

(1965) 10 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No's. 2465 to 2468, 2550 to 2554 and 2604 to 2606 of 1965

M.A. Khader and Co. and Others

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 13-10-1965

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 15, 6, 7, 8
Constitution of India, 1950 — Article 226, 286

Citation : (1967) ILR (Mad) 709 : (1966) 17 STC 396

Hon'ble Judges : Veeraswami, J; Kailasam, J

Bench : Division Bench

Advocate : M.R.M. Abdul Karim, for the Appellant; Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Veeraswami, J.—There are three batches of petitions before us each filed by a different assessee, which have been posted together because

the petitioners claim that in view of the interpretation placed by the Supreme Court on Section 9(2) of the Central Sales Tax Act, 1956, in State of

Mysore v. Lakshminarasimhiah Setty and Sons [1965] 16 S.T.C. 231, they are entitled to a refund of the tax collected from them by a mistake of

law. They ask for a rule directing the State to make a refund of the tax levied under the provisions of that Act. In the first batch which relates to the

assessment years 1958-59 to 1961-62, the assessee, a registered dealer, was charged to sales tax on inter-State sales, which he effected, of

tanned hides and skins. His course of dealing was to purchase tanned hides and skins from local dealers and sell the same on consignment basis by

lorry or train to dealers outside the State. The Supreme Court delivered

judgment in *State of Mysore v. Lakshminarasimhiah Setty and Sons*¹, on 10th November, 1964. The first batch of petitions was filed in this Court on 21st June, 1965, on the ground that in that case, the Supreme Court held that u/s 9 of the Central Sales Tax Act, the provisions of the State Act with regard to single point taxation and other exemptions will equally apply to Central sales tax assessments as well and where the local Act provides that assessments shall be made only on the first seller of particular goods, no tax shall be levied under the Central Sales Tax Act on the last seller of the said goods. The petitioners claim that they came to know of the mistake of law only after the judgment of the Supreme Court and that in spite of demand, the respondents have failed to refund the tax. In the second and third batches the petitioners are dealers in matches. The second batch covers the assessment years 1958-59 to 1962-63 and the third 1961-62 to 1963-64. Their inter-State sales were charged to Central sales tax on a turnover which included excise duty. There is a provision in the Madras Rules for deduction of such duty from the taxable turnover for purposes of the Madras Act. The petitioners in these two batches say that having regard to the Supreme Court judgment, although there is no specific provision in the rules framed under the Central Act, they are entitled to the benefit of exclusion of excise duty from chargeable turnover under the State Rules.

2. It may be seen, therefore, that the entire submission for the petitioners is rested on *State of Mysore v. Lakshminarasimhiah Setty and Sons*

[1965] 16 S.T.C. 231. In *Mariappa Nadar v. State of Madras* [1962] 13 S.T.C. 371, this Court was of the view that the effect of Section 9(3) in

the Central Act was merely to attract the procedure for assessment, levy and collection of tax prescribed in the State Act and Rules and not the

substantive provisions relating to chargeability. *State of Mysore v. Ldkshminarasimhiah Setty and Sons* [1965] 16 S.T.C. 231 was an appeal by

special leave from a judgment of the Mysore High Court. The assessee there was a dealer in powerloom and handloom textiles, both within and

without the Mysore State, and in the course of inter-State trade, he was assessed under the Central Sales Tax Act for the year 1957-58 as the Act

stood before its amendment in 1958. The Revenue on further stages upheld the charge but the High Court in revision accepted the assessee's

contention that the turnover consisting of sales of textiles manufactured by means of powerlooms in the course of inter-State trade was liable to be

taxed at the same rate and exactly in the same manner as they would have been taxed if they had been intra-State transactions. Section 5(3)(a) of

the Mysore Sales Tax Act, 1957, provides for levy of tax on sale of any of the goods mentioned in column (2) of the Second Schedule thereto by

the first or the earliest of successive dealers in the State. The rate for such sale is specified in the corresponding entry of column (3) of the

