

(1957) 09 MAD CK 0030

In the Madras High Court

Case No : Criminal Revision Case No. 505 of 1956 (Criminal Revision Petition No. 464 of 1956)

In Re: R. P. Ramudu Iyer and Sons

Date of Decision : 20-09-1957

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (1958) ILR (Mad) 142 : (1957) 70 LW 918 : (1957) 8 STC 805

Hon'ble Judges : Somasundaram, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : Vittal V. Souli, for the Appellant;

Final Decision : Dismissed

Judgement

Basheer Ahmed Sayeed, J.—The petitioners in this case have preferred this revision against the order of the learned Additional First Class Magistrate, Madurai, in Summary Trial Case No. 93 of 1955. The respondent herein had instituted a prosecution under Rule 32 of the Madras General Sales Tax rules against the petitioners, who are dealers in cotton yarn in Madurai town. For the year 1954-55, the petitioners had taken out a cotton yarn licence No. 1073. Their turnover for that year was in the sum of Rs. 53,369-8-0 as could be seen from Ex. B-1. Under Rule 5 of the Madras General Sales Tax rules the petitioners should have applied for and taken out a licence for the year 1955-56 for enabling them to trade in cotton yarn. They did not do so. Under the then rules they should have filed the application before the 30th September, 1955. But actually the petitioners submitted the application on the 22nd November, 1955, after they had been called upon to do so by the General Sales Tax department by notice dated 24th October, 1955, under Ex. P-2. Ex. P-3 is the application submitted by the petitioners for the licence. Having submitted the application for the licence so late, they did not also pay the licence fee, which should have been paid along with the application for the licence. Both the application and the licence fee should have been made and paid before the 30th September, 1955, as required by Rule 5 (1) of the Madras General Sales Tax rules as amended by G. O. No. 1898 dated 17th June, 1955. Having failed to do so, the petitioners were

prosecuted on two counts: (1) for failure to apply for the licence, and (2) for failure to pay the licence fee, an offence punishable u/s 15(b) of the Madras General Sales Tax Act, as also under Rule 32 of the General Sales Tax rules.

2. The petitioners' defence was that they, being subsequent dealers or second dealers, were not liable to pay the tax and therefore not liable to apply for the licence and pay the fee prescribed. The second line of defence was that the petitioners were liable to apply for the licence only if the turnover was Rs, 7,500 and above, and since they did not have so much turnover for the year concerned, they were not bound to apply for a licence. The petitioners also questioned the validity of the rule requiring a licence fee in the sum of Rs. 150 which according to them was more in the nature of a tax than a fee. The learned Magistrate after considering the defence put forth by the petitioners found that the petitioners had omitted to submit their application for a licence in time under Rule 5 (1) of the Madras General Sales Tax rules and to pay a licence fee along with the application as required under Rule 6 (4) (a) of the Madras General Sales Tax rules, and that the offence being punishable u/s 15(b) of the said Act, the petitioners were guilty under the two provisions. While convicting them he sentenced the petitioners to pay a fine of Rs, 10 each on the first count and Rs. 20 each on the second count, in default to undergo simple imprisonment for ten days and twenty days respectively. The learned Magistrate also directed the petitioners to pay the licence fee of Rs. 150 which was to be recovered from them jointly and severally, as if it were a fine.

3. The same points as have been urged before the learned Magistrate are now urged before us by the learned counsel Mr. Vittal Souli for the petitioners. The point raised as to whether the fee prescribed and levied is in the nature of a tax or a fee for a licence has already been decided in W. Ps. Nos. 85 of 1956 etc. by a Bench of this Court on the 28th May, 1957. The decision is unreported¹, but there is no controversy about the points dealt with in this decision. In that decision it was held that it was not an unreasonable restriction to levy a licence fee for dealing in skins and hides (which stood on the same footing as cotton yarn and) that there was no infringement of Article 19(1)(g) of the Constitution and that further the fee was not in the nature of a tax and also was not in excess of the value of the services rendered. The legal point raised by the learned counsel for the petitioners now need not therefore be gone into over again by us in view of this decision, with which we are in agreement.

4. With regard to the other points raised by the learned counsel for the petitioners, the learned Assistant Government Pleader has taken us through the various sections and rules relevant to them and has argued in detail in a clear and succinct manner the scheme of taxation and licensing as envisaged in the various sections and the rules framed under the Madras General Sales Tax Act. We appreciate the exposition of the points involved in this revision petition made by the learned Assistant Government Pleader. The first point to be noted while considering a case of this nature is that in this State the tax that is levied is still

