

(1980) 01 MAD CK 0015

In the Madras High Court

Case No : Tax Case No"s. 894 and 895 of 1977, 591, 942, 968 and 975 of 1979 and Writ Petition No"s. 4951 and 4952 of 1978

Mahi Traders

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 09-01-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4

Citation : (1980) ILR (Mad) 167 : (1980) 45 STC 327

Hon'ble Judges : M.M. Ismail, C.J.; Ratnam, J

Bench : Division Bench

Advocate : V.K. Thiruvengkatachari, S.V. Subramaniam and C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

Ismail, C.J.—All these cases involve the same point and are therefore disposed of by a common judgment. The petitioner in T.C. Nos. 894

and 895 of 1977 is one and the same and these tax revision cases are concerned with assessment under the Tamil Nadu General Sales Tax Act

and the Central Sales Tax Act for the year 1973-74. The tax revision cases have been preferred against the order of the Board of Revenue

(Commercial Taxes), Madras, dated 26th February, 1977, suo motu revising the order of the Appellate Assistant Commissioner, Kancheepuram.

T.C. No. 591 of 1979 has been preferred by the State against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) dated 14th

December, 1978, in respect of the assessment for the year 1976-77 dealing with another assessee. W.P. Nos. 4951 and 4952 of 1978 have been

filed by the same assessee praying for the issue of a writ of prohibition. The two

writ petitions have been filed, one in respect of the assessment under the Tamil Nadu General Sales Tax Act and the other with reference to the assessment under the Central Sales Tax Act. The prayer in the writ petitions is for the issue of a writ of prohibition restraining the Joint Commercial Tax Officer, Mannadi (East), (impleading the State of Tamil Nadu also as the second respondent), from proceeding further with his notice for reopening the assessment during the year 1972-73 and seeking to tax the goods in question as goods liable to multi-point levy of sales tax. The facts leading to these cases can now be stated as follows :

In T.C. Nos. 894 and 895 of 1977, the Deputy Commercial Tax Officer held that the scraps of hides and skins were not eligible to single point levy and, therefore, brought them to tax at multi-point levy. On the other hand, with regard to coloured leather, he held that, notwithstanding the colouring they continued to be dressed hides and skins and, therefore, liable to single point levy as provided for under sections 14 and 15 of the Central Sales Tax Act. When the assessee preferred appeals to the Appellate Assistant Commissioner, the Appellate Assistant Commissioner took a different view. He accepted the contention of the assessee that even leather splits would continue to be hides and skins and, therefore, were liable only to single point levy. It was this order which was revised by the Board of Revenue. The Board of Revenue took the view that leather splits were merely scraps, that they could not be termed as hides and skins and that, therefore, the turnover relating thereto was liable to multi-point levy. With regard to the coloured skin, the Board of Revenue took the view that as a result of colouring and dyeing what was produced was a different commercial commodity other than hides and skins and that, therefore, the same would not fall within the scope of section 14(iii) of the Central Sales Tax Act. It is this conclusion of the Board of Revenue that is challenged in the tax revision cases.

2. As far as T.C. No. 591 of 1979 is concerned, the Sales Tax Appellate Tribunal held that coloured leather would also come within the scope of section 14(iii) of the Central Sales Tax Act and that, therefore, the turnover was liable to only single point levy. The correctness of this conclusion is challenged by the State in this tax revision case.

3. The two writ petitions, as we already pointed out, have been filed for the issue

of a writ of prohibition. Originally, the Deputy Commercial Tax

Officer taxed the turnover relating to coloured skins at single point on the basis that they would still be hides and skins as contemplated u/s 14(iii)

of the Central Sales Tax Act. Subsequently, he changed his opinion and proposed to tax the turnover at multi-point on the ground that coloured

leather would not fall within the description of hides and skins as contained in section 14(iii) of the Central Sales Tax Act. Putting forward the

contention that the assessing authority was in error in taking such a view, the writs of prohibition have been filed.

4. Thus, it will be seen that all the cases raise one or the other or both the questions, namely, leather splits or scraps not containing to satisfy the

description of hides and skins as contemplated in section 14(iii) of the Central Sales Tax Act, and coloured skins, merely because of the colouring,

becoming a different commercial commodity other than hides and skins as contemplated u/s 14(iii) of the Central Sales Tax Act.

5. The Central Sales Tax Act (74 of 1956) was enacted to formulate the principles for determining when a sale or purchase of goods takes place

in the course of inter-State trade or commerce or outside a State or in the course of import into, or export from, India, to provide for the levy,

collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special

importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase

of such goods of special importance shall be subject. Section 14 of this Act enumerates the goods which are declared as goods of special

importance in inter-State trade or commerce. Section 14(iii) states as follows :

14. It is hereby declared that the following goods are of special importance in inter-State trade or commerce :

(iii) hides and skins, whether in a raw or dressed state.

6. Section 15 of the Act provides :

15. 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) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or

purchase price thereof, and such tax shall not be levied at more than one stage;

(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, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State.

7. The provisions of section 15 of the Central Sales Tax Act have been implemented by the following provision contained in the Tamil Nadu

General Sales Tax Act, 1959. Section 4 of that Act states :

Notwithstanding anything contained in section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year.

