
(1959) 12 MAD CK 0028

In the Madras High Court

Case No : Tax Revision Case No's. 21 to 23 of 1957

Madura Mills Co. Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 14-12-1959

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1967) 11 STC 622

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Aiyar, instructed by King and Partridge, for the Appellant; The Government Pleader, for the Respondent

Judgement

Rajagopalan, J.—The petitioner, a spinning mill with its headquarters at Madurai, assessed to sales tax on its purchase turnover in cotton, applied u/s 12-B of the Sales Tax Act to set aside the order of the Appellate Tribunal which confirmed the assessment on a turnover of (1) Rs. 3,54,152-9-9 in the assessment year 1949-50 (the transactions were between 26th January, 1950 and 31st March, 1950, T.R.C. No. 21 of 1957); (2) Rs. 4,51,24,252-7-3 in the assessment year 1952-53 (T.R.C. No. 22 of 1957); and (3) Rs. 6,70,57,555-5-3 in the assessment year 1951-52 (T.R.C. No. 23 of 1957). The main ground on which the petitioner-assessee claimed that these items of its turnover were not assessable to sales tax is the same in all the three assessment years and we find it convenient to dispose of all the three petitions together, even as the Tribunal disposed of the appeals, by a single judgment.

2. The petitioner-assessee was a dealer and in the relevant assessment years the assessee obtained a licence in conformity with Rule 5 of the Sales Tax Rules. The Tribunal found that the turnover, the taxability of which was in issue was that of purchase of cotton from persons or firms resident outside the State of Madras, which the petitioner effected through its buying agent, Messrs Comorin Investment and Trading Co., Ltd. The Tribunal recorded :

It is also clear...that Messrs Comorin Investment and Trading Co., was used as an agent by the appellants for effecting the purchases and they were paid a small commission by the appellants for the purpose. There is evidence to show that Messrs Comorin Investment and Trading Co., Ltd., clearly informed the foreign sellers about their capacity as the agents of the appellants for the purpose of settling the transactions. The property in the goods passed directly from the seller to the appellants and the price was paid by the appellants to the sellers.

3. The Tribunal further found :

There is no doubt that the cotton was despatched by the seller to the buyer directly using either the railway or the steamer for conveyance.

4. The Tribunal sustained the claim of the department, that these transactions came within the scope of the Explanation to Article 286(1)(a) of the Constitution as the cotton was delivered to the assessee as purchaser for consumption within the State of Madras and that, as the transactions had to be assessed to sales tax at the point of purchase by spinner, the assessee was liable to be taxed on the turnover. It should be convenient to refer to the transactions that fell within the scope of the Explanation to Article 286(1)(a) of the Constitution as "Explanation sales", a phrase coined for convenience of use even in the earlier decisions of this and other courts.

5. The assessee did not challenge the stand taken by the department all through, that these were all explanation sales, that is, sales in the course of inter-State trade, which however came within the scope of the Explanation to Article 286(1) (a) of the Constitution. That, in the case of the explanation sales, where the delivery is within the State of Madras, that State has a right to tax the transactions to sales tax cannot be challenged. Section 22 of the Sales Tax Act provided the statutory basis for the levy of sales tax on such transactions, read with Section 3 of the Act and the other relevant statutory provisions and rules. That was what was laid down in *Mettur Industries Ltd. v. State of Madras* [1956] 7 S.T.C. 691 and that principle was approved of by the Supreme Court in *Sundararama Iyer and Co. v. State of Andhra Pradesh* [1958] 9 S.T.C. 298. Section 22 of the Act came into play when, after the decision of the Supremo Court in *Bengal Immunity Co. Ltd. v. State of Bihar* [1955] 6 S.T.C. 446, Parliament lifted the ban on the rights of the States to tax inter-State sales during the specified period by enacting the Sales Tax Laws Validation Act 7 of 1956.

6. Transactions in cotton were, however, subjected to tax only at a single point to be prescribed by the rules. Section 5(ii) of the Act made that clear. Rule 4-A (iv) prescribed the points for levy of sales tax on transactions in cotton. The contentions of the learned counsel for the assessee-petitioner in the main were : (1) there was no valid and enforceable prescription of a single point for the levy of sales tax on transactions in cotton and (2) even if Rule 4-A (iv) of the Turnover Rules amounted to a valid prescription of a single point required by

Section 5 (ii) of the Act, purchases of cotton by a licensed dealer from an unlicensed dealer did not come within the purview of that rule. It was common ground that the petitioner was a licensed dealer and that the purchases made by the petitioner were from unlicensed dealers. The dealers who sold the cotton were outside the State of Madras and they were obviously in the position of unlicensed dealers, that is, dealers not licensed under the Madras General Sales Tax Act.

