
(1961) 09 MAD CK 0019
In the Madras High Court
Case No : Tax Case No. 162 of 1958

Madura Mills Co., Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 13-09-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 286
Income Tax Act, 1961 — Section 33B

Citation : (1962) ILR (Mad) 489 : (1962) 75 LW 81 : (1963) 1 MLJ 73 : (1962) 13 STC 124

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

Bench : Division Bench

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

Final Decision : Allowed

Judgement

Jagadisan, J.—The Board of Revenue, Madras, in exercise of its powers of revision u/s 12 of the Madras General Sales Tax Act acted suo

molu and revised the assessment made by the Deputy Commercial Tax Officer, Madurai, on 28th November, 1952, in respect of the business

turnover of the Madura Mills Co., Ltd. The mills have preferred this appeal against the order of the Board of Revenue dated 25th August, 1958,

challenging the decision against them on the ground, amongst others, that the Board exceeded its jurisdiction in having exercised the powers of

revision beyond the period of limitation fixed under the Act.

2. The facts necessary for the disposal of this appeal can be shortly stated. The Madura Mills Co., Ltd., are dealers in yarn, purchasing raw

materials like cotton, staple fibre etc., manufacturing them into yarn and selling them. In the assessment year 1950-51 they returned a total turnover

of Rs. 15,27,61,883-8-4 before the Deputy Commercial Tax Officer, Madurai. The officer, after scrutiny of the account books produced by them, held that the net turnover was Rs. 15,44,09,109-3-11. The assessee aggrieved by this order preferred an appeal before the Commercial Tax Officer, Madurai South. They contended before the appellate authority that a sum of Rs. 1,44,294-14-4 was wrongly included by the first assessing authority in the purchase value of cotton purchased by them for production of yarn as that amount only represented commission paid by them to the Comorin Investment Trading Co., Ltd., for the purchase. They further contended that another sum of Rs. 81,546-0-1, which represented sale proceeds realised by them by selling empty drums and other miscellaneous articles, were not realisations in the course of their business as they never dealt with such articles. The Commercial Tax Officer upheld their contention and excluded the sum of Rs. 1,44,294-14-4 from the total turnover on the ground that the amount was commission paid by the assessee for the purchase of cotton, but negated their contention in regard to the sum of Rs. 81,546-0-1. The view of the Commercial Tax Officer was that the sale of the empty drums and miscellaneous articles was part of the business of the assessee. The Deputy Commercial Tax Officer issued a revised assessment. The assessee then preferred a revision petition before the Deputy Commissioner of Commercial Taxes in which the only objection they raised was that they should not have been assessed to tax on amounts collected by them by way of tax amounting to Rs. 6,57,971-4-9. In other words, they contended that the Sales Tax Act did not permit inclusion of the tax amount collected by the assessee in their business turnover. It must be noted that the assessee did not raise any objection against the order of assessment by the Deputy Commercial Tax Officer or the Commercial Tax Officer in regard to any other matter. By order dated 21st August, 1954, the Deputy Commissioner, the revising authority, dismissed the revision petition. He held that the assessee was not entitled to raise the contention at that stage before him for the first time and that even otherwise the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1954, permitted the inclusion of tax in the taxable turnover. The Board of Revenue issued a notice to the assessee on 4th August, 1958, stating that it proposed to revise the assessment of the

Deputy Commercial Tax Officer, Madurai, by including in the net turnover the sum of Rs. 7,74,62,706-1-6 as that amount was wrongly excluded

by the assessing authority. The assessee filed written objections to this proposed revision and also prayed for an opportunity to be heard through

their counsel before the Board passes final orders revising the assessment originally made. In this objection they raised the point that the revision

proceedings started suo motu by the Board were barred by limitation as prescribed u/s 12 of the Madras General Sales Tax Act, and they also

submitted that there was no wrongful exclusion of the sum of Rs. 7,74,62,706-1-6 by the Deputy Commercial Tax Officer in assessing the net

turnover. By order dated 25th August, 1958, the Board overruled both these contentions and fixed the net turnover as Rs. 23,17,15,948-15-2. It

is the correctness of this decision of the Board which is now called in question by the assessee.

3. The appellant contends that the Board of Revenue invoked its revisional jurisdiction after the expiry of the period of limitation prescribed u/s 12

of the Act. Section 12(4)(b) is the relevant provision prescribing the period of limitation and it is in these terms"":

12(4) In relation to an order of assessment passed under this: Act ...(b) the power of the Deputy Commissioner under Clause (1) of Sub-section

(2) and that of the Board of Revenue under Clause (1) of Sub-section (3) shall be exercisable only within a period of four years from the date on

which the order was communicated to the assessee.