8. The Second Schedule to the Act deals with the rate and point at which the turnover of declared goods shall be subject to tax. Entries 7(a) and

(b) of the Second Schedule read as follows :

9. Thus, it will be seen that once a particular commodity comes within the scope of the expression "hides and skins, whether in a raw or dressed

state", immediately the restrictions imposed by section 15 of the Central Sales Tax Act, 1956, are attracted. Consequently, the question for

consideration in the present case is whether leather splits and coloured skins can be said to fall within the scope of "hides and skins, whether in a

raw or dressed state", as contemplated by section 14(iii) of the Central Sales Tax Act. For the purpose of considering this question it is necessary

to find out what is meant by leather splits and coloured skins. In its order which is the subject-matter of cases figuring as the first two tax revision

cases, the Board of Revenue points out :

The Board was of the view that leather splits and bits obtained in the process of getting leather of uniform thickness from dressed skins, are only

scrap and cannot be equated to dressed hides, which are declared goods. The Board was also of the view that once the dressed skins bought

locally are split and the upper layer coloured, the coloured skins become a different product, and are liable to tax as general goods at the multi-point rate.

10. Again, in the later portion of its order, the Board stated :

The splits are only pieces of leather obtained in the process of getting leather of uniform thickness from dressed skins. Such splits cannot be treated as dressed hides and declared goods. The expression "raw or dressed skin" in section 14 of the Central Sales Tax Act has a distinct connotation and it cannot be extended to leather bits obtained in a process. These splits are of much lesser value, and cannot be equated to dressed skins The contention that these leather splits continue to be dressed skins and are declared goods of inter-State importance is untenable

As regards the coloured skins, once the dressed skins bought are split and the upper layer of uniform size is coloured or dyed, such coloured skins

become a different product. They are finished leather sold as coloured skins and not as dressed skins. They are commercially different and are

treated and dealt with in trade circles as different products. The process of dyeing or colouring changes the commercial nature of the dressed skins.

There are different patterns of dyeing and colouring. The complete piece may be dyed or coloured uniformly with a single colour or with a pattern

of colours, depending upon the requirements of the prospective consumers in the market. As the dressed skins are subjected to process, first by

splitting and secondly by colouring, they become different products. Pieces of coloured and dyed leather were produced before the Board at the

time of hearing. Some pieces were coloured with a single colour on one side and dyed on the reverse. They can be used straightway for

manufacturing leather goods. They were also in patterns. The contention that no change is involved has therefore no force.

11. We are of the opinion that the Board of Revenue has committed more than one mistake in coming to this conclusion. In the first place, when it

purported to extract section 14(iii) of the Central Sales Tax Act, it wrongly extracted the same. Section 14(iii) states ""hides and skins, whether in a

raw or dressed state"". The Board of Revenue has wrongly understood it as meaning ""raw or dressed skin"". The second mistake committed by the

Board of Revenue is in thinking that coloured leather and leather splits are commercially different products and that, therefore, section 14(iii) will

not apply. For the purpose of the application of section 14(iii), it is not necessary to find out whether the resultant product is commercially different

or not, and the only thing necessary to find out is whether it comes within the expression "hides and skins, whether in a raw or dressed state" or

not. The expression used in section 14(iii) namely, "hides and skins, whether in a raw or dressed state", is of wide connotation and the latter part of

the expression is not restrictive in anyway of the goods mentioned earlier, namely, hides and skins, but, on the other hand, is intended to cover all

hides and skins in all states, whether dressed or raw. Simply because a dressed skin is split or the split skin is coloured, it does not cease to be

hides and skins", though in a dressed state and does not become a totally different commodity. Consequently, we are clearly of the opinion that

leather splits and coloured skins will come within the scope of the expression "hides and skins, whether in a raw or dressed state" u/s 14(iii) of the

Central Sales Tax Act and would, therefore, be liable only to single point levy as provided for in section 15 of that Act and not to multi-point levy.

In view of this clear position, we allow T.C. Nos. 894 and 895 of 1977 and set aside the order of the Board of Revenue and restore the order of

the Appellate Assistant Commissioner.

12. For the same reason, T.C. No. 591 of 1979 preferred by the State is dismissed.

13. For the reasons we have indicated above, the assessing officer will have no jurisdiction to bring to tax the turnover relating to coloured leather

on the basis of it being liable to multi-point levy and, therefore, writs of prohibition will issue in W.P. Nos. 4951 and 4952 of 1978 and the writ

petitions will stand allowed.

14. There will be no order as to costs in any of these cases.

15. T.C. Nos. 942 and 968 of 1979 have been preferred against the orders of the Sales Tax Appellate Tribunal holding that coloured leather

would fall within the scope of the expression contained in section 14(iii) of the Central Sales Tax Act, 1956, and remanding the matter from the

purpose of finding out which are the turnovers which would come within the scope of that provision. Since we have held in T.C. Nos. 894 and 895

of 1977 that coloured leather also would come within the expression ""hides and skins, whether in a raw or dressed state"", as contemplated by

section 14(iii) of the Central Sales Tax Act, the Tribunal was right in its conclusion and, therefore, no case has been made out for interference with

the order of the Tribunal. Hence, these two tax cases are dismissed.

16. T.C. No. 975 of 1979 has also been preferred against the order of the Sales Tax Appellate Tribunal. In this case also, the Tribunal has come

to the conclusion that coloured leather will answer the description in section 14(iii) of the Central Sales Tax Act and that, therefore, this turnover

will be liable to only a single point levy, as contemplated by section 15 of that Act. Since we have also taken the same view in T.C. Nos. 894 and

895 of 1977, this tax revision case is also dismissed.

17. Ordered accordingly.