
(1962) 12 MAD CK 0038
In the Madras High Court
Case No : Tax Case No. 199 of 1961

M.R. Narasimhalu and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-12-1962

Acts Referred:

Citation : (1963) 14 STC 947

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

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry and C. Venkataraman, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—The assessee is a dealer in cloth. It was assessed for the assessment year 1957-58 in respect of its turnover which fell for taxation at different rates. There was an appeal in so far as part of the turnover was concerned, only with regard to the rate applicable thereto. Before the Appellate Assistant Commissioner, it was contended that the assessee collected the tax only at the lower rate and that, therefore, the levy of tax on the assumption that it had collected the tax at the higher rate was unjustified. The total turnover involved was Rs. 85,664, parts of which turnover were taxed at different rates. The assessee pointed out that the prices at which it sold the goods during the assessment year did not disclose that it realised a higher gross profit margin than in the years 1956-57 and 1957-58, which would certainly have been the case if it had in fact collected higher sales tax without showing it as such. The Appellate Assistant Commissioner examined the records and the sale and purchase prices during the period. He verified what is referred to as the "price structure" and felt satisfied that it could not have included any extra percentage of tax. There was also no increase in the gross profit margin. He concluded:

It is thus clearly seen that the appellants have neither openly collected extra tax nor included it in the price structure while fixing the selling price.

2. Accordingly, he granted the relief prayed for in the appeal. The Board of Revenue took up suo motu proceedings by way of revision and issued a notice to the assessee. This notice stated :

There is ample evidence in the assessment file to show that the dealer had collected additional tax indirectly. The assessing authority has made out a clear case of this by showing the difference in the rate of prices charged by the dealers for local sales and for sales outside the State. It is seen therefrom that the dealers had added an amount equivalent to additional tax for local sales while no such addition was made for inter-State sales, because such sales were not liable to tax. The Appellate Assistant Commissioner has overlooked this important factor....

3. For these reasons, the assessee was asked to show cause why the assessment made by the original authority should not be restored. The assessee furnished its explanation, contending that the view taken by the Board did not accord with the facts. The assessee also pointed out that in cases where the enhanced tax at 8 per cent. had been collected by it, in view of the imposition of that levy on certain types of cloth for a certain period, it had been properly brought into account by it, and that it was incorrect to say that any portion of the extra tax had been included in the price structure with a view to conceal the collection of such a tax. In its subsequent proceedings, the Board called upon the assessee to prepare and furnish a statement in the form indicated by it in respect of sales inside and outside the State for identical types of cloth for the period 1st April, 1957, to 31st May, 1957. Such a statement was furnished to the Board. Along with this statement, the assessee pointed out that the general practice of the trade is to consign cloth at the commencement of the year to its usual customers in anticipation of orders and that such sales during the month of April in any year would always record a higher figure than in the rest of the months. It was also pointed out that in no instance would the differences in prices relied upon by the Board in support of its views reach the quantum of 8 per cent, which is the extent of the additional tax. Local sales were generally for credit and, accordingly, the price was higher as compared with sales outside the State. Whatever differences might exist between the prices for local sales and outside State sales were based upon this circumstance and not, so it was contended by the assessee, because any portion of the additional tax was clandestinely included in price structure.

4. The Board in its final order however purported to rely upon the features already indicated in holding thus :

The Board finds that up to April, 1957, the bills showed the collection of additional tax at the rate of 8 per cent, and also from 3rd December, 1957, to 12th December, 1957. For the months of May, 1957, to November, 1957, no doubt the dealers did not openly collect the additional 8 per cent, tax, but the price structure of goods when examined as explained above for goods sold intra-State reveals that the dealer has included or provided for in the price the extra

percentage ranging round about 8 per cent.

5. In an earlier part of the order, the Board stated :

From the statement filed by dealers it is seen that the prices charged after 1st May, 1957, when the dealers were not collecting the additional tax as a separate item in the bills were far higher than those charged before that date for intra-State sales. Also the price for sales outside the State for the same varieties were less than the prices for sales inside the State. The difference in prices of the same variety was very markedly higher when compared to the prices charged for the month of April. It therefore follows that the dealers were aware of their liability to additional tax and provided for such additional tax by including it in the prices of the goods sold....

6. Accordingly, the Board restored the original order of assessment and it is against this order that the present appeal has been filed.

7. A further fact has to be stated in connection with the imposition of the additional tax. While the additional tax was undoubtedly brought into force with effect from 1st April, 1957, the imposition itself was announced long after that date. With a view to meet the difficulties of assessees who might not have collected the tax, Government appear to have announced that dealers who had not collected the tax would not be called upon to pay this additional tax. In the majority of cases that have come before us, certain collections were made by the dealers during a part of the period and to the extent to which some amounts were collected, the amounts were paid over by these dealers to the State. The Government also announced that they would waive this additional tax in cases where it was shown to the satisfaction of the taxing authorities that such tax had not been collected by the dealers. The suo motu revision by the Board was made for the reason that though the dealer in the present case had not collected the additional tax as such, there was an unexplained increase in the sale value of his goods which indicated to the Board that this additional tax had been merged in the sale price of the goods and the Board seems to have thought that this circumstance was sufficient to lead it to the conclusion that the additional tax had in fact been collected by the dealer.

