
(1959) 09 MAD CK 0044

In the Madras High Court

Case No : Tax Revision Case No. 64 of 1956

Sri Jey Cherish and Co. Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 01-09-1959

Acts Referred:

Citation : (1960) 73 LW 508 : (1960) 2 MLJ 147 : (1960) 11 STC 353

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

Bench : Division Bench

Advocate : G.R. Jagadisan, for T.V. Balakrishnan, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The disputed turnover was Rs. 1,05,955-11-2. It was common ground that this represented the price at which the assessee purchased untanned hides and skins. The further findings were that these untanned hides and skins were got tanned in other tanneries by the assessee and that the tanned hides and skins were eventually sold by the assessee for purposes of export. The Tribunal, agreeing with the departmental authorities, held that the assessee was liable to be assessed to sales tax on this turnover. Apparently the basis of the liability was sought in Rule 16(2) of the Turnover and Assessment Rules, 1939, as they stood in the relevant assessment year 1952-53.

2. Both before the Appellate Authority and the Appellate Tribunal the stand taken was that, as the assessee did not tan these hides and skins in any tannery of his own, the tax liability imposed by Rule 16(2) was not attracted. That contention, in our opinion, was rightly rejected in the circumstances of this case. In the relevant year of assessment the assessee held a licence both as a dealer and as a tanner. It was true that the authorities upheld his plea, as a question of fact that these hides and skins were not tanned in any tannery that belonged to the assessee. None the less, it was certainly a reasonable inference from the facts proved, that the Tribunal confirmed, that it was as a registered tanner that he

purchased the goods. The fact that he had them tanned within the State at tanneries that did not belong to him did not make him any the less a registered tanner within the meaning of Rule 16(2).

3. Learned counsel for the assessee next contended that to make a person a tanner a course of dealings would have to be established. Such a point was never taken at any stage before. For example, even the Tribunal was not asked to investigate any plea that this turnover represented an isolated transaction and did not constitute the turnover of a course of dealings in the year of assessment. A new question involving investigation of facts not raised at any stage before, the assessee cannot be allowed to put forward at this stage.

4. Learned counsel for the assessee next referred to Rule 16(3) and contended that Rule 16(2) had to be read consistently with Rule 16(3) and that Rule 16(3) could not be availed of by the assessee. He would be subject to a tax at the purchase point on purchases of untanned hides and skins and taxed again at the sales on sales of tanned hides and skins, because no tannery of his paid the tax within the meaning of Rule 16(3). This contention again was not put forward before the Tribunal. Learned counsel for the assessee recognised as a factual position that on the sales of the tanned hides and skins the assessee was not subjected to any tax liability. The word "tannery" as used in Rule 16(3) has to be considered consistently with the scheme of the rules. The tax is to be paid by a person that is a tanner. It is not necessary for us to consider in this case, whether a person who gets hides and skins tanned elsewhere should be deemed to be the owner of a tannery within the scope of Rule 16(3).

5. In the circumstances of the case, as we said, the fact that the assessee was proved to have got the untanned hides and skins tanned in tanneries other than his own made no real difference to the tax liability, to which he was subjected under Rule 16(2) as a registered tanner.

6. The petition fails and is dismissed with costs. Counsel's fee Rs. 100.