
(1959) 11 AP CK 0026

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 48 and 49 of 1957

K.M. Khudrathulla and Co.

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-11-1959

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1960) 11 STC 595

Hon'ble Judges : M.A. Ansari, J;Jaganmohan Reddy, J

Bench : Division Bench

Advocate : P. Kodandaramayya, for the Appellant; D.V. Sastry, for The Second Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jaganmohan Reddy, J.—Two questions arise in these tax revision cases, viz., (1) whether an assessee dealing in hides and skins, having applied for and obtained a licence and having paid the provisional fee of Rs. 25 under the Madras General Sales Tax Act (hereinafter called "the rules" and "the Act" respectively), could long after the year of assessment refuse to pay the balance of the licence fee payable under the rules and insist on getting himself treated as an unlicensed dealer.; and (2) whether the purchases made by the assessee in the shandies; from sellers whose names and addresses were not disclosed can be treated as purchases from unlicensed dealers.

2. The petitioner who is a resident of Vizianagaram is a dealer in raw hides and skins. In the assessment year 1953-54, i.e., during the period from 1st April, 1953, to 31st March, 1954, he applied for a provisional licence on 21st February, 1953, having paid a provisional licence fee of Rs. 25 and Rule 6(4) (a) and (c) of the rules. He was granted a licence on 13th May, 1953. At the end of the year the turnover of the petitioner was Rs. 3,27,214 with respect to his sales which were exclusively made to the dealers in the Madras City. His turnover in respect of such sales till the date of the formation of the Andhra State, i.e., 1st October,

1953, amounted to Rs. 99,774 and from the date of the formation of the Andhra State to the end of the assessment year, viz., 31st March, 1954, was Rs. 2,25,424. With respect to these sales made after the formation of the Andhra State he was assessed to sales tax on the ground that they were exported outside the State and the licence fee on that turnover was fixed at Rs. 350 and he was called upon to pay the balance of Rs. 325, Rs. 25 having been paid towards provisional licence fee as stated above. Several contentions were raised by the assessee before the Sales Tax Appellate Tribunal which were, however, rejected by the Tribunal. The contentions were: (i) that all his purchases in raw hides and skins were from unlicensed dealers and therefore he is not liable to be taxed on the amount of such purchases, (2) that he should be taxed on the footing of an unlicensed dealer as he has not paid the balance of the licence fee as finally ascertained on the amount of his turnover and also because he did not maintain the accounts in accordance with the conditions of the licence, or alternatively that he is entitled to elect to be taxed on the footing of an unlicensed dealer because to apply or not to apply for a licence is always a matter of choice and that a right of option is not taken away by the simple fact that he paid the provisional licence fee. In other words, his contention was that at any stage before the assessment he is entitled to ask the department to assess him on the footing of an unlicensed dealer if it is found beneficial to him to choose that choice and (3) that Rule 16(2)(ii) is inconsistent with Rule 16(2) and Rule 4(2)(d) and is therefore illegal and unworkable and that the purchases in question, being for resale at Madras and consequently the consumption not having taken place in the Andhra State, the purchases are exempt from taxation under Article 286(1)(a) of the Constitution. With respect to contention (1) the Tribunal held as a fact that the assessee did not prove that his purchases were from unlicensed dealers. With respect to contentions (2) and (3) it was of the view that they were different branches of the same plea, namely, that he should be taxed on the basis of an unlicensed dealer. In contention 2 he takes the plea that as he has failed to pay the full licence fee and to observe the conditions of the licence in regard to the maintenance of accounts, the department ought to cancel his licence and treat him for purposes of taxation as an unlicensed dealer. Under contention 3 his plea is that it is open to him to elect to be taxed on the footing of an unlicensed dealer, in spite of his having obtained the licence. The third contention is in a way implied in the second contention, because it means that by refusing to pay the licence fee or to maintain the accounts according to the terms and conditions of the licence he can signify his election to be treated as an unlicensed dealer for purposes of taxation. While the third contention refers to the oral or written expression of his intention, the second contention implies that. Such intention as is expressed by his conduct as well as the department, therefore, are (i) as to whether a licensed dealer has a right to change his mind and demand that he should be taken on the footing of an unlicensed dealer at his choice and (ii) if so, within what time he can do so, after he obtained the licence ? Normally no man is allowed to benefit by his own default but with regard to a licence under the provisions of the taxing statute the

only consequence contemplated by the default appears to be to tax him on the footing that he had not taken a licence at all and when the defaulter himself courts that consequence or penalty there seems to be no apparent reason why his fault should be condoned simply because he voluntarily prays for it.

