing so, the Legislature

applies its mind to the law adopted as it exists at the time and makes it part of the law that it makes, instead of repeating in detail the provisions of

the law adopted. Naturally, therefore, the principle of adoption by reference to some other Act will not extend to a law which did not exist at the

time of the enactment. In fact for the Central Legislature to adopt a State law not only as it exists at the time but also as it may exist in future

including amendments made from time to time will amount to abdication of its legislative functions. This is because, if the Central Legislature

purports to adopt State law to be made in future by way of an amendment, the Central Legislature would have had no occasion to "apply its own

mind in making the law. This aspect of the matter in relation to Section 9(3) was considered by this Court in *Haji J. A. Kareem Suit v. Deputy*

Commercial Tax Officer, Mettupalayam [1966] 18 S.T.C. 370, where this Court observed at page 378 :

It is not disputed by the petitioner that where the Parliament intends to adopt, for purposes of Central legislation, any particular provisions of a

State law, it can do so by reference to those provisions instead of reiterating them verbatim. That precisely is the case in relation to Sub-section (3)

of Section 9. But the Madras General Sales Tax Act, 1939, was repealed and was substituted by the Madras General Sales Tax Act, 1959. The

argument for the petitioner is that the Parliament cannot with propriety make a law adopting by reference, the provisions of the State law, as they

stand amended by the local Legislature from time to time. The principle of the contention is certainly unexceptionable, for while it is competent for

the Parliament to adopt the existing provisions of a local law as part of the Central legislation without repeating those provisions in the Central Act,

it cannot make a law adopting the provisions of a local law which did not exist at the time.

4. It follows, therefore, that unless the 1939 Act contained power to levy a penalty, such a power given to the department for the first time u/s

12(3) of the 1959 Act, which repealed the 1939 Act, cannot be regarded u/s 9(3) to be adopted for the purpose of the Central Act. On this ground also, the penalty must be set aside.

5. The tax revision case is allowed with costs. Counsel's fee Rs. 100.