4. The order of the Deputy Commercial Tax Officer making a revised assessment in pursuance of the order of the Commercial Tax Officer is

dated 28th November, 1952. If the four year period of limitation is computed taking this date 28th November, 1952, as the starting point, the

Board, quite obviously, acted beyond the time prescribed in com"" mencing the revision proceedings suo motu. The order of the Deputy

Commissioner of Commercial Taxes dismissing the revision petition filed by the assessee is dated 21st August, 1954. If this date can be taken to

be the starting point for limitation prescribed u/s 12(4)(b) the proceedings of the Board are in time. In the opinion of the Board, time has to be

computed from 26th August, 1954, for the following reason:

The orders passed by the Deputy Commercial Tax Officer will be final only when

appeals and revisions under Sections 11 and 12 of the Act are

not preferred. The mills preferred a revision against the Commercial Tax Officer's orders and those orders are the final ones subject to the

provisions of Section 12(3) of the Act. The period of limitation for exercising suo motu powers by the Board has, therefore, to be counted from

26th August, 1954, the date on which the Deputy Commissioner's order was communicated.

5. The plain words of Section 12(4)(b) of the Act indicate that the period of four years from the date on which the assessee was communicated

with the order has reference only to the order which is called in question and which is the subject-matter of revision. It is equally plain that in this

case the subject-matter of the revision proceedings before the Board was only the revised assessment of the Deputy Commercial Tax Officer,

Madurai, dated 28th November, 1952. There should therefore be no difficulty in holding that the Board exercised its powers of revision beyond

the period of limitation fixed under the Act. This is, in short, the argument of Mr. K. V. Venkatasubramania Iyer, learned counsel for the appellant.

But the contention urged by the learned Government Pleader is that, having regard to the scope of the powers of revision conferred by the Act on

the revising authority, the order of the Deputy Commercial Tax Officer dated 28th November, 1952, became merged with the order of the Deputy

Commissioner dated 21st August, 1954, and that therefore the period of limitation can only begin to run from the date on which the order of the

Deputy Commissioner was served upon the assessee.

6. The appellate and the revisional powers are found in Sections 11 and 12 of the Act. The assessee has a right of appeal to object to an

assessment made on him to the prescribed appellate authority. But the department has no right of appeal to challenge the correctness of an order

of assessment which may be prejudicial to the interests of the revenue. In cases in which the department feels aggrieved by an order of assessment,

it may use the instrument of revisional power with which the Commercial Tax Officer, the Deputy Commissioner and the Board of Revenue are

clothed u/s 12 of the Act. Each one of these authorities may call for and examine the record of any order passed or proceeding recorded under the

provisions of the Act by any officer subordinate to it. If after scrutiny of the

records the revising authority is not satisfied with the legality, propriety of the order of the subordinate, or the regularity of the proceeding before the subordinate, it may pass such order with respect thereto, as it thinks fit, after giving due opportunity to the assessee to show cause why an order adverse to him cannot be passed. The exercise of this power of revision can be done by the respective authorities on their own initiation acting suo motu. Upon the assessee also, has been conferred a right of revision before this hierarchy of authorities, namely, the Commercial Tax Officer, the Deputy Commissioner and the Board of Revenue. The Commercial Tax Officer can be moved by way of revision by the assessee in cases in which an appeal does not lie to him. The Deputy Commissioner can exercise revisional power at the instance of the assessee provided no appeal has been preferred by him to the Appellate Tribunal u/s 12-A. The Board of Revenue can also exercise revisional jurisdiction when moved by the assessee, but that can be done only when no appeal has been preferred to the Appellate Tribunal. The scheme of the Act is that the assessee has a right of appeal against an order of assessment to the prescribed appellate authority and a further right of appeal to the Appellate Tribunal from any decision of the Commercial Tax Officer functioning as appellate authority or revising authority and from the decision of the Deputy Commissioner exercising revisional power suo motu u/s 12 of the Act. From any order relating to an assessment passed by the Board of Revenue suo motu the assessee has a right of appeal to this Court u/s 12-C of the Act. The Act does not provide for any right of appeal in favour of the department. The grievance of the department, if any, can be remedied only by the exercise of suo motu powers of revision by any of the hierarchy of authorities mentioned u/s 12 of the Act.