3. The only two points urged before us now are, (1) that he should be treated as an unlicensed dealer because he has option to be so treated and that if he has not paid the balance of the licence fee, the privilege which conferred on him an advantage cannot be given to him and that this is a matter of his choice and the assessing authorities must therefore assess him as an unlicensed dealer; and (2) even if he is treated as a licensed dealer, as he has purchased his hides and skins in shandies from unlicensed dealers, he would not be liable to any sales tax, as it is the unlicensed sellers, that will have to pay the tax u/s 3 of the Act. It is contended that the Tribunal and the Sales Tax Authorities while holding that he has made all the purchases in shandies were in error in holding that because he could not disclose the names of the unlicensed dealers from the shandies he has purchased them from licensed dealers.

4. Taking the last point first, the assessee had applied to the Tribunal that as his purchases from the unlicensed dealers amounted to Rs. 1,99,955-5-0 he should be given an opportunity to prove the same. The Tribunal gave him an opportunity and directed the Deputy Commissioner to take evidence that may be adduced by the petitioner in this matter and report how far his contention is borne out by the accounts and other evidence. The Deputy Commissioner after taking the evidence adduced by the assessee reported that the accounts of the assessee revealed that he made purchases to the tune of Rs. 1,88,439-0-6 for cash without noting down the names and addresses of his vendors and the assessee's Advocate withdrew his claim in respect of the balance of Rs. 11,476-5-3. Because of this inability to establish that his purchases amounting to Rs. 11,476-5-3 were made from shandies and on the admission of his own Advocate that he withdrew the claim, the Tribunal thought that the contention of the assessee was not substantiated and that the assessee could not justifiably ask the Tribunal to presume that all his purchases were from unlicensed dealers, as he could not furnish the names and addresses of the dealers from whom he purchased. Before us the learned Advocate for the assessee does not deny that the onus of proof was upon him, because if he was a licensed dealer he could claim exemption only with respect to his purchases from unlicensed dealers. It is well established that the onus is upon the person claiming the exemption. The fact that he has made huge purchases to the tune of about Rs. 1,88,000 from the shandies does not by itself establish that he must have purchased them from unlicensed dealers. To do so would be to admit that only unlicensed dealers sell their raw hides and skins in the shandies. At any rate, no evidence has been led to establish that only unlicensed dealers operated in the shandies. In the absence of any such evidence, we must assume that- both licensed and unlicensed dealers bring their hides and skins to the shandies for sale. If so, it is for the assessee to establish that he purchased only from the unlicensed dealers.

Whether he disclosed the names of the persons from whom he purchased or otherwise, there is no escape from the burden of establishing that those from whom he purchased were unlicensed dealers. Merely to establish that the purchases were made in the shandies does not satisfy the requirements of proof for obtaining the benefit of exemption. That apart, the assessee had in the beginning of the assessment year, obtained a licence and intended to get the exemptions as a licensed dealer would be entitled to from purchases made from unlicensed dealers. In these circumstances, it would have been quite possible for him to have noted the names and addresses, particularly when the purchases at each shandy were in several thousand rupees. The assessee's admitted inability to prove the purchases of Rs. 11,476-5-3 worth of hides and skins from unlicensed dealers itself supports the view that he has not been exclusively purchasing from unlicensed dealers. In these circumstances, we think the Tribunal was right in holding that he has not established that the purchases were from unlicensed dealers. This question is also one of fact and it is not permissible to interfere with it in revision.

5. Coming to the next point, the learned Advocate has strenuously contended that under the rules, the privilege is given to the assessee and if he does not exercise that privilege, he cannot be compelled to do so. Secondly, there is nothing in law to compel him to pay the balance of the licence fee and this, according to him, was admitted by the Tribunal. Consequently he cannot be forced to pay the licence fee, nor can he be treated as a licensee. Learned Advocate for the assessee relies upon Rule 6, Clause (11), Sub-clauses (a), (b), (c) and (d), Rule 8 and on Section 6-A. But before we deal with these sections it is necessary to say that the scheme of the Madras General Sales Tax Act and the rules framed thereunder with respect to the grant of licences is to encourage certain classes of dealers to apply for licences by offering complete exemption from taxation in some cases, imposition of lower rate of tax in other cases and imposition of single point tax in a third category of cases. Sections 5 and 8 deal with exemptions and reductions of tax in certain cases and licensing and exemption of agents, while Section 6 empowers the Government to notify exemptions and reductions of tax. The benefits of Sections 5 and 8 can be claimed by licensed dealers. Section 6-A and Rule 6 and 8 are as under :

6-A. If any restrictions or conditions prescribed u/s 5 or notified u/s 6 are contravened or are not observed by a dealer, or in case a condition so prescribed or notified requires that a licence shall be taken out or renewed, if a licence is not taken out or renewed by the dealer or if any of the conditions of a licence taken out or renewed by him are contravened or are not observed, the sales of the dealer, with effect from the commencement of the year in which such contravention or non-observance took place, may be assessed to tax or taxes u/s 3, as if the provisions of Section 5 or of the notification u/s 6, as the case may be, did not apply to such sales and notwithstanding that a licence, if any, taken out or renewed by the dealer continued or continues to be in force during the year.