Schedule. On a construction of Section 9(1) and (2), the Supreme Court held at page 239 :

When Section 9(1) says that under the Central Act tax shall be levied in the same manner as the tax on the sale or purchase of goods under the

general sales tax law of the State is assessed, paid and collected, it is reasonable to hold that the expression "levied " in Section 9(1) of the Central

Act refers to the expression "levied" in Section 5(3)(a) of the State Act. There is no reason why the Central Act made a departure in the manner of

levy of tax on the specified goods which are taxed only at a single point under the State Act; if any such radical departure was intended, the

Central Act would have expressly stated so. The Central Act was passed to levy and collect sales tax on inter-State sales to avoid confusion and

conflict of jurisdictions ; the tax is also collected only for the benefit of the States. Therefore, the construction we accept avoids the anomaly of the

State collecting tax on powerloom textiles only at a single point and the Centre, through the agency of the State authorities, collecting the said tax

for and on behalf of the State at multi-points.

3. From the reasoning that underlies the construction what emerges is that the Supreme Court considered that when the policy of the State

Legislature is to tax particular goods only at a single point in a succession of sales, it cannot be the intention of the Central Act to depart from that

policy because the Central Act came to be enacted in view of certain historical reasons and difficulties involved in the construction of Article 286 of

the Constitution and in placing the locus of inter-State sales for purposes of taxation.

4. Section 6 of the Central Act is the charging section. It says that subject to the other provisions of the Act the sales effected by a dealer in the

course of inter-State trade or commerce during any year and from a notified date shall be chargeable to tax. Section 7 deals with registration of

dealers and Section 8 prescribes rates of taxes on sales in the course of inter-State trade or commerce. Sub-section (1) of Section 8 fixes the rate

at one per cent, of the turnover. As the section stood prior to the Amending Act 31 of 1958, Sub-section (1) had a proviso the effect of which is

that if a sale or purchase of any goods by a dealer is generally exempt under the State law and not in specified cases, or in specified circumstances

or is chargeable to tax at a rate lower than the rate specified in Sub-section (1), the tax payable under the Central Act shall be on the basis of a

corresponding advantage. Sub-section (2) related to rates of tax on sales of goods not covered by Sub-section (1). The rates for the sales are to

be calculated at the same rates and in the same manner as would have been done if the sales had in fact taken place inside the appropriate State. In

other words, for purposes of rates the inter-State sales shall be deemed to be intra-State sales and the tax levied on that basis. Section 9 is the one

which relates to levy and collection of tax. The section has been recast in 1958. But as it stood before, Sub-section (1) stated that the tax payable

by any dealer under the Act should be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-

section (2). Sub-section (2) was as follows :-

The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate

State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax

payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is

assessed, paid and collected ; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the

State ; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding

of offences, shall apply accordingly.

5. There were two views on the scope of the expression ""in the same manner"" in Section 8(2), namely, it meant only calculation of the rates and the

other, that it included also the manner of levy of tax. To put it differently,

according to one view only the rules relating to the process of assessment that were attracted by the expression and according to the other view, not merely that, but also the substantive charging provisions including provisions as to exemptions and deductions. But the Supreme Court construing the sections that we just referred to held :

But Section 9(1) dispels the ambiguity for it says that the tax payable by any dealer under the Central Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-section (2); and Sub-section (2) of Section 9 empowers the appropriate State authorities to assess, collect and enforce payment of any tax payable by any dealer under the Central Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected. The expression "levy" means "impose". u/s 5(3)(a) of the Mysore Sales Tax Act, 1957, hereinafter called the State Act, tax shall be levied in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule by the first or the earliest of successive dealers in the State, who is liable to tax under that section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule on the turnover of sales of such dealer in each year relating to such goods.

6. On that view the Supreme Court proceeded to lay down that ""levied"" in Section 9(1) meant ""levied"" as in Section 8(3)(a) of the State Act.

