

(1959) 11 MAD CK 0003
In the Madras High Court

M.S. Mariappa Nadar

APPELLANT

Vs

State by the Commercial Tax Officer

RESPONDENT

Date of Decision : 25-11-1959

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 19(2)(f)

Tamil Nadu General Sales Tax Rules, 1959 — Rule 17(1), 17(3A)

Citation : (1960) 1 MLJ 464

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—This application u/s 12-B of the Sales Tax Act arises out of reassessment proceedings for the assessment year 1952-53.

The petitioner-assessee was originally assessed to sales tax on an estimated turnover on 29th March, 1954. That order was passed by the Deputy

Commercial Tax Officer, as the ""assessing authority"" appointed under the Act. The assessee appealed to the Commercial Tax Officer, who

dismissed the appeal on 6th August, 1954. Subsequent to that, after an examination of the accounts of one Suruli Nadar, the Commercial Tax

Officer issued a notice on 12th April, 1955, in purported exercise of the revisional powers conferred upon him by Section 12 of the Act, calling

upon the assessee to show cause why the assessment should not be revised by the Commercial Tax Officer. The assessee lodged his objections,

one of which was that the Commercial Tax Officer who had disposed of the appeal could not himself revise his own order u/s 12 of the Act.

Meanwhile on 19th March, 1956, the Deputy Commercial Tax Officer issued a notice to the assessee under Rule 17(1) of the Sales Tax Rules,

calling upon the assessee to show cause why the assessee should not be

assessed on a turnover which had escaped assessment in the original assessment proceedings. Apparently in compliance with Rule 17(1-A) the Deputy Commercial Tax Officer submitted the records to the Commercial Tax Officer, and the Deputy Commercial Tax Officer, directed the petitioner-assessee to appear before the Commercial Tax Officer.

On 31st March, 1956, the Commercial Tax Officer passed an order, holding that in addition to the turnover already assessed the assessee was liable to be assessed on a turnover of Rs. 26,993-4-0. In the order, dated 31st March, 1956, no specific reference was made to the notice issued by the Deputy Commercial Tax Officer under Rule 17(1) on 19th March, 1956. But a specific reference was made to the notice issued in purported exercise of Section 12 by the Commercial Tax Officer himself on 12th April, 1955. In the body of the order itself no specific reference was made either to Section 12 or to Rule 17(3-A).

2. The assessee appealed to the Tribunal. The Tribunal apparently viewed the order of the Commercial Tax Officer, dated 31st March, 1956, as one passed in exercise of the powers of reassessment vested in the Commercial Tax Officer by Rule 17(3-A) of the Sales Tax Rules. The Tribunal then dealt with the contention of the assessee that Rule 17(3-A) was ultra vires the rule making power vested in the Government, because Rule 17(3-A) vested the power of reassessment in an authority other than the assessing authority as defined by Section 2(a-2) of the Act. The Tribunal recorded that it was not within its competence to decide whether any rule, which had the effect of a statutory provision under the terms of Section 19 of the Act, was intra vires or ultra vires. The point was therefore left undecided. On merits the Tribunal was of the view that there was no substance in the appeal. The appeal was dismissed.

3. Learned Counsel for the assessee contended before us that the order, dated 31st March, 1956, passed by the Commercial Tax Officer must be correlated only to the notice issued by him on 12th April, 1955 and the further contention of the learned Counsel was that since it was only Section 12 that was invoked in the notice, dated 12th April, 1955, it was only that power that the Commercial Tax Officer exercised when he passed the order, dated 31st March, 1956. It should be taken as well settled that even a wrong reference to a statutory provision may not invalidate the order

if the authority had the requisite power to pass that order, that is the jurisdiction in the exercise of which he could pass such an order. In this case, though in the preamble reference was made to the notice issued by the Commercial Tax Officer on 12th April, 1955, the Commercial Tax Officer was obviously aware of the fact, that it was treated as a case of escaped turnover when the Deputy Commercial Tax Officer issued notice on 19th March, 1956 and submitted the papers thereafter to the Commercial Tax Officer in compliance with the requirements of Rule 17(1-A). Therefore, the failure to quote specifically Rule 17(3-A) does not invalidate the order. Nor does it make the order, dated 31st March, 1956, any the less an order passed in the exercise of the powers vested in the Commercial Tax Officer by Rule 17(3-A). The view taken by the Tribunal, that it was a case of assessment of escaped turnover in exercise of the powers vested in the Commercial Tax Officer by Rule 17(3-A), is correct and calls for no interference in revision.