a multi-point tax, but there are exceptions to it. In order to avail of the exceptions to the multi-point tax, certain conditions prescribed by the sections as well as by the rules have to be observed by persons, who want to avail of such exceptions. To determine at which point tax should be levied as single point tax, various rules have been framed, and it has also been laid down under these rules that no one can derive any benefit of the exemptions provided under the scheme of multi-point tax, unless those conditions are fulfilled in their entirety. Another point to be noted in this connection is that the sections of the Act which govern the levy of the sales tax in respect of goods bought and sold are no doubt few, but the rules framed for the purpose of determination of the tax, its recovery and the various conditions and terms which have to be complied with by dealers, if they are to take benefits of the exemptions, are too voluminous, and the amendments thereto are also not any the less numerous. It has to be stated that the various amendments to the sections and to the rules which have been issued from time to time, create no small amount of confusion in the minds of the lay persons to whom they are intended to apply. We are tempted to suggest that the sooner a well arranged compendium of the main sections as amended up to date and the rules framed so far with all their ramifications as to sub-rules and sub-clauses etc. is issued, the better it will be for the administration of the law on the subject. Apart from this, a third point to be noted is that the modern tendency to provide under primary legislation a mere skeleton of the general scheme of the levy of a tax of the kind in question, and to provide for the rest of the details of the application of the law, its enforcement and administration etc. by elaborate rules made under secondary or delegated legislation, is very much in evidence in this piece of legislation, viz., the General Sales Tax Act. This delegated legislation results in making the law in its most important aspects more cumbersome and complicated and more often unintelligible to the lay man. There is, therefore, much need to simplify the entire system now in force.

5. However this be, Section 3(1) of the Madras General Sales Tax Act, which relates to the levy of the tax on sales of goods provides that subject to the provisions of this Act (a) every dealer shall pay for each year a tax on his total turnover for such year, and (b) the tax shall be calculated at the rate of three pies for every rupee in such turnover. The other parts of this section need not be extracted, as they are not relevant for purposes of this judgment. This section was, however, amended by Madras Act I of 1957, and for Sub-section (1) the following was substituted:

Subject to the provisions of this Act, every dealer shall pay for each year a tax on his total turnover for that year calculated at one and nine-sixteenth per cent of such turnover.

6. The proviso to Sub-section (1) was also amended by the said amending Act I of 1957. But in this case, we are concerned only with the section as it stood when the petitioners failed to comply with the provisions of the Act and were prosecuted for such failure. sections refers to the levy of tax and Section 5

provides for exemptions and reductions in certain cases. Section 5 enacts that subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees, (1) the sale of handspun yarn and of any cloth woven on handlooms wholly with handspun yarn and sold by persons dealing exclusively in such cloth, shall be exempt from taxation u/s 3, Sub-section (1); (ii) the sale of cotton (including kapas) and of cotton yarn other than handspun yarn shall be liable to tax u/s 3, Sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed and only at the rate of one half of one per cent of the turnover at that point. The rest of the sub-sections of Section 5 need not be referred to as they are not relevant for the purpose of this judgment. This section which provides for exemptions and reductions of tax in certain cases had been amended a number of times and the latest amendment would appear to be the one carried out by Madras Act I of 1957. Under Sub-section (v) of the amended Section 5, it is provided that the sale of cotton yarn among other commodities detailed thereunder shall be liable to tax u/s 3, Sub-section (1), only at the point of the first sale effected in the State of Madras by a dealer who is not exempt from taxation u/s 3, Sub-section (3), but at the rate specified against them. The rate of tax on the turnover specified on the cotton yarn other than handspun cotton yarn is half a per cent. In order to avail of the exemption provided under this sub-section, that is to say, that the tax should be payable only at a single point in respect of cotton yarn that is dealt with by him, the dealer was bound to conform not merely to the provisions of the Act but also to such restrictions and conditions as may be prescribed including conditions as to licences and licence fees. These latter restrictions and conditions referred to u/s 5 have been prescribed by the rules framed in exercise of the rule-making power given to the State Government u/s 19 of the Act. It is not in dispute that the petitioners are dealers in cotton yarn, and it is also not in controversy that the petitioners are subsequent dealers, who if they conform to the requirements of Section 3 and Section 5 prescribed under the rules made u/s 19, will be liable to pay tax only at a single point.

7. The question then is whether the petitioners have conformed to and complied with the requirements of the Sections and the rules governing the taxation at a single point. The learned counsel for the petitioners when asked to state definitely whether his clients could claim to have conformed to these sections and rules, could not state that they did conform to the requirements of law to enable them to be taxed at a single point. The original Rule 5(1) (a) requires that dealers in the position of the petitioners should apply for exemption before the 30th April, but this was amended so as to extend the date to the 30th September. It has been admitted that the present dealers did not make any such application within the prescribed date. Sub-Rule 4 (a) of Rule 6 prescribes the fees for the grant of licence on the basis of the turnover of the year. The licence fee is calculated on the estimated turnover and it is prescribed to be payable in advance along with the application. This is provided for by Sub-rule 4 (c); and Sub-rule 4 (d) provides that every applicant shall enclose a. cheque along with

the application for the licence fee. Sub-Rule (5) of Rule 6 gives the power to the licensing authority to satisfy himself as to the correctness of the estimated turnover, and a return of the turnover is to be made in the form prescribed.