7. It is necessary to focus attention on the exact terms of Section 12 of the Act to ascertain its true purport and scope. Section 12(1) deals with the powers of the Commercial Tax Officer, 12(2) with the powers of the Deputy Commissioner and 12(3) with the powers of the Board of Revenue. Each sub-section contains two clauses, the one permitting exercise of power suo motu and the other enabling the exercise of power on application by the assessee. There are some limitations imposed on the power when it is invoked by the assessee, but the suo motu power is unrestricted and

unqualified, subject of course to the period of limitation fixed u/s 12(4) of the Act. The content of the revisional power is however the same, whether the authority acts suo motu or on invitation by the assessee. In effect, the power of revision extends only to a limited area unlike the power of appeal, namely to correct any illegality or impropriety of the impugned order or the irregularity of the impugned proceeding. The suo motu exercise of power and the exercise of power on application by the assessee are not mutually exclusive in the sense that one bars the other. In the very nature of the scheme of the Act,, the compass of the subject-matter of revision cannot be the same under both categories of revision. The assessee seeking the aid of revision will naturally call in question only points decided against him by the officer subordinate to the revising authority. In such a proceeding the revising authority can either give relief or not to the assessee on the questions raised by him. The fact that the record of any order passed or proceeding is before the revising authority will not clothe the authority with jurisdiction to pass an order placing the assessee in a position more unfavourable than what he occupied at the time when he preferred the revision petition. It may be that the revising authority can in the course of that very proceeding, and during the pendency of that proceeding, exercise his suo motu power of revision and pass any order that may be appropriate or proper, after giving due notice to the assessee. In the same way, in the course of proceedings started suo motu by the revising authority, the assessee cannot ask for relief except on proper application made by him to that authority but can only show cause against the proposal to enhance the assessment. The provisions of the the Act therefore make a clear demarcation regarding the scope and ambit of the revisional powers exercisable suo motu by the authorities and on application by the assessee. The subject-matter of a revision proceeding started suo motu is always the question of enhancement of assessment, while the subject-matter in a revision moved by the assessee is always the question whether he is entitled to any relief by way of reducing the assessment. Even where both sets of revision proceedings are conducted together in a common enquiry or successively, the subject-matter remains quite distinct and separate.

8. The learned Government Pleader relied upon the decision of this Court in *Stale of Madras v. India Coffee Board, Batlagundu* [1960] 11 S.T.C.

1, and contended that an order of assessment under the Sales Tax Act is single and indivisible and the revising authority u/s 12 whether it acts suo motu or at the instance of the assessee can only be deemed to have dealt with the assessment order as such and that there is no warrant to split up and dissect the order into two portions favourable and unfavourable to the assessee. In that case the Deputy Commissioner exercised his powers of revision after the assessee had exhausted his challenge to the order of assessment by preferring an appeal to the Tribunal and by preferring a revision to this Court. The question raised was whether the Deputy Commissioner was competent to exercise the revisional power at a stage when the orders of his subordinate were affirmed by the Appellate Tribunal and by this Court. This Court held that where an assessment has been the subject-matter of a final order of this Court u/s 12-B of the Act, the Deputy Commissioner had no jurisdiction to revise u/s 12. At page 6, Ramachandra Iyer, J., as he then was, observed as follows:

We have already pointed out that an order of assessment should be viewed as single and indivisible. In an appeal filed to the Appellate Tribunal u/s 12-A, although the Tribunal is not entitled to increase the assessment, there is nothing to preclude the Tribunal from considering the propriety of the order appealed against, that of the Commercial Tax Officer, in so far as it was against the State, provided the final order has not the effect of enhancing the tax liability. The appeal would, however, be against the order of assessment as a whole, in which the whole assessable turnover could be considered, though interference could be only in favour of the assessee, e.g., where the Commercial Tax Officer disallows the turnover on a wrong view, but equally wrongly included a turnover, an appeal can only be in regard to the order against the assessee. It would however be open to the Tribunal to retain or alter the assessment without increasing it by taking a correct view of the whole matter and by deleting the latter turnover and including the former in the assessable turnover.