8. The question that we have to consider is whether where a dealer sells goods at varying prices, it is proper to infer that the difference in the prices represents an amount collected by the dealer by way of tax. From the statement that the assessee was called upon to furnish setting out the prices of the same goods charged in respect of transactions covered by local sales and inter-State sales, both during the period when the additional tax was in force and thereafter, it certainly does not appear that there was any uniform addition made to the price which might be taken to represent the additional quantum of tax. The variation ranges from as low as 2 per cent, to as high as 20 per cent. In some cases, there is no difference in the sale price as between a local sale and an inter-State sale, and in some others, local sales have recorded a sale price lower than that

relevant to inter-State sales. Here is a commodity, cloth, of different varieties, the prices of which certainly does fluctuate widely ; and solely for the reason that in respect of two different transactions different prices have been recorded, it cannot possibly follow that the higher price must be deemed to include an amount collected towards tax. The Appellate Assistant Commissioner who examined the matter was definitely of the opinion that the sale price structure could not have been fixed including the extra percentage of tax. This conclusion was reached by him on a comparison of the gross profit margin of the preceding years and this year. If indeed the sale price did include the additional amount, it should necessarily follow that the gross profit margin also would have shown an enhanced value. That was not the case. It was also pointed out by the dealer that while the purchasers in inter-State sales were prompt in making their payments, local purchasers often availed themselves of credit facilities, so that in their cases the price covered the cost of the probable delay in the payment of the sale price. It is also not unusual that dealers,, whether consciously or unconsciously, quote different prices on different occasions for the same commodity. That would depend upon conditions regarding the supply of the goods as against the demand. These are features which the Board in its order did not examine. Surely, the Board should have stopped to consider whether any purchaser would have been willing to pay the very much higher price unless the ruling conditions of the market justified this doing so. Even assuming that it was understood between the dealer and the purchaser that an extra amount was to be included in the price structure to cover the additional levy, the purchaser would certainly have demanded to know why any amount over and above the 8 per cent, was so added. As we have pointed out, the additions ranged from as low as 2 per cent, to as high as 20 per cent, in some cases. And when the purchaser himself is not a consumer but a dealer, he would have been more vigilant to see that it was not called upon to pay a very much higher price than what the prevailing conditions warranted.

9. It is true that the question that had to be examined by the Board was one of fact and had it stood only as a question of fact, we would hardly have thought it proper to interfere. But what the Board has proceeded to do is to draw an inference from those facts and certainly that raises a question of law.

10. The learned Government Pleader has drawn our attention to a decision rendered by one of us in *Valliappa Chettiar v. State of Madras* AIR 1962 Mad. 372 That was a case where the assessee was denied the benefit of a concession announced by the State in respect of the additional levy to be available on condition that the dealer had not collected such tax. The assessing authorities took the view that the assessee had collected the additional tax in a disguised form. In that case it was held that whether the assessee had or had not collected the additional tax from his purchasers was a fact which was peculiarly within the knowledge of the assessee and before the assessee could claim the concession, the onus was upon him to establish that he did not collect the additional levy. It was pointed out that though the assessee had not ex facie shown any collection

in his books of account, it was open to the authorities to probe into the matter and find out whether in fact the assessee had collected the tax. This decision has been relied upon on behalf of the State in support of its contention that the price structure of the assessee could be examined in that regard and that it is within the jurisdiction of the assessing authorities to discover if any amount had been collected by way of additional tax. While no doubt before the concession granted by the Government could be availed of, the assessee has to satisfy the authorities that he did not collect the additional amount, and a claim of that kind did invite the scrutiny of the assessing authorities, the question in any instant case would certainly be whether any amount towards the additional tax was in fact collected. In the decision referred to, the writ jurisdiction of this Court was invoked and the lack of jurisdiction of the authorities was raised as vitiating the order. In addition, disputed questions of fact were in issue and this Court declined to issue the writ prayed for when the assessee had other special remedies open to him. In this appeal, this Court is exercising its jurisdiction under the Madras Sales Tax Act, so that the scope of its powers is certainly wider than in the case of writ jurisdiction.

11. On an examination of the facts in the present case, we are clearly of the view that the inference that could properly be drawn from the materials that were available was certainly the one that was in fact drawn by the Appellate Assistant Commissioner. The inference reached by the Board that the assessee should have collected this additional tax in a disguised form is not one which naturally flows from the material, from whatever point of view that material might be considered.

12. It follows that the order of the Board cannot be sustained. The petition is allowed. The appellant will get its costs. Counsel's fee Rs. 100.