
(1959) 11 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No's. 503, 516 and 517 of 1957

Muthu Muna Muthukaruppan Chettiar

APPELLANT

Vs

Deputy Commercial Tax Officer

RESPONDENT

Date of Decision : 20-11-1959

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1960) 2 MLJ 20 : (1960) 11 STC 220

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : K. Venkataraman, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Rajagopala Ayyangar, J.—These three petitions raise a common question regarding the proper construction of Section 12-A of the Madras General Sales Tax Act and Sections 3 and 17 of Madras Act XV of 1956.

2. By an amendment effected to the Madras General Sales Tax Act, 1939, by Madras Act XV of 1949, a proviso was added to Section 3(1)(b), the charging section under the Act and it read :

Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding house or restaurant, the tax shall be calculated at the rate of 4? pies for every rupee if the turnover relating to those articles is not less than Rs. 25,000.

3. In effect this meant that whereas normally the standard rate of tax was 3 pies per rupee on the total turnover tax was enhanced to 4? pies in cases where articles of food and drink were sold in hotels. The constitutional validity of this proviso was challenged before this Court and this Court upheld the objection and declared that the enhanced rate of tax for which provision was made by the proviso was void as an unreasonable discrimination obnoxious to Article 14 of the

Constitution.

4. This situation was, however, altered by an amendment effected to the General Sales Tax Act, by Madras Act XV of 1956. By Section 3 of this Amending Act, the proviso to Section 3 (1)(b) which has been set out earlier, was replaced by a different proviso reading :

Provided that if and to the extent to which such turnover relates to articles of food or drink or both sold in a hotel, boarding house, restaurant, stall or any other place, the tax shall be calculated at the rate of four and a half pies for every rupee, if the turnover relating to those articles is not less than twenty-five thousand rupees.

5. By Section 1(2) of the Amending Act the amendment effected by Section 3 was to be deemed to have come into force on 1st August, 1949, the date on which the original proviso was introduced into the section by Madras Act XV of 1949.

6. This will be the convenient stage to narrate the facts relating to the assessments in the three petitions now before me. The petitioner in W.P. No. 503 of 1957 is a hotel proprietor carrying on business in Tiruchirapalli. For the year 1953-54, the Deputy Commercial Tax Officer determined his turnover at a certain figure and levied tax on that computed at 4? pies in the rupee applying the proviso to, Section 3(1) as it then stood. This assessment was confirmed by the Commercial Tax Officer, Tiruchirapalli, on appeal by the assessee. There was a further appeal by the petitioner to the Sales Tax Appellate Tribunal and the Tribunal determined the turnover at a particular figure. But at the stage of the hearing and disposal of the appeal by the Appellate Tribunal, the decision of this Court to which I have already adverted had been rendered and applying the principles there laid down the Tribunal reduced the rate of tax to 3 pies. This order of the Tribunal has become final and is even now in force. On the basis of this order of the Tribunal deducing the rate, the petitioner became entitled to a refund of Rs. 1,727-1-3 and this sum was refunded in September, 1956.

7. Madras Act XV of 1956 received the assent of the President on 1st October, 1956 and was published in the Fort St. George Gazette on 8th October, 1956. Thereafter the Deputy Commercial Tax Officer, Tiruchirapalli, issued a notice to the petitioner, requiring him to refund the sum of Rs. 1,727-1-3, which had been paid back to him in September, 1956, on the ground that by reason of the amendment effected retrospectively to the proviso to Section 3(1) there had been a liability on the part of the petitioner to pay tax at the rate of 4? pies and that the refund already made to him was consequently not due and had to be paid back. It is the validity of this demand that is challenged in this writ petition. The facts in the other two petitions are similar except as to the details of the amounts involved.

8. Before considering the submissions urged by the learned counsel on either side, it is necessary to set out the terms of Section 17 of the Amending Act,

Madras Act XV of 1956. That section reads as follows :

(1) Notwithstanding anything contained in any Judgment, decree or order of any court, any tax levied or collected or purported to have been levied or collected under the proviso to Clause (b) of Sub-section (1) of Section 3 of the principal Act before it was amended by this Act shall be deemed to have been levied or collected, as the case may be, under the principal Act as amended by this Act as if this Act was in force at all relevant times.

(2) No suit or other proceeding shall be maintained or continued in any court for the refund of any tax so paid; and no court shall enforce any decree or order directing the refund of any tax so paid.

9. The question for consideration is whether the State is entitled to require the petitioner to refund the amount which on the date when it was paid over was validly due to the petitioner under an order of the Appellate Tribunal which stands even now; in other words, whether the retention of the money by the petitioner has become unlawful by reason of the provisions contained in Madras Act XV of 1956, relevant portions of which have already been extracted.

10. I am clearly of the opinion that the demand for refund now made cannot be sustained on the terms of Section 17. The relevant portion of the section is contained in Sub-section (1) and under it the tax levied or collected is deemed to have been levied or collected validly. If, therefore, matters had stood at that stage, that is, if assessment had been made at 4? pies in the rupee, but recovery proceedings had not taken place, any objection on the score of the constitutional validity of the proviso to Section 3(1) would not have stood in the way of the recovery of the tax. Similarly if tax had been collected at the rate of 4? pies before the date of the Amending Act and the amount had been retained with the Government no proceedings either to challenge the assessment or to question the legality of the retention of the amount collected would have been open to the assessee. But that is not the situation which is brought up for consideration in these petitions. As already pointed out, when the excess over three pies per rupee was refunded to the petitioner, it was an amount lawfully due to him and was properly paid. The only question is, whether the payment had become unlawful or could be deemed to have been made under a mistake of law. If ex hypothesi the refund was due it was due because of the Judgment of this court upholding the objection to the validity of the charging provision; there could be no mistake in law in making the refund and the mere fact that the proviso has been re-enacted with retrospective effect cannot have the effect of rendering the refund then made either illegal, unlawful or one under a mistake of law. If authority were needed for what I consider so obvious a proposition I might refer to the decision of Rajagopalan, J., in W.P.A. Soundarapandian and Brothers by partner W.P.A.S. Bhaskaran and Others Vs. The Agricultural Income Tax Officer, . I consider that the demand for the repayment of the amount refunded is not justified by law and that the petitioners are entitled to the reliefs which they seek by these petitions.

11. The petitions are accordingly allowed and the rules nisi made absolute and the notices of demand quashed. No order as to costs.