7. We shall deal first with the second of these contentions based on the learned counsel's interpretation of the relevant rules.

8. Section 3 of the Act, which is the general charging provision is itself subject, in the case of cotton, to Section 5(ii) of the Act, which provides for a single point levy on transactions in cotton. As pointed out at page 805 in *Noor Mohammed and Co. v. State of Madras* [1956] 7 S.T.C. 792, the exemption granted by Section 5(ii) of the Act is to the commodity, that is, to the cotton and is of an impersonal character, which is not dependent on any restrictions to which the dealer in cotton may be subjected by the rules, for example, Rule 5 of the Sales Tax Rules. Section 5 (ii) required :

Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees...the sale of cotton (including kapas)...shall be liable to tax u/s 3, Sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed and only at the rate of one half of one per cent, of the turnover at that point.

9. The prescription of a single point in the case of cotton was by Rule 4-A(iv) of the Turnover rules. Rule 4(2) prescribed :

In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by the dealer...(bb)...cotton (including kapas) bought by spinning mill or by dealer who exports outside the State.

10. This is a rule which complied with the requirements of Section 3(5) of the Act to prescribe whether it was the seller or the purchaser in a given transaction that should be taxed. Rule 4(2) (bb) was not by itself the rule prescribing a single point for the levy required by Section 5(ii) of the Act. If, for example, Section 5(ii) of the Act had not directed that transactions in cotton should be subjected to sales tax only at a single point the position would have been this :

Under Rule 4(2)(bb) it would be the purchaser that would be liable to pay the tax if the purchase was (1) by a spinning mill, or (2) by a dealer who exported the cotton outside the State. In all other cases the transactions would have fallen under the scope of Rule 4(1), under which it is the seller that would be liable to pay the tax and on the turnover of the sales. Under Rule 4 of the Turnover Rules by itself no question could have arisen whether the seller or purchaser was licensed or not. We have explained this position at this stage only to emphasise

that Rule 4 of the Turnover Rules carried out the mandate in Section 3(5) of the Act and was not concerned with prescribing the single point required by Section 5(ii) of the Act.

11. We have already referred to Rule 5 of the Sales Tax Rules, which it may not be necessary to set out in full. It should be taken as well settled now that the benefit of the single point levy conferred in the case of cotton by Section 5(ii) of the Act cannot be confined to licensed dealers alone. In *Noor Mohammed and Co. v. State of Madras* [1956] 7 S.T.C. 792, it was laid down (at page 806):

...it would be clear that the frame of Rule 5 of the General Sales Tax Rules which restricts the benefit of the single point taxation to those who take out licences, is contrary to the provisions of Section 5(vi) which do not contemplate such a condition being imposed and would appear to forbid the imposition of such a restrictive condition.

12. It is against this background that we have to decide the scope of Rule 4-A(iv) of the Turnover Rules. Rule 4 -A(iv) directs :

Subject to the provisions of Section 5-

* * *

(iv) in the case of cotton (including kapas) the tax u/s 3(1) shall be levied in accordance with the following provisions:-

(a) in the case of all cotton (including kapas) sold to a spinning mill in the State, the tax shall be levied from the spinning mill on the amount for which it is bought by it;

(b) in the case of all cotton (including kapas) which is exported outside the State, the tax shall be levied from the dealer who buys it in the State and is the last dealer not exempt from taxation u/s 3(3), on the amount for which the cotton is bought by him;

(c) all other sales of cotton (including kapas) by licensed dealers in cotton shall be exempted from taxation :

Provided that the burden of proving that a transaction is not liable to taxation under this clause shall be on the dealer.

13. It should be obvious that there is no express reference either in Clause (a) or in Clause (b) to the dealer who sells the cotton. Nor is there any express requirement in either of these clauses that either the dealer who sells or the dealer who purchases the cotton should be a licensed dealer. The contention of Mr. Venkatasubramania Aiyar, learned counsel for the assessee, was as follows : All the three Clauses (a), (b) and (c) of Rule 4-A (iv) should be considered together and that too against the background of Rule 5 of the Sales Tax Rules to gather what the rule-making authority intended when it promulgated Rule 4 -A (iv). Despite any express reference to licensed dealers, what the rule-making

