
(1961) 12 MAD CK 0004
In the Madras High Court
Case No : Tax Case No. 211 of 1960

M.A. Abbas and Co., Madras

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 22-12-1961

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 8(1), 8(2)

Citation : AIR 1962 Mad 457 : (1962) 13 STC 433

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

Bench : Division Bench

Judgement

Srinivasan, J.

(1) The assessee is a dealer in hides and skins and the assessment is in respect of the assessment year 1957-58 under the Central Sales Tax Act:

The department brought to tax a turnover of Rs. 4,36,526 at one per cent under Sec. 8(1) of the Act and a turnover of Rs. 1,15,928 at two per

cent under Sec. 8(2) of the Act. The petitioners objected to the levy under the Central Sales Tax Act contending that the relevant provisions of that

Act had not been brought into force by a proper and valid notification and that the levy of tax at two per cent under S. 8(2) of the Act is illegal

being discriminatory. These contentions failed before the Sales tax Appellate Tribunal and the same contentions are now pressed before us.

(2) Originally the petitioners appear to have claimed that they were only agents in putting through the sale transactions, and, that, therefore, no

inter-State sales were involved. This contention was examined and found to be not established and that contention has now been abandoned.

(3) We have in T. C. Nos. 171 to 173 of 1960 separately dealt with the question of the validity of the, notification bringing Sec. 6 of the Act into

force and similar contentions advanced in these cases have been repelled by us. Following that decision, we hold that the attack upon the validity of the notification must fail.

(4) Under Sec. 8(1) of the Act, as it stood during the year of assessment, inter-State sales to, a registered dealer of the goods of the description

referred to in sub-sec. (3) were made liable to tax at one per cent of the turnover. The proviso to this section stated that if under the sales tax law

of the appropriate State, sales or purchases of goods of that description, were either exempt or were subject to tax at rates lower than one per

cent, the Central Sales tax Act should also follow those rates, that is, it should be "nil" in the one case or should be at the lower rate in the other.

The goods are hides and skins which are undoubtedly goods of the description referred to in sub-sec. 3. Learned counsel claims that these goods

are "exempt" from tax under local sales tax law and that, therefore, the rate of Central Sale-tax on inter-State sales should be at the "nil" rate. It is

true that the sale of hides and skins is subject to tax at a single point under the local sales tax law. It is not the same thing as saying that the sale or

purchase of such goods is exempt from tax under that law. The expression used in the proviso to S. 8(1) is "..... if under the sales tax law of the

appropriate State, the sale or purchase of any goods by a dealer is exempt from tax generally and not in specified cases or in specified

circumstances....." To our minds, the correct interpretation of this expression is that the goods should be totally exempt from tax be-fore

similar exemption from the levy of Central Sales-tax can become available; but where the exemption from taxation is conferred on conditions leach

as that the turnover of a dealer under the local sales tax law is below the minimum prescribed or that the tax will attach to a transaction only in

certain circumstances, there is no exemption from tax "generally". This provision cannot apply to the present case.

(5) It is next argued, with particular reference to the part of the turnover made taxable under S. 8(2) of the Act, that since the incidence of tax in a

case falling under Sec. 8(2) shall be calculated at the same rate and "in the same manner as would have been done if the sale had in fact taken

place inside the appropriate State", there can be no incidence of tax for the reason that the petitioners in respect of the present transactions must be

regarded, as a second dealer, the transactions in hides and skins being taxable under the local sales tax law only at a single point. Here again,

learned counsel in putting forward this argument reads only one part of the section. While no doubt the earlier part of Sec. 8(2) specifies that the

calculation of the Central Sales tax shall be at the same rates and in the same manner as if the sale had taken place inside the appropriate State, the

further part of the section lays down that the dealer shall be liable "notwithstanding that he, in fact may not be so liable under that law"; that is to

say, for the purpose of attaching the liability to Central Sales tax, the fact that in respect of that transaction he may not be liable to tax under the

local sales tax law is of no consequence. This contention is also without any substance and has to be rejected.

(6) On the argument of discrimination, *A.R. Krishna Iyer and Another Vs. The State of Madras*, has been referred to. That was a case where the

Madras General Sales tax Act provided that the turnover of articles of food and drink sold in hotels, boarding houses and restaurants in excess of

Rs. 25,000 be taxed at 4½ Pies in the rupee, while similar dealers in such articles but not sold in hotels, boarding house and restaurants were

taxed only at three pies; and further, even dealers in such articles sold in hotels, boarding houses and restaurants with a turnover of less than Rs.

25,000 were taxed only at three pies. This court held that the classification was not based upon any reasonable or intelligible criteria having just

and reasonable relation to the object of the Act and accordingly held the provision to be void and air-enforceable. *Ram Krishna Dalmia Vs. Shri*

Justice S.R. Tendolkar and Others, has also been cited. We are unable to see how the present Act, in so far as it makes certain transactions liable

under S. 8(1) and certain others under S. 8(2) of the Act, can come under the attack of a discriminatory levy. The scheme of the Act is clearly to

tax inter-State sales. Sale of declared goods and goods other than declared goods are dealt with differently. There is a further distinction between

goods sold to a registered dealer for the purpose of re-sale in the case of declared goods and other goods sold to registered dealers for re-sale or

for use in manufacture, etc. This differentiation in the use of declared and other than declared goods in so far as any sales or purchases of such

goods take place in the course of inter-State trade or commerce are dealt with differently and taxed differently. The very purpose of the Act being

to treat declared and other than declared goods forming the subject matter of inter-State sales differently, different modes of taxation of such sales

are provided for by Ss. 8(1) and (2) of the Act. These provisions do accordingly carry out the policy of the Act and they cannot as far as we can

see be attacked on the basis that the classification has no just relation to the purpose of the Act. This contention must fail.

(7) The petition is accordingly dismissed with costs. Counsel's fee Rs. 100.

(8) Petition dismissed.