

**(1959) 09 MAD CK 0045**

**In the Madras High Court**

**Case No :** Tax Revision Case No's. 226 of 1956 and 70 and 71 of 1957

M.S. Mohammed Hussain and Sons

APPELLANT

Vs

The State of Madras

RESPONDENT

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**Date of Decision :** 24-09-1959

**Acts Referred:**

Constitution of India, 1950 — Article 286

**Citation :** (1960) ILR (Mad) 303 : (1960) 73 LW 121 : (1960) 2 MLJ 152 :  
(1960) 11 STC 362

**Hon'ble Judges :** Ramachandra Iyer, J;Rajagopalan, J

**Bench :** Division Bench

**Advocate :** T.T. Srinivasan, for the Appellant; The Government Pleader, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Ramachandra Iyer, J.—The petitioner is a licensed tanner doing business in Gudiyattam in the North Arcot District. He was assessed to sales tax in the year 1953-54 on a turnover of Rs. 1,82,711-2-9, which comprised a sum of Rs. 88,522 representing the value of untanned hides and skins which were purchased by the assessee and tanned in Chittoor and later exported to the United Kingdom. Chittoor was a part of the Madras State till 30th September, 1953; thereafter it became part of the Andhra Pradesh. The dispute relates to the turnover in respect of the goods tanned at Chittoor after 1st October, 1953. The contention of the assessee was that the hides and skins, though purchased in the State, if tanned outside the State, would be liable to be taxed only under the provisions of Rule 16(4) of the (Turnover and Assessment) Rules, that is, at the stage of sale by the first dealer after they were tanned and that, or in the present case, the tanned goods were exported to foreign countries, no tax could be levied by reason of Article 286 of the Constitution. Neither the Commercial Tax Officer nor the Appellate Tribunal accepted this contention. The Appellate Tribunal held that the hides and skins purchased while in a raw condition in this

State would be liable to be assessed under Rule 16(2) irrespective of the fact whether they were tanned in this State or outside and that Rule 16(4) would not apply to such a case. That position is contended by the assessee for the Obvious reason, that if the latter rule were to apply the tanned goods, having been exported to foreign countries, would escape the levy of sales tax by reason of Article 286.

2. The learned Advocate for the petitioner raised two contentions : (1) that, as the hides and skins were not tanned in a tannery owned by the assessee but elsewhere, it should be held that the assessee would not be liable as a tanner and (2) that, even assuming that the assessee was liable as a tanner, assessment could be made only under the provisions of Rule 16(4), which specifically provided for a case of hides and skins tanned outside Madras State.

3. The case for the assessee was that he did not own a tannery and that his goods were tanned in tanneries owned by others. The Appellate Tribunal did not give a finding on that question, as, in its opinion, it would make no difference between a case where a person tanned the hides and skins in his own tannery, or where he had them tanned elsewhere. It is admitted that the assessee obtained a licence in Form No. IV for the year 1953-54 "as a dealer in hides and skins whether as a tanner or otherwise". It has been found by the Appellate Tribunal that the assessee's main business was to purchase untanned hides and skins, get them tanned and sell the same. We do not consider that, in order to render a person liable as a tanner, he should personally tan the goods; nor is it necessary that he should tan them in a tannery either owned by him or in which he had an interest. Recently, we had to consider the latter part of the question in T.R.C. No. 64 of 1956 Since reported as Sri Jey Cherish and Co., Ltd. v. The State of Madras [1960] 11 S.T.C. 353 where we held that a person who tans in the course of his business raw hides and skins bought by him, in a tannery which was not his, would be liable to be assessed in respect of the raw hides and skins purchased as a tanner. The conclusion of the Appellate Tribunal is, therefore, correct.

4. On the second question, the case for the assessee was that, after 1st October, 1953, 20,622 skins were tanned at Chittoor, which since that date became part of another State. The Tribunal did not consider whether it was true that the hides and skins were tanned at Chittoor. In its opinion, such a case, even if it be true, would make no difference in the assessment, as Rule 16(2) and not 16(4) would apply. On behalf of the assessee, it was contended that Rule 16 provided for two categories of cases : (1) where hides and skins were tanned by the tanner inside the Madras State and (2) where they were tanned outside the Madras State, the first category being provided for by Rule 16(2) while the second category would be covered by Rule 16(4). Rule 16, so far as it is relevant for the purpose of the present case, states :-

16(1) In the case of hides and skins the tax payable u/s 3(1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the State or are sold for export outside the State.

(i) In the case of all untanned hides or skins sold to a tanner in the State, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him...(ii)...(3) Sales by licensed dealers of hides or skins which have been tanned within the State shall be exempt from taxation provided that the hides or skins have been tanned in a tannery which has paid the tax leviable under the Act. If such hides or skins have been tanned in a tannery which is exempt from taxation u/s 3(3), the sale of such hides or skins shall be liable to taxation as under the next Sub-rule below dealing with hides or skins tanned outside the State.