7. It is contended before us for the assesseees that the effect of the decision of the Supreme Court is to assimilate and apply the substantive charging provisions of the State Act to assessment, levy and collection of tax under the Central Act. Where, therefore, according to the argument, the State Act prescribes a point of charge different from the stage of inter-State sale which would be the last sale in the State of the seller and tax has been actually paid at the former point, there would be no tax liability at any subsequent stage under the Central Act. We are of the view that while that may be the effect of the decision, it may, however, have no application to the facts before us and the relative provisions of law which govern them.

It may be remembered that the assessment with which the Supreme Court was concerned related to 1957-58 and the Central Act as it stood prior

to amendments made in 1958 particularly to Sections 8 and 9 as also Section 15.

Section 15 in a certain form existed even originally in the Act, but it was not brought into force. That was the case even when the section was amended in 1957. In 1958 it was again amended and brought into force with effect from 1st October, 1958. This section, as it originally stood, provided for certain restrictions and conditions in regard to tax on sale or purchase of declared goods. It merely said that notwithstanding anything contained in the sales tax law of any State, the tax payable by any dealer in respect of any sales or purchases of declared goods made by him inside the State, shall not exceed two per cent, of the sale price thereof and such tax shall not be levied at more than one stage in a State. But as amended, the section so far as is material for present purposes, reads :

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-

(a) ...

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

8. The effect of this provision, as it seems to us, is that where the same declared goods have been taxed under the State law as inside sales and have also been subjected to tax on their inter-State sales, the Central tax should prevail and the State tax levied should be refunded to the person entitled to it as provided by or under the State law. Obviously that meant a considerable change from Section 15 as it stood originally. There was no indication in the old section that there could be two taxes levied one under the State law and the other under the Central Act and that in such a case the former should be refunded and the latter should prevail. It is in this context, as we feel, the decision in *State of Mysore v.*

Lakshminarasimhiah Setty and Sons [1965] 16 S.T.C. 231 should be understood. Section 15, as it now stands, clearly visualises that where sales

of declared goods are to be taxed only at a single point under the legislative policy of the State, the levy at the stage of inter-State sales should

prevail and the levy at the earlier stage should be refunded. Section 15 is a

restriction on the scope of the State law to that effect. The levy under the State law is made by Section 15 subject to the restriction and condition of refund in a particular contingency, namely, the same goods being also the subject-matter of inter-State sales charged to tax.

9. Under the Madras General Sales Tax Act, 1959, Section 3 is the charging section. Sub-section (1) levies tax on the turnover exceeding a

certain limit and the levy applies to every sale. Sub-section (2), however, directs that sales of goods mentioned in the First Schedule shall be taxed

only at the rate and at the point specified in that Schedule. Section 4 further provides that notwithstanding anything contained in Section 3, the tax

in respect of declared goods shall be payable only at the rate and only at the point specified against each of the goods in the Second Schedule. The

proviso to this section as it stood prior to Madras Act 6 of 1963 reads :

Provided that where a tax has been levied under this section in respect of the sale or purchase of declared goods and such goods are sold in the

course of inter-State trade or commerce the tax so levied shall be refunded to such person in such manner and subject to such conditions as may

be prescribed.

10. The proviso was omitted by Madras Act 6 of 1963 and was re-enacted in the form of Section 4-A(1) which reads in an identical way. Section

6 makes it clear that the tax levied under the State Act is to be in addition to the tax under the Central Act. The scheme of these sections in the

present context is this. So far as the goods mentioned in Schedule 1 are concerned, their sales are liable to levy both under the State Act as well as

the Central Act. But in the case of declared goods mentioned in Schedule 2, though levies may be made under both the Acts, the levy under the

State Act is liable to be refunded.

