(1969) 11 MAD CK 0033

In the Madras High Court

Case No : Writ Appeal No. 123 of 1966

M. Haji Mohammed Ismail Sahib and Co., Tanners, Pernambut, North Arcot District — APPELLANT

Vs

The Deputy Commercial Tax Officer, Gudiyatham, North Arcot District — RESPONDENT

Date of Decision : 19-11-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 38

Citation : AIR 1970 Mad 422 : (1970) 25 STC 328

Hon'ble Judges : K. Veeraswami, C.J;Somasundaram, J;Natesan, J

Bench : Full Bench

Advocate : M.R.M. Abdul Karim, for the Appellant; A.G. and Asst. Govt. Pleader and J. Jayaraman, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, C.J.—Actually the reference to the Full Bench was on the question of jurisdiction of this Court u/s 38 of the Madras General

Sales Tax Act, 1959, to go into the vires of a provision in the Act or the Rules. But it seems to us that there can be no controversy on the question

in view of K.S. Venkataraman and Co. Vs. State of Madras, . Kailasam, J., in dismissing the writ petition out of which this appeal arises was of

the view that the ratio of K.S. Venkataraman and Co. Vs. State of Madras, was in the context of the advisory juris diction of this Court u/s 66 of

the Income Tax Act and that since the revisional jurisdiction under the Sales Tax Act is not of that character, the principle of K.S. Venkataraman

and Co. Vs. State of Madras, would not apply. But we find that K.S. Venkataraman and Co. Vs. State of Madras, itself related to the revisional power of the High Court under the Madras General Sales Tax Act, 1939. That decision, therefore, directly applies to the revisional jurisdiction of

the High Court under the Act in exercise of which a question of vires of any provision in the Act cannot be dealt with in this Court at all.

2. But that is not conclusive In favour of the appellant. Kailasam J., dismissed the petition on another ground, namely, that the appellant failed to

disclose certain material facts. The matter had a history which is better stated. The assessment related to the year 1951-52 and the assessee had

taken out a licence as a dealer of hides and skins only for the period from January 7 to March 31, 1952. His turnover consisted of sales of tanned

hides and skins part of which had been made out of his local purchases of untanned hides and skins and the rest out of such hides and skins

purchased from outside the State. Since there was no means of separating the two types of turnover, the entirety was brought to charge under Rule

16(4) of the Turnover Rules as they stood then. The assessment order was made on March 28, 1953. The appellant sought to quash it by means

of a writ petition which was, however, dismissed in January, 1956. Apparently in view of the law as declared by courts at that time the Deputy

Commercial Tax Officer revised the assessment. This order, in view of the further clarification of the law, was revised by the Deputy Commissioner

in exercise of his suo motu powers in May 1961. The order of the Deputy Commissioner was under attack in two writ petitions, one for

prohibition and the other for certiorari. But they were dismissed. Never the less the assessee appealed against the Deputy Commissioner''s order

to the Tribunal which eventually restored the original order of the Deputy Commercial Tax Officer. A tax revision case directed against the

Tribunal''s order was dismissed. Pending the tax revision case stay was applied for, which was granted subject to the condition of payment of

arrears of tax by certain installments. The assessee defaulted in payment with the result the Revenue applied the provisions of the Revenue

Recovery Act for collection of the arrears. The petition out of which the writ appeal arises was for restraining the Revenue from proceeding further.

3. The petition was based on Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, . That case was decided by the Supreme

Court on November 22, 1962, and was certainly available for citation before this court when the tax case was disposed of. But it does not appear that that was done. Kailasam, J., dismissed the writ petition on two grounds. One of them was that the assessee suppressed the fact of conditional

stay having been granted by this Court pending disposal of the tax case and the assessee not complying with the conditions leading to the Revenue

taking proceedings under the Revenue Recovery Act. The other ground was that the appellant could as well have taken the point based on Article

304 in the tax case itself. This was upon the learned Judge''s view that K.S. Venkataraman and Co. Vs. State of Madras, was not a bar to do so.

This point we have already disposed of at the outset.

4. We are In agreement with Kailasam J., that the appellant had not come with clean hands in the petition out of which this appeal arises. He had

moved this Court from time to time and eventually come up here in tax case and obtained stay subject to conditions. He was unable to comply with

the conditions which naturally led to Revenue recovery proceedings. That, we think, in the circumstances, was a material fact in dealing with the

petition for prohibition, the disposal of which would certainly depend upon the court''s opinion whether the discretion should be exercised in the

circumstances in favour of the assessee or not. Even apart from that, we think that the dismissal of the writ petition by Kailasam, J., should be

sustained on another ground. As we have already indicated, when the Tax case was disposed of by this Court, Firm A. T. B. Mahtab Majid &

Co. v. State of Madras, was available to the assessee. It is no doubt true that that case actually dealt with Rule 16(2) as amended in 1955. Even

so. In substance and in essence Rule 16(2) as amended in 1955 was substantially the same as its predecessor and that being the case, the principle

of Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, could well have been invoked for application which would not

necessarily oblige this court to go into the question of vires in the tax case. On the face of Firm A.T.B. Mehtab Majid and Co. Vs. State of

Madras and Another, this Court in the tax case could well have given relief the appellant wanted for the licence period if the point had been taken

on the basis of that decision. This had not been done by the assessee. In our view, this is again a ground why the appellant is not entitled to the

exercise of the discretion of this Court under Article 226 of the Constitution in the writ petition.

5. The writ appeal is therefore dismissed with costs, counsel''s fee Rs. 200/- (Rupees two hundred only),