9. It must be noted that the learned Judges dealt with: the powers of the Appellate Tribunal dealing with an appeal by the assessee. The powers of the revising authority u/s 12 are of course not as comprehensive and wide as the appellate powers of the Tribunal and indeed the language of Section 12 defines unmistakeably the extent of the revisional power. The limit of

the revisional jurisdiction is pegged down by the words legality, propriety or regularity. It is true that an argument was advanced before the learned Judges in *State of Madras v. India Coffee Board, Batlagundu* [1960] 11 S.T.C. 1, on behalf of the Government that there could be no question of any merger of the order of the Commercial Tax Officer in its entirety in the judgment either of the Appellate Tribunal or that of the High Court. The decision in the case however was rested not on the ground that the order of the Appellate Tribunal distinctly quashed the order of the Commercial Tax Officer or that the Order of the Commercial Tax Officer became merged with the order of the Appellate Tribunal. At page 7, the learned Judge observed thus :

The Appellate Tribunal held that the order of the Commercial Tax Officer was merged in the order of the Appellate Tribunal. Independent of any theory of merger of the order of the subordinate authority in the order of the appellate authority, we are of the view that the provisions of the Act do not warrant the existence of any power in the Deputy Commissioner to interfere u/s 12 of the Act with an order of the Commercial Tax Officer passed u/s 11, when such an order has itself been superseded by the order of the Appellate Tribunal.

10. We are unable to hold that the decision in *State of Madras v. India Coffee Board, Batlagundu* [1960] 11 S.T.C. 1, has laid down the principle that the order of the last revising authority u/s 12 passed at the instance of an assessee seeking its aid must be deemed to be the only effective and surviving order of assessment superseding and annihilating the orders of assessment by the subordinate officers.

11. The learned Government Pleader submitted that wherever a hierarchy of authorities is constituted and powers of appeal and revision are conferred by statutes from one authority to another, the order of the inferior authority is always submerged in the order of the superior authority, whether that order is one of affirmance or reversal of the order of the inferior authority. If a superior authority reverses or modifies the order of the inferior authority, of course, there "can be only one order and that is the order of the superior authority as ex concessu the order of the inferior authority has ceased to exist. In cases where the superior authority confirms the order of the subordinate authority two views are possible. It can

be said that the very act of confirmation by the superior authority of a particular order is to render the order itself as having been passed by that

authority. With equal force it can be urged, that the affirmation by the superior authority merely kept the original order intact leaving it untouched.

12. In *Collector of Customs v. A. H. A. Rahiman* (1957) 2 M.L.J. 41, this Court had to consider the question whether a writ under Article 226 of

the Constitution can issue to the Collector of Customs, Madras, when his order was affirmed by the Central Board of Revenue at New Delhi. The

Collector of Customs, Madras, was an authority within the territorial limits of the writ jurisdiction of this Court but the Central Board of Revenue,

New Delhi, was outside such jurisdiction. In dealing with: this contention; the learned Judges observed at page 50 :

We agree with the learned Advocate-General's contention that the general rule is that when an order of an inferior tribunal is carried up in appeal

or revision to a superior tribunal and the superior tribunal passes an order confirming, modifying or reversing the order of the inferior tribunal and a

writ cannot issue from this; Court to the superior tribunal because it is not situate within the territorial jurisdiction) of this Court, in such a case no

writ can equally issue against an inferior tribunal though situate within the jurisdiction of this Court.

13. It may be that this principle can be founded on the doctrine that an order of an inferior tribunal gets merged into the; order of the superior

tribunal once the superior tribunal passed its order.; ""It is possible to view this decision as being one upholding the principle that the Court cannot

do indirectly what it cannot do directly.

14. In *Commissioner of Income Tax, Bombay Vs. Amritlal Bhogilal and Co.*, , while considering, the jurisdiction of the Commissioner to, exercise

his powers of revision u/s 33-B of the Indian income tax-Act,; Gajendragadkar, J., observed thus at page 136:

There can be no doubt that, if an appeal is provided against an; order passed by a tribunal, the decision of the appellate authority is the"" operative

decision in law. If the appellate authority . modifies or reverses the decision of the tribunal, it is obvious that it is .the:-,appellate decision that is

effective and can be enforced. In law the position; would be just the same even if the appellate decision, merely confirms the decision of the

tribunal. As a result of the confirmation, or affirmance of the decision of the tribunal by the appellate: authority" the original decision merges in the

appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement.

15. The general principle that an order of an inferior tribunal appealed against and confirmed by a superior tribunal gets merged in the final order on

appeal cannot any longer be doubted in view of the categorical pronouncement of the Supreme Court. But the rule is not of universal application

and it cannot be said that wherever there are two orders, one by an inferior tribunal and the other by a superior tribunal, passed on appeal or

revision, there is a fusion or a merger of the two orders irrespective of the subject-matter of the appellate or revisional order, and the power of

appeal and revision, which are of course creatures of statute.