Rule 6. (n)(a) On receipt of the return in Form VI or Form VII or the return or returns submitted under Rule 11, 13, or 15 of the Madras General Sales Tax (Turnover and Assessment) rules, the licensing authority shall, if he is satisfied after such scrutiny of the accounts of the licensee and after making such enquiries as he considers necessary, that the return or returns are correct and complete, determine on the basis of the return or returns the turnover of dealings in respect of which the licence was issued and finally assess the licence fee payable for the year to which the licence related in accordance with the scale laid down in Sub-rule (4).

(b) If no return or returns are submitted, or if the return or returns submitted appear to the licensing authority to be incorrect or incomplete, the licensing authority shall, after following the procedure laid down in Rule 8 and 9 of the Madras General Sales Tax (Turnover and Assessment) rules determine the turnover dealings in respect of which the licence was issued and finally assess the licence fee payable for the year to which the licence related in accordance with the scale laid down in Sub-rule (4).

(c) If the licence fee as finally assessed under this Sub-rule is greater than the licence fee provisionally paid under Sub-rule (4) or Sub-rule (5), the licensing authority shall serve upon the licensee a notice of demand and the licensee shall pay the sum demanded at the time and in the manner specified in the notice. If the licence fee as finally assessed is lower than the licence fee provisionally paid under Sub-rule (4) or Sub-rule (5), the licensing authority shall refund the amount due to the licensee.

(d) The benefit of Sections 5 and 8 may be claimed only after paying the balance of licence fee, if any, demanded under Clause (c)."

8. Every licence granted or renewed under these rules shall be liable to cancellation by the licensing authority in the event of a breach of any of the provisions of the Act or of the rules made thereunder or of the conditions of the licence. For the year in respect of which the licence of a person is so cancelled, he shall not be eligible for the grant of a fresh licence. But the licensing authority may grant a licence for any subsequent year notwithstanding the cancellation of the licence in respect of any previous year.

6. The above provisions of Rule 6 provide for the final assessment of the licence fee payable at the end of the assessment year and for making a demand for the balance of any licence fee in excess of the provisional fee already paid or the refunding of any excess over the provisional fee that may have been paid. The penalty for non-payment of the licence fee or for breach of the conditions of the licence is to lose the benefits of Sections 5 and 8 and of being assessed to tax or taxes u/s 3 as an unlicensed dealer or where the fee is paid and the conditions have not been complied with, the cancellation of the licence. While this is so, nowhere does the Act or the rules make it obligatory on the assessing authority to cancel the licence if the conditions are not fulfilled or to treat the licensed

dealer as an unlicensed dealer merely because he has not paid the balance of the licence fee demanded of him, nor is there anything to preclude the assessing authority who cancels the licence from not recovering the balance of the licence fee. Under the Act all dealers, including the dealers in hides and skins, are liable to tax u/s 3(1) of every sale transaction, unless the dealer chooses to be assessed on the single point transaction. If he intended to be taxed on a single point he is required to apply for licence by paying the licence fee and by maintaining the accounts in a particular manner as indicated in the licence itself. It is no doubt a choice given to the dealer, but if the choice is made by him he cannot be permitted, before the expiry of that licence, to change his mind and say that he will not be liable under that scheme of taxation unless of course as a penalty he is precluded from taking advantage of it. In the case of *State of Andhra Pradesh v. Mohammad Azam Abdul Bari & Co.* [1958] 9 S.T.C. 231, a Full Bench of this Court to which one of us was a party, held that under the Act and the rules framed thereunder, a licensed tanner is not liable to pay sales tax on the amount for which hides and skins were bought by him from an unlicensed dealer. Similarly a licensed dealer who purchased the said goods for export outside the State from an unlicensed dealer is not liable to tax on the amount for which the said goods were bought by him. It further held that Section 3 of the Act is the charging section. Section 5 exempts certain commodities from taxation u/s 3(1) and gives some concession in regard to other commodities by providing single point taxation instead of multipoint taxation u/s 3(1). One of such commodities is hides and skins. Under Rule 5(c) the accrual of the concession is conditioned by the taking of a licence. If the licence is not taken or renewed, the concession is withdrawn. Rule 4(2) of the Madras General Sales Tax (Turnover and Assessment) rules says nothing more than that in the case of the said commodity the amount for which the goods are bought by the dealer is the turnover on which tax is leviable. It does not either in express terms or by necessary implication localized the stage or the transaction in regard to which the tax becomes exigible. That is expressly done by Rule 15 and 16, which provide for the levy and collection of taxes. Under these Rule the levy of sales tax is on the turnover representing the price for which a licensed tanner or exporter purchases from a licensed dealer. Rule 16, therefore, fixes the stage and levies the tax, where there are a series of transactions between licensed dealers on the last licensed dealer whether he is a tanner or exporter. It is thus seen that if a licensed dealer purchases from an unlicensed dealer, tax is not exigible from the assessee. In other words, Rule 16(5) deals with transactions between unlicensed dealers where the tax levied will be at a multiple point. Rule 16(2)(ii) fixes the levy at the single point on the licensed dealers at the last purchase before export, that is by a licensed dealer from a licensed dealer. If the purchases are by the licensed dealer from an unlicensed dealer, the unlicensed seller dealer is liable under Rule 16(5) and the licensed purchaser cannot, because of Section 3(5), be taxed on the same transaction for the reason that both the purchaser and the seller cannot be taxed on the same transaction.

