

(1955) 02 MAD CK 0024

In the Madras High Court

Case No : W. Petition No. 644 of 1954

P. Hajee Abdul Gafoor Sahib

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 14-02-1955

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 7 STC 133

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : T.S. Krishnamurthi Ayyar and G.S. Ullal, for the Appellant; The Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—This is a petition under Article 226 of the Constitution for the issue of an appropriate writ to the authorities of the Commercial Tax Department to restrain them from enforcing an order of assessment already made and which had become final, under which the petitioner was liable to sales tax assessed under the provisions of the General Sales Tax Act, 1939, and the rules framed thereunder.

2. The petitioner was a licensed tanner. For the assessment year 1950-51 he was assessed on a turnover of Rs. 24,22,622-14-5. The assessment was levied by the Deputy Commercial Tax Officer on 22nd January, 1952. The assessee appealed to the Commercial Tax Officer, but the assessment was confirmed, and the appeal was dismissed on 24th April, 1952. The assessment became final. The tax liability was Rs. 37,853-7-9. The assessee paid a sum of Rs. 5,265-3-9. The balance has yet to be collected. The validity of the assessment itself was challenged by this application presented in October, 1954, that is more than 2 1/2 years after the assessment had become final. The assessee had an opportunity to appeal against the appellate order of the Commercial Tax Officer to the Appellate Tribunal u/s 12-A of the Act, but the assessee did not appeal.

Having had an adequate remedy to challenge the correctness or even the validity of the assessment confirmed by the Commercial Tax Officer, and having no adequate explanation for that failure, the petitioner should not be permitted to invoke the jurisdiction vested in this Court under Article 226 of the Constitution to grant in its discretion a writ of certiorari.

3. Apart from the fact that the petitioner failed to avail himself of the remedy, there is also the considerable delay. It is not as if anything is enforced against the petitioner which is not permissible, if the order of assessment confirmed by the Commercial Tax Officer on 24th April, 1952, were to stand. The delay itself disentitles, in our opinion, the petitioner to any relief claimed by him.

4. Learned counsel for the petitioner argued on what he called the merits of the case, in support of his contention, that the assessment confirmed by the Commercial Tax Officer was illegal. One of his contentions was that since Rule 16 (5) of the Madras General Sales Tax (Turnover and Assessment) Rules framed under the Act was held to be ultra vires, the retention of Rule 16 (2) and "exemption" of tax liability under that would be discriminatory and therefore unenforceable. It should be remembered that the petitioner is a licenced dealer, and the liability of an unlicensed dealer to pay sales tax, even though Rule 16(5) has been held to be ultra vires, does not really arise for determination in these proceedings. Another contention of the learned counsel for the petitioner was that Rule 15, which provided for provisional assessment on a monthly basis in the case of a licensed tanner was also ultra vires, and therefore there was no machinery at all to enforce the liability which Section 3 (1) read with Section 5 of the Act imposed upon him. Yet another contention was that, since the single point taxation could no longer be confined only to licensed dealer after Rule 16 (5) had been held to be ultra vires, the basis of licensing was non-existent, and that no licence fee should have been collected from him. We have merely set out the contentions of the learned counsel for the petitioner. We propose to express no opinion on the soundness or otherwise of any of these contentions.

5. The petition is dismissed with costs. Counsel's fee Rs. 100.