16. It seems to us that the language of Section 12 of the Act is such that there is hardly any scope for invoking the principle of merger of the order

of the assessing authority in the order of the revising authority. . Let us take a hypothetical case as a touchstone to test the soundness of the theory

of merger resulting from an order in revision. The revising authority may act suo motu and after due notice to the assessee render a decision against

the assessee by enhancing the assessment. If after such an order is passed, the assessee discovers that the subordinate assessing authority had

wrongly and illegally included items of turnover in the total turnover assessed, and if he is within time to invoke the revisional powers of the

authority, can he invoke the jurisdiction of the authority and seek relief to have the wrongly included items excluded ? In the revisional proceeding

dealt with suo motu by the authority this question could not have been dealt with at all for the simple reason that it was not in the interest of revenue

to do so and the assessee was incompetent to claim such relief in that proceeding. The answer to this question must obviously be in favour of the

assessee. But if the theory of merger comes into play the assessee's right of revision can well be defeated by his being told that the order in

revision passed by the authority in the exercise of its suo motu powers merged the order of the assessing authority and that there was no longer any

order of the assessing authority subsisting and that the authority cannot revise its own order. Any such conclusion against the assessee's right of

revision will be startling and be manifestly against the plain terms of the section.

17. The scope of the revisional power is only to correct illegality or impropriety of the order of the subordinate officer and to correct the

irregularity of the proceedings of such officer and that implies that portions of orders of the assessment can be modified or cancelled. Such

modification or cancellation may lead to consequential orders of assessment being passed. Assessments vitiated by some error of law or

impropriety do not become altogether bad or void. The exercise of a revisional power can be with reference to portions of orders of assessment

and where portions of the order alone are before the revising authority, the dismissal of the revision petition does not tantamount to a confirmation

by the revising authority of other portions of the orders of assessment which were not before that authority. The calling for the entire records of

assessment by the revising authority is only for the purpose of satisfying itself as to the legality, propriety of the order or regularity of the proceeding

and that cannot indicate that the whole assessment proceeding is the subject-matter of the revision. To take such a view would be to misapprehend

the scope of the revisional power granted to the authority which falls into two categories, the one to be exercised suo motu and the other to be

exercised on application by the assessee. The subject-matter of the decision of the revising authority moved by an assessee is in no way affected

by the potential power of that authority to take action suo motu if it thought fit. The existence of such a dormant power cannot operate to bring

about an enlargement of the scope of the actual decision in the matter. This is very clear because when the power is exercised suo motu, and the

scope of the exercise of that power is only to find out whether there should be an enhanced assessment or not, there cannot be a potential power

in that authority to give relief to the assessee by way of a reduction or enhancement unless and until the assessee has moved in the matter.

18. In our judgment, merger of the order of an inferior tribunal into the order of a superior tribunal really means an effective displacement of the

original order and the substitution in its place of the appellate order, and so long as that position cannot be envisaged or postulated, the doctrine

has no application.

19. Section 12(4) (b) prescribes the starting point of the period of limitation from

the date on which the impugned order was communicated to the assessee. The Board of Revenue was dissatisfied with the legality and propriety of the order of the Deputy Commercial Tax Officer dated 28th November, 1952. If the order of the Deputy Commercial Tax Officer became merged with the order of the Deputy Commissioner, the only order which the Board can seek to revise is the order of the Deputy Commissioner. Plainly, the Board was not dissatisfied with the legality or propriety of the order of the Deputy Commissioner. The Board cannot call in question the legality or propriety of the order of the Deputy Commercial Tax Officer after the four years period had elapsed, after the date of communication of that order to the assessee. In these circumstances, to rely upon the date of the order of the Deputy Commissioner as the commencement of the period of limitation, to give jurisdiction to the Board to exercise its revisional functions in respect of the Order of the Deputy Commercial Tax Officer will amount to circumvention of the provisions of the statute. The view of the Board that the order of the Deputy Commissioner is the final order of all the assessment orders which have become merged therein and that therefore the four years period should be computed from the date of communication of that order reveals that it is trying to ride a horse in opposite directions at the same time. If there is merger, the only order that can be revised is the order of the Deputy Commissioner and the Board has not attempted to do that. If there is no merger, the starting point of limitation u/s 12 (4) of the "Act can only be the date of the revised assessment by the Deputy Commercial Tax Officer, namely, 28th November, 1952 ; in which case the bar of limitation operates. In our judgment, the proceedings before the Board of Revenue were beyond the period of limitation and were therefore wholly incompetent.