7. Learned advocate for the assessee by reference to Stroud's Judicial Dictionary, Corpus Juris Secundum and the Halsbury's Laws of England, submits that the application and the grant of a licence under the Act confers a personal privilege on him to obtain the exemptions under the Act. In the circumstances, he contends, the assessee is entitled to withdraw from that privilege at any time. It is no doubt true that the acceptance of a licence does not impose any obligation on the licensee to exercise a privilege or to engage in the business covered in the licence. But once he exercises the privilege or engages in the business on the terms of that licence, he cannot withdraw from it, nor can the Sales Tax Authorities refuse to give him the privilege if he fulfils the conditions of the licence. The statute provides for the cancellation of the licence or for treating the assessee as an unlicensed dealer if he omits to do what he is liable to do under the licence. That is quite a different thing from saying that he has an option to ask to be treated as an unlicensed dealer. In this case, the assessee carried on the business as a licensed dealer till the end of the period of the licence. A licence under Rule 16(1) of the rules enures for a whole year and it is only at the time of the assessment, seven months after the expiry of the period of the licence, that the assessee wanted himself to be treated as an unlicensed dealer, which in effect is asking the authorities to cancel the licence retrospectively for an omission deliberately committed by him, viz., by not paying the balance of the licence fee which was determined at the time of the assessment. It may be seen that under Rule 6(n)(a) it is only at the end of the year on the turnover as determined, the licence fee finally becomes payable on that turnover as per Rule 6(4)(a). That stage having passed, the licence fee as well as the tax became payable. The decision in *The Province of Madras v. Balakrishna Chetty & Sons* [1955] 6 S.T.C. 415 does not in any way assist the assessee, because it says that if an assessee has failed to comply with the conditions and restrictions prescribed by the Act, namely, the maintenance of a true and correct account u/s 13, he loses his right to exemption from the tax u/s 5 and he could therefore be validly assessed to tax although no formal order cancelling the licence was passed. As we have already pointed out, this is quite a different thing from the assessee seeking to have the licence cancelled.

8. The next question is whether the balance of the licence fee could be recovered from the assessee. Learned Advocate for the assessee contends that both Sections 10 and 15 do not deal with the recovery of a fee, but only with the recovery of tax. As such there is no power under the Act which validly authorises the Sales Tax Authorities to recover the fee from the assessee. That may be, but Section 15(b) of the Act imposes a penalty on a person who fails to pay within the time allowed, any tax assessed on him, or any penalty levied or any fee due from him under the Act. To say that licence fee is not a "fee under the Act" would not be correct, because under Rule 6(11)(c) if the licence fee is finally assessed under the rules is greater than the licence fee provisionally paid under Sub-rule (4) or Sub-rule (5), the licensing authority shall serve upon the licensee a notice of demand and the licensee shall pay the fee demanded at the time and in the

manner specified in the notice. Once a notice of demand is issued under the provisions of a taxing law, that demand creates a debt payable to the State (Vide *Doorga Prosad v. Secretary of State* [1945] 13 ITR 285 at 286 (para. 6).). Apart from the question of the assessee being exposed to criminal prosecution u/s 15 for non-payment of any fee due from him, it becomes a debt which can be recovered u/s 52 of the Madras Revenue Recovery Act II of 1864, as amended by Act XV of 1939 under which all sums due to the State Government including compensation for any loss or damage sustained by them as a consequence of a breach of contract, may be recovered in the same manner as arrears of land revenue under the provisions of the Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for. In the circumstances, the contention that the licence fee does not become due and the non-payment of the same ends only in forfeiture of the privileges cannot be accepted.

9. These revisions, therefore, fail and are dismissed with costs. Advocate's fee Rs. 100 in each.