
(1961) 09 MAD CK 0008
In the Madras High Court
Case No : Tax Case No. 148 of 1959

Jain Jari Stores

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 28-09-1961

Acts Referred:

Constitution of India, 1950 — Article 14
Madras General Sales Tax Act, 1939 — Section 14A, 3(2)

Citation : (1962) ILR (Mad) 573

Hon'ble Judges : Srinivasan, J; Jagadisan, J

Bench : Division Bench

Advocate : M.A. Rajagopalan, for the Appellant; G. Ramanujam, for A. Alagiriswami, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagadisan, J.—The Petitioner is a firm of textile merchants carrying on business at Godown street, Madras. The Deputy Commercial Tax

Officer, Godown Division, assessed their sales turnover for the year 1956-57 at Rs. 11,33,355-12-6. This turnover included the sale value of

goods purchased by the Petitioner from non-resident dealers and the Petitioner objected to the levy of tax at the rate of one anna six pies in

respect of these sales. The additional levy at the rate of one anna three pies per rupee was made under the proviso to Section 3(2) of the Madras

General Sales Tax Act. This objection on the part of the dealer was, overruled by the assessing authority. The Petitioner preferred an appeal to the

Commercial Tax Officer and reiterated the contention that the sale of goods purchased from non-resident dealers should not be dealt with as the

first sale under the proviso to Section 3(2) of the Act. The appellate authority confirmed the decision of the first assessing authority. The Petitioner

thereupon preferred a further appeal before Sales Tax Appellate Tribunal, Madras, and confined their claim for relief against the enhanced levy

under the proviso to Section 3(2) of the Act only to the extent of the value of sales turnover of Rs. 7,88,352-0-9. The Tribunal overruled the

contentions urged by the Petitioner and dismissed the appeal. This revision petition is by the dealer, whose main contention is that the sales

turnover of the value of Rupees 7,88,352-0-9, should not suffer any additional levy than what is properly chargeable under the main charging

section of the Act.

2. Learned Counsel for the Petitioner urged the following three grounds in this revision petition: (1) The first proviso to Section 3(2) of the Act

cannot apply to the sales turnover of Rs. 7,88,352-0-9 as the sales covered by that amount were not "the first sales" in the Madras State. (2) The

goods sold by the Petitioner for the value of Rs. 7,88,352-0-9, were purchased from non-resident sellers at Bombay through their resident agent

at Madras, who must be deemed to be "dealers" under the provisions of Section 14-A of the Act, and that therefore the sales effected by the

Petitioner were only second sales and not "the first sale" (3) The first proviso to Section 3(2) of the Act is unconstitutional as it is discriminatory in

character, and therefore violative of the equality Clause of the Constitution, Article 14.

3. According to the Petitioner the amount of Rs. 7,88,352-0-9 relates to sales effected by Bombay Merchants having either branches or agents in

the State of Madras. The course of business in respect of these transactions as set out in the affidavit of S. Roopchand, a partner of the Petitioner-

firm, is that the agent of the non-resident seller would offer goods for sale to the Petitioner and fix the price. Thereafter the agent of the seller would

communicate to the principal at Bombay who would tend the goods through the railway taking out the railway receipts in his own name, as

consignor and consignee. The railway receipts would be handed over to the Petitioner by the agent or would be cleared by the Petitioner from the

seller's bank at Madras. On these averments the contention of the Petitioner is that the first sale was in their favour by the non-resident seller.

4. Section 3(2) of the Act, as amended by Madras Act XXIII of 1957, dated 18th December 1957, giving retrospective effect from 23rd August

1954, is in these terms:

On the first sale of any of the goods mentioned below by a dealer who is not exempt from taxation under the next succeeding Sub-section, the

dealer shall pay a tax at the rate specified as applicable thereto; and the tax shall be paid by the dealer on his turnover in each year relating to such

goods and shall be in addition to the tax to which he is liable under Sub-section (1) on his total turnover for the year:

Provided that, in the case of goods imported into the State of Madras either from outside the territory of India or from any other State in India, the

tax shall be levied on the first sale effected in the State of Madras by a dealer who is residing in the State of Madras and who is not exempt from

taxation under the next succeeding Sub-section after the import of the said goods into the State of Madras.

Description of the goods. Rate of tax on the turnover.

(i) Cloth (other than cloth woven on Eight per cent.

handlooms whether silk, artificial silk,

wool, flax, or any other material) which is

not made wholly of cotton.

5. The language of the proviso is sufficiently clear and expressive so as to constitute the sale by the Petitioner of the goods purchased by him from

outside the territory as the first sale. The taxable event covered by the proviso attracting the enhanced levy of eight per cent is the first sale effective

in the State of Madras by a dealer who is residing in the State of Madras. The sale which preceded the sale by the Petitioner to others, or in other

words the purchase of the Petitioner from the non-resident sellers cannot be aptly described as the first sale by a dealer residing in the State of

Madras.

6. In the absence of proof of any business activity on the part of non-resident in the State, Section 14-A cannot have any application to a particular

transaction. Though for the purpose of chargeability and the collection of the tax a resident agent in the State is deemed to be the dealer, it is only a

statutory fiction which cannot be extended to mask the real nature of the business activity which is essentially one between a non-resident and a

resident. We are of opinion that the representative character of the resident

agent with which he is clothed u/s 14-A of the Act cannot be read into the first proviso of Section 3(2) of the Act to enable the Petitioner to contend that the sale in his favour was the first sale from another dealer in the State.

7. The attack on the first proviso to Section 3(2) of the Act that it offends Article 14 of the Constitution is flimsy and unsubstantial. There is nothing in that proviso discriminating residents in the State as against non-residents. The non-resident is prima facie a person who is outside the Act except in case provided for u/s 14-A of the Act, and no discrimination can arise on the ground that the residents in the State carrying on business of buying and selling in the State become subject to taxation at a particular rate. The equal protection Clause does not prevent a State.

8. from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities, for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within MADRAS reasonable limits and general usage, are within the discretion of the State Legislature [Bell's Gap Railroad Co. v. Commonwealth of Pennsylvania 38 L.ed. 892].

9. Application of these principles has meant that the Court is even less likely to challenge legislative classifications under the taxing power than under the police power: inheritance tax laws typically involve numerous discriminatory features-exemption of small estates, graduated tax rates, variation of tax rates according to whether the estate goes to lineal descendants, collateral heirs, or persons unrelated by blood-but they have uniformly been upheld against claims of denial of equal protection. The same is true of the exemption and progressive rate features of income taxes.

(See Pritchett on The American Constitution-Page 666.)

10. Rottschaefer on Constitutional Law at page 667 states thus:

It is generally held that an issue under the equal protection Clause must be

decided in respect of the general classification rather than by the chance incidence of the tax upon particular tax payers [Colgate v. Harvey 80 L.ed. 299]. A classification that is in general reasonable does not become invalid as applied to a particular case merely because it might effect an unreasonable result therein.

It is now well settled that even discriminatory legislation can be upheld as constitutional if the discrimination is founded upon a reasonable distinction or classification or if any State of facts can be reasonably conceived to sustain it.

The impugned provision is not discriminatory in its terms and even if it were so, the fixing of taxing points and taxable events at the discretion of the Legislature amounts to a reasonable classification, not falling within the mischief of Article 14 of the Constitution.

11. The petition fails and is dismissed with costs.