authority intended to prescribe and did prescribe in Clauses (a) and (b) was a single point in the series of transactions between licensed dealers, both the seller and the buyer being licensed dealers. The rule-making authority was obviously of the view that the benefit of the single point levy granted by Section 5(ii) of the Act should be confined only to licensed dealers, with the result that in the case of unlicensed dealers the rule-making authority was of the view, that there was no obligation to prescribe a single point. None was prescribed. Except in the cases referred to in Rule 4(2) (bb) of the Turnover Rules, transactions by unlicensed dealers would fall within the scope of Rule 4(1). They would be outside the scope of Rule 4-A(iv). The result would be that, in the case of unlicensed dealers they would be liable to tax on every transaction and except in the cases for which provision was made by Rule 4(2) (bb), the tax would fall on the seller under Rule 4(1). It is the correctness of the contention that Clauses (a) and (b) of Rule 4-A(iv) should be confined to transactions between licensed dealers that we have now to examine.

14. Clause (c) of Rule 4-A(iv) it should be remembered runs : "all other sales of cotton (including kapas) by licensed dealers in cotton shall be exempted from taxation."

15. The learned counsel for the assessee pointed out that the use of the expression "other" could only have relation to the class of sales specified earlier in Clauses (a) and (b) of Rule 4-A(iv). The further contention was that, when the rule directed that all other sales of cotton should be exempted, the further qualification that these sales should be by licensed dealers, obviously implied that Clauses (a) and (b) also referred only to transactions between licensed dealers. In further support of this interpretation the learned counsel pointed out that Rule 5 of the Sales Tax Rules, as it was promulgated, expressly confined the benefit of the single point levy only to licensed dealers. Plausible as the argument sounds, we are unable to accept it. The intention of the rule-making authority has to be gathered primarily from the words of the rule itself. The real test is what does the rule say and not so much what was it the rule-making authority intended to say. Whatever might have been the intention of the rule-making authority, if that intention was not brought out by the words of the rule, it is the words of the rule that should decide the issue, what was it that was taxable under Clauses (a) and (b) of Rule 4-A(iv).

16. We have already pointed out that there is no express requirement either in Clause (a) or in Clause (b) that the transactions should be between licensed dealers. At one stage the learned counsel for the assessee invited us to consider the position, that ultimately resulted from decisions of this Court on the scope of Rule 16 of the Turnover Rules, which prescribed a single point for transactions in hides and skins. Even independent of Rule 16(5), which was struck down as ultra vires, the position was that there was prescription of a single point only in the series of transactions between licensed dealers. But that was specifically based on the language of Rule 15 as well as Rule 16, which expressly referred to

licensed dealers. But the language of Rule 4-A(iv) is not identical with that of Rules 15 and 16 and we have to construe the scope of Clauses (a) and (b) of Rule 4-A(iv) on the wording of these Sub-clauses and not on the analogy of what applied to hides and skins under Rules 15 and 16 of the Turnover Rules.

17. We have pointed out that the use of the expression "other sales" with the qualification by "licensed dealers" in Clause (c) furnished the basis for the argument addressed to us by the learned counsel for the assessee that Clauses (a) and (b) also of Rule 4-A (iv) could refer only to transactions between licensed dealers. We have to consider the scope of Rule 4-A (iv) with reference to the language employed therein. Rule 4-A (iv) (a) purports to apply to cases of all cotton sold to a spinning mill in the State that could be paraphrased, in the case of all sales of cotton sold to a spinning mill in the State. It was a similar language that was employed in Clause (b) and so we can leave that out of further account. If Clause (a) expressly refers to cases of all sales of cotton, the only requirement being that these sales should be to a spinning mill, we see no scope for importing a further restricting factor, that all those sales should be only those by licensed dealers and to licensed dealers. No doubt one cardinal rule of interpretation of a rule is if there is any ambiguity in a taxing enactment, the ambiguity should be resolved in favour of the taxpayer and not the State. We are however unable to hold that there is any ambiguity about Rule 4-A (iv) as it stands, when it expressly directs that all sales of cotton sold to a spinning mill should be dealt with under that clause. That Clause would apply and prescribes a single point for the levy of tax and it has no reference to the fact of licensing that is, whether the seller or buyer or both are unlicensed may not be relevant in applying Clause (a) of Rule 4-A(iv).