4. The next contention of the learned Counsel for the assessee was that Rule 17(3-A) was ultra vires. That was really based upon the definition of "Assessing Authority" in Section 2(a-2) and the fact that under the notifications issued by the Government it is not the Commercial Tax Officer but the Deputy Commercial Tax Officer that is designated the assessing authority. Learned Counsel, however, realised that there is no specific statutory provision for reassessment; nor was there any provision prescribing the authority who alone could undertake the statutory duty of reassessment.

5. Section 19(2)(f) specifically clothed the State Government with the power to make rules for the assessment to tax under this Act of any turnover which has escaped assessment and the period within which such assessment may be made. It was in exercise of this power that Rule 17 of the General Sales Tax Rules was made and subsequently amended by the incorporation of Sub-clauses (1-A) and (3-A). Now there can be no doubt that in the exercise of the powers conferred on the Government by the Section 19(2)(f) it can provide for assessment of escaped turnover, and it can also by rules prescribe the authority who should be clothed with the jurisdiction to make such assessment. Rule 17(1) as originally promulgated invested only the assessing authority with the jurisdiction to assess escaped

turnover. Subsequently Rule 17 was amended, and Rule 17(3-A) vested the power to assess escaped turnover, in the circumstances, mentioned therein, on the appellate and revisional authorities referred to in Sections 11 and 12 of the Act. Sub-rule (1-A) was virtually ancillary to Sub-rule (3-A) and Sub-rule (1-A) directed the assessing authority to submit to the appellate or revisional authority, as the case may be, the cases where an assessment of escaped turnover was called for, and where the assessment of the assessing authority had merged in an appeal or a revisional order.

6. Even if there is a conflict apparent or real, between Rule 17(1) and Rule 17(3-A), it cannot be said that either of the rules was beyond the rule-making power conferred on the Government by Section 19(2)(f). We have already pointed out that under the powers vested in the Government by Section 19(2)(f) it could provide for assessment of escaped turnover and also prescribe the authority which, could make such assessment. To illustrate our point, if Rule 17(1) itself had been amended to provide for assessment of escaped turnover not only by the assessing authority but also by authorities superior to it, that is, the appellate or revisional authorities specified in Sections 11 and 12, we have no doubt that such a rule would have been intra vires. Merely because the authorities other than the assessing authority mentioned in Rule 17(1) have been specified in a separate rule, and the exercise of the authority was subjected to further conditions, it cannot be said that Rule 17(3-A) was beyond the rule-making power of the Government.

7. Learned Counsel for the assessee referred to *Manepalli Venkatanarayana v. State of Andhra* (1959) 10 S.T.C. 524 : (1959) 2 A.W.R. 467, in support of his contention, that Rule 17(3-A) was ultra vires. But in the Andhra Act, the Act itself contained Section 14(4), which in effect was a reproduction of what is Rule 17(1) in the Madras General Sales Tax Rules. That is, the Act itself provided in Andhra that escaped turnover shall be assessed only by the assessing authority. Obviously a rule framed by the Government cannot conflict with a specific statutory provision vesting jurisdiction to assess escaped turnover in a specific authority, the assessing authority. We have already pointed out that the Madras Act did not contain any specific statutory provision either prescribing the officer who should

assess escaped turnover or even specifically providing for the conditions under which escaped turnover could be assessed. Thus the position is that Rule 17(1-A) and Rule 17(3-A) of the Madras Sales Tax Rules do not conflict with any express statutory provision in the Madras General Sales Tax Act. There is therefore no scope for applying to this case the principle laid down by the learned Judges of the Andhra High Court.

8. Since the validity of Rule 17(3-A) was the only substantial point taken in the proceedings before us and that fails, the petition has to be dismissed. The petition is dismissed with costs. Counsel's fee Rs. 100.