20. Any reference to Article 182(2) of the Indian Limitation Act cannot be of assistance in solving the problem of limitation now before us. Article 182 of the Indian Limitation Act governs an application for the execution of a decree or order of any civil court and Clause 2 of the third column therein gives the date of the final decree or order of the appellate court as the starting point for computing the period of limitation. In construing the said provision it has no doubt been held that even if the appeal is against part of the decree, the date of the appellate decree will afford a fresh

starting point of limitation. This view proceeds on the plain meaning of the words of Article 182 namely that the period of limitation runs from the

date of the decree or order of the appellate court whenever there has been an appeal. There are no words in Article 182(2) to suggest or to imply

that the appeal must be an appeal against the whole decree and not against a part of the decree. In *Krishnama Chariar v. Mangammal* I.L.R.

(1903) Mad. 91, a Full Bench of this Court held that under Article 179 of Schedule II to the Limitation Act when a portion of a decree has been

appealed against and a portion has not been appealed, the period of limitation for an application to execute the portion not appealed against runs

from the date of the appellate decree. Benson, J., observed thus at page 94 :

All periods of limitation are more or less arbitrary, and it is of the highest importance that they should be laid down with clearness and certainty,

and that subtle distinctions not warranted by the language of the Legislature should not be introduced by the courts.

21. Bhashyam Aiyangar, J., stated thus at page 96 :

If the appeal be against a portion of the decree only and the appeal be dismissed the decree will be one confirming as a whole the decree appealed

against, including the portion not appealed against and the confirmation is not limited to the portion appealed against. If such appeal be allowed, the

decree appealed against will not be reversed by the appellate decree but only varied or modified and confirmed as to the rest, i.e., the portion not

appealed against. The portion appealed against and litigated in the court of appeal is varied or confirmed according as the objection taken in the

court of appeal to such part of the decree prevails or fails. The rest of the decree is confirmed because no objection is raised thereto by the party

concerned and it is not the function of a court of appeal, as distinguished from a court of revision, to give relief to any party who has not applied to

it in the form and within the time prescribed for appeal.

22. This decision has authoritatively laid down that on a proper construction of the provisions of Article 182(2) the date of the appellate decree has

to be reckoned as the starting point of limitation though the subject-matter of the appeal did not really involve the entirety of the subject-matter of

the original decree appealed against. The learned Judges were dealing with the provisions of the Indian Limitation Act and the CPC and were not

concerned to consider the question in a general form, whether an appeal or revision takes within its ambit anything more than what the aggrieved

person sought redress for before the appellate or revising authority.

23. The appeal has to be allowed on this ground alone and it is really unnecessary for us to discuss the other matters in controversy between the

assessee and the department. We shall however briefly indicate our views in the matter for the sake of completeness.

24. The Board of Revenue was of the opinion that the sum of Rs. 7,74,62,706-1-6 represented the value of cotton purchased by the assessee

from outside the State and that these purchases were concluded within the State of Madras having regard to the provisions of Section 22 of the

Madras General Sales Tax Act. There are no materials before us to decide whether these sales are really inside sales liable to assessment under

the Act. The learned Government Pleader however conceded that the order of the Board cannot be supported on the reasoning contained in the

order and he relied upon the Sales Tax Continuance Order of 1950 issued by the President. It is in these terms :

In exercise of the powers conferred by the proviso to Clause (2) of Article 286 of the Constitution of India, the President is pleased to make the

following Order, namely,

(i) This Order may be called the Sales Tax Continuance Order, 1950.

(ii) It shall come into force at once.

2 Any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the

commencement of the Constitution of India shall, until the 31st day of March 1951, continue to be levied notwithstanding that the imposition of

such tax is contrary to the provisions of Clause (2) of Article 286 of the said Constitution.

25. The assessment year in question in the present case is the year 1950-51. The learned counsel for the appellant urged that there are various

objections to the taxability of the purchase of cotton and he submitted that the Board has not gone into the matter fully and properly and has not set

out all the available evidence on record. In view of the paucity of evidence in the case and the absence of materials before us to find out whether

the purchase value is taxable or not, we would have remitted the matter for a

fresh disposal to the Board, if we had taken the view that the proceedings were not barred by limitation. The appeal is allowed and the order of the Board of Revenue is set aside. The appellant will have his costs from the respondent. Counsel's fee Rs. 100.