(4) Sales by licensed dealers in hides or skins which have been tanned outside the State shall be exempt from taxation except at the stage of sale by the dealer who is the first dealer not exempt from taxation u/s 3(3) who sells them within the State. The tax shall be levied from such dealer on the amount for which he sells such hides or skins.

5. u/s 5(vi) of the Act, in respect of sale of hides and skins, whether tanned or untanned, the tax liability would be only at such single point in the series of sales by successive dealers as may be prescribed. Rule 16 prescribes the point at which such sales should be taxed. Prima facie it would appear that with Rule 16(2), providing as it does for the assessment earlier in point of time as compared with cases covered by Rule 16(4), the liability to tax would be attracted the moment raw hides and skins are purchased and tanned; there is no requirement in the section that the tanning should be within the State. Mr. T. T. Srinivasan, the learned advocate for the assessee, contended that Rule 16(4) would apply to all cases where the raw hides and skins purchased in this State were tanned outside, as otherwise an application of Rule 16(2), according to its tenor, would entail a levy of sales tax at more than one point, contrary to the provisions of Section 5(vi) of the Act. He further contended that, if in respect of all raw skins and hides a tax is levied irrespective of the fact whether it was tanned within or without the State under Rule 16(2), no exemption being provided in the rules for goods tanned outside, in respect of which a tax was levied at the purchase point already, as in the cases contemplated by Rule 16(3), they would be exposed to a further taxation under Rule 16(4). This result would, according to him, be avoided only if the application of Rule 16(2) is restricted to the case of goods tanned within the State of Madras, Rule 16(4) being applied to cases where it was tanned outside.

6. The tax under the Act is on the transaction of sale. u/s 5(vi) , in regard to sale of hides and skins, whether tanned or untanned, the tax shall be levied only at such single point as may be prescribed. It is unnecessary to consider, for the purpose of the present case, whether untanned hides and skins become in law different after being tanned so as to entitle the State to tax both of them without

infringing the rule as to single point levy. We shall proceed on the assumption that they are the same for the purposes of application of Section 5(vi) and that levy at one point would preclude levy at another point in the series of sales.

7. Rule 16(2) prescribes the levy of the tax in respect of hides and skins. It divides them into two categories : (1) where it is sold to a tanner in the State and (2) where it is not sold to a tanner in the State, but exported outside the State. As regards the first category, the levy is at the purchase point on the tanner in the State who should have tanned the goods but that however is not conditioned on his having a tannery of his own or getting the goods tanned within the State. Rule 16(3) relates to exemption from the levy of tax on goods tanned in a tannery within the State in respect of which tax had been paid. Rule 16(4) refers to a case where hides and skins had been tanned outside the State and prescribes that the first dealer of the tanned goods who sells them within the State shall pay the tax. Having regard to the language of Rule 16(2), which comprehends all cases of purchase of untanned hides and skins, by a tanner and to the absence of any saving clause therein with respect to the cases provided for in Rule 16(4) we consider that Rule 16(4) was intended to apply only to those cases which were not covered by Rule 16(2). The application of Rule 16(2), being at an earlier stage, would take in all cases where raw hides and skins are brought by a tanner in the State for tanning. Rule 16(4) cannot be read as a proviso to Rule 16(2) (i); nor can Rules 16(2) and 16(4) be read as alternatives in respect of the same goods. In a case, therefore, where raw hides and skins are bought by a tanner in the State, the levy would have to be only under Rule 16(2). The rule as to single point levy would not be contravened if Rule 16(4) is held to apply only to cases not covered by Rule 16(2). We agree with the Appellate Tribunal that the assessee has been properly assessed under Rule 16(2).

8. The revision petition fails and is dismissed with costs. Advocate's fee Rs. 100.

9. T.R.C. No. 70 of 1957.-This revision petition relates to the assessment to sales tax for the year 1952-53. The only question raised in this case is whether a tanner, who purchased untanned hides and skins but did not tan the same in his own factory, would be liable to be taxed. This point is covered by our decision in T. R. C. No. 64 of 1956 Since reported as Sri Jey Cherish and Co., Ltd. v. The State of Madras [1960] 11 S.T.C. 353. The conclusion that the turnover in respect of such purchase is assessable is correct.

10. This revision petition fails and is dismissed.

11. T.R.C. No. 71 of 1957.-This revision petition relates to the assessment for the year 1954-55. The questions raised in this case are identical with those raised in T.R.C. No. 226 of 1956. In view of our decision in that case, this revision petition fails and is dismissed.