11. Having regard to this scheme, therefore, the charging provisions in the State Act read with the other provisions we have referred to themselves

make it clear that in the case of declared goods the Central charge will prevail and the State tax should be refunded. This result is inherent in the

provisions of the State Act itself. In this respect, the Mysore Sales Tax Act as it stood prior to 1958 was entirely different. That Act as it was

before the Supreme Court in *State of Mysore v. Lakshminarasimhiah Setty and Sons*¹ as far as we are able to see, did not make provisions like

the proviso to Section 4 and Section 6. We are of the view, therefore, that taking that, ""levied"" in Section 9(1) and (2) of the Central Act is related

to the levy under the State Act, the levy under the State Act, in the light of the provisions we have read is subject to the limitation that it is liable to

be refunded in case there is a levy of Central tax on inter-State sales of the same goods. The result is, that applying the interpretation which found

favour with the Supreme Court, we hold that, having regard to the special provisions under the Madras General Sales Tax Act, 1959, and Section

15 as it is in force today in the Central Act, the charge under the Central Sales Tax Act is valid and the tax paid pursuant to it is not liable to be

refunded. Learned counsel for the assessee argues that there cannot be two different points of levies under the Central Act and the State Act,

where the scheme of taxation in the State is a single point one. But the answer is to be found in the provisions of the State Act and Section 15 of

the Central Act, we referred to. The single point scheme of taxation cannot be taken in the abstract but has to be understood in the light of the

statutory provisions both in the Central Act as well as the State Act.

12. The second and third batches relate to the deductibility of excise duty in the computation of chargeable turnover. There can be no doubt that

under the State Act and Rules provision has been made for such deduction. Rule 6(f) of the Madras General Sales Tax Rules, 1959, directs that in

determining the taxable turnover excise duty, if any paid, by the dealer to the Central Government in respect of goods sold by him shall be

deducted. The question is whether the benefit of this rule enures to the second and third batches of petitioners when they are assessed under the

Central Act on their inter-State sales. It is contended that if by ""levied"" in Section 9(2) of the Central Act what is meant is ""levied"" as under the

State Act, that would include also the State Rules enabling deductions in the computation of turnover. We are unable to accept this contention and

our reasons are these.

13. ""Turnover"" is defined by Clause (j) of Section 2 as the aggregate of the sale prices in respect of sales of any goods of inter-State trade or

commerce and as determined in the prescribed manner. Section 13 confers rule-making power on the Central as well as the State Governments on

specified matters. Power to make rules relating to deductions to be made in the

process of determination of turnover has been conferred on the Central Government by Clause (1) (b) of that section. In exercise of this power, the Central Government has framed the Central Sales Tax (Registration and Turnover) Rules, 1957. This rule, both before and after its amendment in 1962, provides for certain deductions which do not include excise duty. Section 6 which is the charging section in the Central Act, makes it clear that the charge will be on the turnover and that means turnover as defined in that Act. No rule framed under the Central Act provides for deduction of excise duty. We are of the view, therefore, that it is not possible to uphold the contention for the assesseees that in determining the aggregate turnover of inter-State sales, they are entitled to deduction of excise duty.

14. For the respondents the learned Special Government Pleader contends that in any case the assesseees having actually collected tax, they are liable irrespective of their liability to tax, to make over to the State Government the amounts so collected. He refers to Section 9-A and also to Rule 4-A(ii) of the Central Sales Tax (Madras) Rules, 1957. On the view we have expressed on the main contention for the assesseees, it is not necessary for us to deal with this ground of the learned Special Government Pleader. He next argues that in the first batch of petitions it could not be said that the petitioners were under any mistake of law as they had been all along contending that they were not liable to tax under the Central Act. The further contention for the respondents is that even assuming that there was such a mistake of law, this Court in exercising its discretion under Article 226 of the Constitution should take note of the law of limitation. Here again, it is unnecessary for us to express any opinion on these contentions as the assesseees fail in any case.

15. The petitions are dismissed with costs. Counsel's fee Rs. 250 for each batch.