
(1964) 06 MAD CK 0004

In the Madras High Court

Case No : T.A. No. 1254 of 1961 and T.C. No. 27 of 1963 (Revision No. 17)

S. Mohammad Samiulla Sahib and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 30-06-1964

Acts Referred:

Citation : (1965) ILR (Mad) 511 : (1964) 15 STC 920

Hon'ble Judges : Ramamurti, J; Ramakrishnan, J

Bench : Division Bench

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

Judgement

Ramakrishnan, J.—In Noor Mohamed & Co. v. State of Madras [1956] 7 S.T.C. 792 , it was held by this Court that in respect of turnover

in hides and skins, unlicensed dealers were not assessable to sales tax. For the assessment year 1954-55 the assesseees were given exemption on

their turnover in hides and skins and subjected to an assessment on a small turnover of Rs. 10,000/- and odd which dealt with other items of

goods. But the Supreme Court in State of Madras v. Noor Mohamed & Co. [1960] 11 S.T.C. 570 overruled the decision of this Court in Noor

Mohamed & Co. v. State of Madras [1956] 7 S.T.C. 792 and held that unlicensed dealers in hides and skins were also liable to pay sales tax.

Relying on this decision the Deputy Commercial Tax Officer suo motu took steps for revising the assessment and assessed the petitioners' sales in

hides and skins. The learned counsel appearing for the revision petitioners presses his claim only in regard to a turnover of Rs. 39,000/- and odd in

respect of which the assesseees claimed exemption on the footing that they represented sales in the course of export effected through Messrs Best

& Co., as exporting agents. The assessee had dealings with Messrs Best Co. in respect of a turnover of Rs. 1,06,000/-. The Deputy Commercial

Tax Officer found on a perusal of the contracts available with the assessee that their claim to the sales being in the course of export was

supportable in regard to a turnover of Rs. 67,000/- and odd. But since the two contracts which represented the disputed turnover of Rs. 39,000/-

and odd were not forthcoming, they should be presumed to be sales completed in Madras State and therefore assessable. The Sales Tax

Appellate Tribunal to whom the assessee appealed confirmed this decision and the present revision is directed against the order of the Sales Tax

Tribunal.

2. It was urged by Sri Chandrasekhara Sastry for the petitioners that there was absolutely nothing to show that in regard to these two transactions,

the assessee's dealings with Best & Co. followed a different pattern from the rest of their dealings and that as the accounts were kept in the same

fashion by the assessee in regard to the entire dealing with Messrs Best & Co., there was no room at all for the lower authorities to draw an

adverse presumption against the assessee relying solely on the omission of the assessee to produce the relevant contracts. The petitioners'

learned counsel also relied on Rule 26, Sub-rule (16), of the Madras General Sales Tax Rules, 1959, which as it stood at the relevant period

required an assessee to preserve his accounts for a period of five years after the close of the year to which they related. Sri Chandrasekhara Sastry

urged that since more than five years had elapsed from the year of assessment, the loss of the relevant contracts should be considered to have been

accidental and not a wilful suppression of a relevant document or accounts by the assessee, and that no adverse inference should be drawn

against them regarding the nature of the contract with Best & Co. Learned Government Pleader appearing for the Government relied on the

observation of the Tribunal that Messrs Best & Co. had functioned also as purchasers from other dealers. It is not the case of the Government that

Messrs Best & Co. in their relationship with the assessee functioned also as purchasers in the case of some transactions and as selling agents in

the case of other transactions. There is therefore considerable force in the contention of the petitioners, that the transactions between them and

Messrs Best & Co. followed a uniform pattern as revealed in the petitioners' accounts (regarding which there has been no challenge) and as revealed in the contracts which the petitioners were able to produce for a major part of their transactions with Messrs Best & Co. There is, therefore, absolutely no reasonable basis for departing from the general pattern of the transactions, in the two cases where the department thought it fit to assess the petitioners.

3. Learned Government Pleader urged that the finding of the Appellate Tribunal on the question whether the assesseees are entitled to obtain an exemption in regard to sales in the course of export is a question of fact to be decided on the evidence and that therefore it would not be within the scope of this Court to interfere with that finding in revision. We do not agree. What the Tribunal purported to do was to draw a presumption on the alleged absence of certain items of evidence, but while purporting to draw such a presumption, the Tribunal entirely failed to consider the rule aforesaid regarding the period for preservation of accounts and the fact that the assesseees' transactions with Messrs Best & Co. had been consistently of one pattern with reference to the assesseees' accounts and a major portion of the transactions. There was therefore no basis at all for drawing an adverse inference from the circumstance of the non-availability of the contracts. It led to a finding which cannot be legally supported. We therefore allow the revision and set aside the assessment on the turnover now in dispute.

4. There was a final argument by learned counsel for the petitioners that in the event of their being found liable for assessment, the Tribunal should have granted them a penalty licence. As pointed out by the learned Government Pleader a penalty licence requires an application by the assesseees which is absent in this case. However, this question does not arise in view of our decision given above allowing the revision. The revision is allowed in respect of the turnover of Rs. 39,000/- and odd which alone is disputed before us. The revision fails in other respects. There will be no order as to costs.