

(1975) 03 MAD CK 0066
In the Madras High Court

M.H. Naeems and Co.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 04-03-1975

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 32

Citation : (1976) 1 MLJ 75

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—This case had a protracted career. Though the assessment relates to the year 1954-55 we had to consider the legality of the assessment as late as 1975.

2. The appellants were dealers in hides and skins carrying on the business at No. 9, Rama Pillai Street, Periamet, Madras. Originally the assessment order was made by the Assessment Commercial Tax Officer on 20th October, 1959. By this order though the gross turnover was a huge amount the net taxable turnover was determined only at Rs. 7,447.11.3 which did not attract any tax because of the pecuniary limit of Rs. 10,000 fixed at that time. The Assessment Officer had exempted the turnover relating to hides and skins on the ground that they were not licenced dealers purporting to follow the decisions of this Court in M.A. Noor Mohamed and Co. Vs. The State of Madras and Another, , Since the order was a "Nil" assessment order it was not communicated to the assessee. Subsequently the Supreme Court reversed the decision of this Court in M.A. Noor Mohamed and Co. Vs. The State of Madras and Another, and held that unlicenced dealers in hides and skins were liable to be taxed u/s 3(1) of the Madras General Sales Tax Act, 1939. After this judgment the Deputy Commissioner, Commercial Taxes, initiated suo motu proceedings to revise the order of assessment u/s 32 of the Madras General Sales Tax Act, 1959 which had come into force by then. He refixed the taxable turnover in his order dated 27th July, 1961 at Rs. 10,22,791-8.8 after following the prescribed procedure. The assessee then

preferred an appeal to the Tribunal against this order of the Deputy Commissioner, raising various contentions.

3. One of the contentions raised was that since no order of assessment was served on the assessee and since the appeal could be filed within 30 days of the date of service of the order the time prescribed for preferring an appeal against the original assessment order had not expired and that therefore the Deputy Commissioner had no jurisdiction to revise the order. In support of this contention he relied on the decision reported in *T.M. Batcha and Co. v. State of Madras* (1965) 16 S.T.C. 59, where it had been held that if the order of assessment had not been served on the assessee, suo motu power of revision could not be invoked. The Tribunal accepted this contention and allowed the appeal and set aside the order of the Deputy Commissioner. In that view the Tribunal did not go into the other contentions of the assessee on the merits. The State preferred a revision to this Court in T.C. No. 88 of 1966 and that was dismissed in limine following the decision in *T.M. Batcha and Co. v. State of Madras* (1965) 16 S.T.C. 59. The State preferred a petition for leave to appeal to the Supreme Court against this order. While this petition was pending, in the Supreme Court in *State of Madras Vs. P.M. Batcha and Company*, , reversed the judgment of this Court in *T.M. Batcha and Co. v. State of Madras* (1965) 16 S.T.C. 59, and held that in case of nil assessment it was not obligatory on the part of the assessing authority to communicate that order to the assessee and that therefore suo motu revision by Deputy Commissioner was competent. After this decision of the Supreme Court the State filed another petition in this Court for review of this Court's order in T.C. No. 88 of 1966. The review petition was allowed and the order of the Tribunal was set aside following the decision of the Supreme Court in *State of Madras Vs. P.M. Batcha and Company*, and the matter was remitted to the Tribunal for fresh enquiry on the merits. When the appeal was taken by the Tribunal again for consideration the assessee filed a petition for raising additional grounds in respect of the same turnover disputed by it. The Tribunal refused to entertain the additional grounds but dealt with the grounds raised by them in the original grounds of appeal. On the merits, the Tribunal held that the assessee had not proved that the disputed turnover represented export sales of hides and skins and not liable to tax. Accordingly the Tribunal confirmed the order of the Deputy Commissioner.

4. In this revision petition though the learned Counsel attempted to canvass the finding of the Tribunal on merits we are unable to agree with him. As rightly pointed out by the Tribunal there is absolutely no evidence to show that the disputed turnover represented the export sales or that they were not liable to sales-tax. We therefore confirm the finding of the Tribunal that they are not proved to be export sales. But so far as the additional grounds raised by the petitioner is concerned we permitted the learned Counsel for the petitioner to state the points raised by him in the additional grounds in order to find out whether there is any prima facie point which calls for consideration.

5. The first ground raised in the additional grounds was that the levy of tax in respect of hides and skins under Rules 16(3), 16(4) and 16(5) were invalid and unconstitutional. This point is covered by the Full Bench decision of this Court and it is against the contention of the petitioner and therefore there is no substance in this contention.

6. It was next contended that the original assessment order was made under rule 16(5) and since that rule was deleted the assessment order itself became invalid. We are unable to agree with this contention of the learned Counsel. Since rule 16(5) was relied in certain cases in support of a contention that unlicensed dealers in hides and skins were not liable to sales tax, that rule was deleted. But as already noticed the Supreme Court in *The State of Madras and Another Vs. M.A. Noor Mohammed and Co.*, had held that unlicensed dealers were liable to be taxed u/s 3(1) of the Madras General Sales Tax Act, 1939. Therefore though the assessment order was purported to have been made under Rule 16(5), since the original assessment authority had jurisdiction to assess and the assessee was liable to pay sales-tax u/s 3(1) the assessment order itself was valid and cannot be said to be invalid. Therefore there is no substance in this contention either.

7. The 3rd contention was that under the Madras General Sales Tax Act, 1939 the original assessment was to have been made by the Deputy Commercial Tax Officer and in the present case the original assessment order was made by the Assessment Commercial Tax Officer and that therefore that order was without jurisdiction. The Madras General Sales Tax Act, 1939 was repealed by Tamil Nadu General Sales Tax Act, 1959. But Section 61 provided that in respect of the assessment years prior to 1st April, 1959 the provisions of the 1939 Act would apply. Though properly the Deputy Commercial Tax Officer could have made the assessment in this case, since the Officer who originally assessed was not below the status of a Deputy Commercial Tax Officer and in fact he was a higher authority, we do not consider any prejudice has been caused to the petitioner in the Assessment Commercial Tax Officer himself making the assessment. The matter cannot be looked at as one involving jurisdiction as the assessing officer was not below the rank of the Deputy Commercial Tax Officer. We do not therefore consider that on this ground the assessment order could be interfered with.

8. It was next contended that the suo motu power of revision was available to the Deputy Commissioner only u/s 12(2) in respect of the assessment years prior to 1st April, 1959 and that in purporting to invoke the power of the Deputy Commissioner u/s 32 the assessee had been prejudiced. We are unable to find any difference in substance between the provisions of Sections 12(2) and 32 of the Act. The authority under both the provisions to revise the assessment is the Deputy Commissioner. The difference which the learned Counsel for the petitioner wanted to rely was that while a period of 4 years is prescribed for making an order u/s 12(a) of the Act from the date of service of notice of the

order sought to be. revised such order will have to be made u/s 32 before the expiry of 4 years from the date of order and not from the date of service of the order. We do not think that this differential limitation would in any way help the assessee in this case as the limitation prescribed u/s 12(2) was longer than the one prescribed u/s 32. Therefore, the revision itself could be deemed to have been made u/s 12(2) Further the last of the two grounds is also not available to the assessee in this case in view of Section 4 of Madras Act X of 1963 which validated all such defective assessments. A similar contention was also considered by this Court and rejected in *Ekambara Mudaliar v. State of Madras* (1973) 32 S.T.C. 591. Therefore even if the Tribunal had allowed the additional grounds to be raised we do not think that the petitioner would have been in any better position.

9. In the result the revision petition is dismissed with costs. Counsel fee Rs. 250.