18. No doubt Clause (c) restricts the exemption of transactions to sales by licensed dealers. In the case of cotton sold to a spinning mill and cotton sold to a dealer who exports the cotton outside the State, it should be remembered the seller is not made liable to tax at all, because under Rule 4(2)(bb) it is the purchaser that has to pay the tax and not the seller. Where there was no tax liability at all, it may not be quite accurate to say that there was exemption from tax liability. So the cases of sales to a spinning mill and to an exporter would not be taxable in the hands of a seller, even if Sub-clause (c) had not been enacted. Sub-clause (c) provided for an exemption and confined that exemption to licensed dealers, obviously in conformity with Rule 5 of the Sales Tax Rules. We have already pointed out that the rule-making authority had not the authority to confine the scope of Section 5(ii) of the Act only to licensed dealers under a rule. Whether because of Clause (c) of Rule 4-A (iv) dealers other than licensed dealers would be liable to tax under Rule 4(1) of the Turnover Rules does not arise for determination in this case. But, if it did arise, the position would be that Rule 4 did not concern itself with prescribing a single point required by Section 5 (ii). Only two points were prescribed by Rule 4-A (iv). It is the absence of a valid prescription that would make other transactions non-taxable. The exemption that Clause (c) of Rule 4-A (iv) purported to grant would therefore be really illusory.

But that, in our opinion, is not enough to import the requirement that the transactions referred to in clauses (a) and (b) should be only between licensed dealers and that conclusion we have reached on the express language employed in Rule 4-A(iv). Therefore the fact that the assessee purchased the cotton in question from unlicensed dealers did not take these transactions outside the scope of the taxing provision, Rule 4-A (iv) read with Section 5(ii) and Section 3 of the Act.

19. The next question is, whether Rule 4-A(iv) is valid. The learned counsel for the assessee pointed out that what Section 5(ii) required the rule-making authority to prescribe a single point in a series of sales in relation to a given commodity, cotton. The learned counsel urged that if only two points were prescribed, sale to a spinner and sale to an exporter, the prescription would not be complete. Independent of that was the further argument based upon his earlier set of contentions, that Rule 4-A(iv) was promulgated only with reference to transactions between licensed dealers. Even independent of that, the learned counsel urged that the prescription was not complete and therefore the prescription was not valid. That other transactions might possibly escape taxation is not enough to invalidate either Clause (a) or Clause (b) of Rule 4-A(iv), if they satisfied the requirements of Section 5 (ii) . They did. Other transactions would not be liable to tax because without the prescription of a single point, the tax liability declared by Section 3 and controlled by Section 5(ii) could not come into play. It should be remembered that in the case of hides and skins, even when Rule 16(5) was struck down as ultra vires, the tax liability declared by the other clauses was left un-affected. Similarly the tax liability declared by Clauses (a) and (b) of Rule 4-A(iv), without any reference to the question whether the transactions were between licensed or unlicensed dealers, would be enforceable even though the rule-making authority failed to discharge its statutory obligation to prescribe a single point for other types of transactions in cotton. Rule 4-A(iv) is, in our opinion, intra vires and enforceable.

20. The result is that the turnover in 1951-52 and 1952-53 was assessable under Rule 4-A(iv) and T.R.C. No. 22 of 1957 and T.R.C. No. 23 of 1957 have to be dismissed.

21. Independent of what we have stated above, another question arises in T.R.C. No. 21 of 1957, which relates to the assessment year 1949-50. The transactions were, as we pointed out, between 26th January, 1950 and 31st March, 1950, that is, after the Constitution came into force. The position after the Constitution came into force was that the explanation sales became taxable only u/s 22 of the Act and that taxing provision came into play only after 26th January, 1950. Act 7 of 1956 did not cover this period and that Act could not therefore validate the levy of sales tax. We have pointed out that these were explanation sales, that is, inter-State sales which however fell within the scope of the Explanation to Article 286(1)(a). The President's order which was in operation during this period could validate a levy only if there had been a levy. It did not validate a levy made after

the Constitution came into force. Since, as we have pointed out, the levy in this case was a post-Constitution levy u/s 22 of the Act, the President's Continuance Order did not validate the levy u/s 22. It was outside the scope of Act 7 of 1956. Therefore, even though Section 22 was there, since the other bans imposed by Article 286 of the Constitution were in force during the period, the tax liability u/s 22 was unenforceable. It is on this ground that we have to allow T.R.C. No. 21 of 1957 and direct that the turnover of Rs. 3,54,152-9-9 be excluded from the taxable turnover of the assessee.

22. Since neither party has wholly succeeded in this batch, we direct the parties to bear their respective costs.

23. The learned Government Pleader urged with reference to T.R.C. No. 21 of 1957 that an opportunity should be given to the department to establish, if it could, that the transactions between 26th January, 1950 and 31st March, 1950, came within the scope of the taxing provisions other than Section 22. We see no justification for complying with that request; as we pointed out all along both the department and the assessee proceeded on the basis that these were explanation sales which became taxable only u/s 22 of the Act.