8. In the present case it is conceded that in the application made by the petitioners, the estimated turnover was shown as Rs. 53,000 and odd, which was the same as the previous year's turnover. If such be the estimated turnover, then it exceeded the minimum prescribed, viz., Rs. 10,000, which was subsequently reduced to Rs. 7,500 as per an amendment issued under G. O. 1898, Revenue, dated 17th June, 1955. After the return is made under Sub-rule 11 (a) of Rule 6 the assessing authority is entitled to make a scrutiny of the return and finally assess the turnover for purposes of tax and licence fee. In the petitioners' case, the question of the scrutiny of turnover had not yet arrived. But it is stated before us that the estimated turnover given was Rs. 53,000 and odd and if that were the case the petitioners were bound to send along with the application a cheque for the licence fee in the sum of Rs. 150. It is admitted that this was not done, and therefore both on account of the failure to apply in time and the failure to enclose the cheque for the prescribed fee, the petitioners had made themselves liable to be proceeded against under Rule 32, which prescribes the penalty and punishment for the infringement of the rules.

9. The contention of the learned counsel for the petitioners however is that since it was found subsequently that their turnover was far less than the sum of Rs. 7,500 and that it was actually only Rs. 4,521 for the year 1955-56 the petitioners were not obliged to apply for nor pay any licence fee. If this position taken up by the petitioners was clear and if that had been adverted to in the belated application for the licence, there would have been some justification for their omitting to apply for and pay the licence fee. But actually having shown an estimated turnover at a total figure of Rs. 53,000 and odd, the petitioners cannot now be heard to say that they had justification not to apply for the licence, because it turned out as a matter of fact that their turnover was far less than Rs. 7,500, the prescribed minimum. If the turnover of the petitioners was actually less than the minimum prescribed, in which case they would not be liable to apply for any licence or pay the licence fee, and if the scrutiny of the returns by the assessing authority did establish that fact, then it would be a case for the petitioners to claim a refund of the excess fee recovered from them as prescribed in Sub-rule (11)(c) of Rule 6. But this will not exonerate them from making an application for the licence on the estimated turnover and paying the fees along with the application. The question of a refund should be understood and kept separate from the liability to apply for the licence and to pay the licence fee. The refund of the licence fee is subject to the scrutiny of the return by the assessing authority and finalisation of the turnover and assessment, and this is to happen only at a much later stage. But applying for a licence and payment of licence fee has to be done within the course of the year and is much anterior to any scrutiny of the return and discovery of any payment of fee in excess of the prescribed minimum so as to justify any refund.

10. Upto a certain stage, the effect of a series of decisions of this Court was that a subsequent dealer was not compelled to take out a licence and that it was merely optional and such an option may or may not be exercised by the dealer, and it was also the trend of the decisions that if a dealer does not take out a licence, he could not be deprived of the benefit conferred on dealers u/s 5. But both the learned counsel for the petitioners and the Assistant Government Pleader agree now that by reason of the amendments made to rules 5, 6 and 32, the option that was left with the dealer to apply or not for a licence, if he was to claim benefit u/s 5, has been taken away and the application for a licence and payment of fee in respect thereof has now been made compulsory and it is conceded that this amended rule applies to the present case. If such be the case, it follows that the petitioners did not comply with an obligatory provision of law which compelled them to apply for and take out a licence and pay the prescribed fee in advance, and consequently there was infringement of the rules, which made their failure punishable under Rule 32 and Section 15(b).

11. When the learned counsel for the petitioners had to admit that the present case comes within the purview of the amended rules which compelled his clients to take out a licence and pay the licence fee, whatever might be the claim for a refund of the fee, in view of the turn of events subsequently, namely, that the turnover was Rs. 4,521 and that it did not reach even the minimum figure prescribed under the rules, it cannot be said that on the petitioners' failure to comply with an obligatory rule validly framed in the exercise of the powers conferred u/s 19 of the Act, the conviction and sentence could be said to be illegal and unwarranted. A point was also raised that the sum of Rs. 150 recovered from the petitioners, as if it were a fine was not legal. We do not find any substance in that contention. The rule is clear on the point that in addition to any fine imposed, the Court is entitled also to direct the recovery of the licence fee payable as if it were a fine. If such power is exercised by the Court, it cannot be said that there has been any illegality about the direction to recover the licence fee, as if it were a fine. In the result we do not think that there is any merit in this revision petition. We therefore have no hesitation in dismissing the same, and is accordingly dismissed.

1. Since reported as Guruviah Naidu and Brothers and Ors. v. The State of Madras and Ors. [1957] (8 S.T.C. 690)