
(1955) 11 MAD CK 0019

In the Madras High Court

Case No : Tax Revision Case No. 58 of 1955

Sri Sundararajan and Co. Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 10-11-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 246

Citation : AIR 1956 Mad 298 : (1956) ILR (Mad) 1123 : (1956) 69 LW 75 :
(1956) 1 MLJ 339 : (1956) 7 STC 105

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

Bench : Division Bench

Advocate : R. Ramamurthi Ayyar, for A.R. Krishnaswami, for the Appellant; The Advocate-General and The Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. The assessee was a registered dealer, registered under the provisions of the Madras General Sales Tax Act (hereinafter referred to as the Act). In the assessment year 1952-53 a sum of Rs. 46,456-12-6, which represented the amounts the assessee firm had collected that year from its purchasers by way of tax u/s 8-B of the Act, was included in its assessable turnover. The contention of the assessee firm, that it was not liable to pay sales tax on that sum, was negated by the departmental authorities, and the Appellate Tribunal agreed with them. It was the correctness of that decision that the assessee challenged before us.

2. On 7th January, 1954, a Division Bench of this High Court, which consisted of Satyanarayana Rao, J., and one of us, held in Deputy Commissioner of Commercial Taxes v. Krishnaswami Mudaliar [1954] 5 S.T.C. 88, that under the scheme of the Act the amount collected by a registered dealer from the consumer by way of sales tax and paid over to the Government should not be included in the turnover of the registered dealer as part of the sale price of the goods sold, and that that amount was not liable to be taxed over again.

Subsequent to that, the Madras Legislature passed the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1954 (Act XVII of 1954) (hereinafter referred to as the impugned Act). That Act received the assent of the President on 6th July, 1954.

3. Section 2 of the impugned Act ran :-

In the case of sales made by a dealer before the 1st April, 1954, amounts collected by him by way of tax under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the principal Act), shall be deemed to have formed part of his turnover.

4. Section 3(1) ran :-

All assessments and collections made, all orders passed, and all action taken by any officer in the exercise or purported exercise of jurisdiction or powers conferred by the principal Act, and all judgments, decrees or orders pronounced by any Tribunal or Court in the exercise of its jurisdiction or powers with respect to matters in the principal Act, on the basis that amounts collected by a dealer by way of tax under the principal Act before the 1st April, 1954, formed part of the turnover of the dealer are hereby declared to have been validly made, passed, taken or pronounced, as the case may be ; and any finding recorded by any officer, Tribunal or Court to a contrary effect and any order, judgment or decree in so far as such order, judgment or decree embodies or is based on any such finding and does not relate merely to the costs of the proceeding which resulted in the judgment, decree or order, shall be void and of no effect:

Provided that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this Act had not been passed.

(Sub-section (2) omitted).

5. It was solely on the basis of Act XVII of 1954 that the taxing authorities and the Appellate Tribunal decided that the assessee was liable to pay sales tax on the disputed turnover. The petitioner contended that the impugned Act was ultra vires the legislature, and that it had no legislative competence to pass such a measure. The Appellate Tribunal declined to investigate that question.

6. No question of legislative competence arose for consideration in Krishnaswami Mudaliar's case [1954] 5 S.T.C. 88. After pointing out that under the Bengal Act, which had no provision corresponding to Section 8-B of the Madras Act, it had been held by the Calcutta High Court in Bata Shoe Co. v. Board of Revenue, West Bengal [1949] 1 S.T.C. 193, that it was permissible to include in the taxable turnover of a dealer amounts collected by that dealer by way of sales tax, Satyanarayana Rao, J., referred to the distinction between the cases where the dealer was not authorised by law to collect the tax but all the same added it to the sale price in the bill of sale and collected it from the customer and the cases where the dealer was so authorised, and he observed :-

In the former case it is undoubtedly part of the purchase price, as all the collections made by the dealer from the purchaser must be treated as constituting part of the sale price. If, however, under law the dealer is empowered to pass on the sales tax to the purchasers, to collect it and pay it to the Government, what he is permitted to so collect under law would continue to retain its character as tax and it would never form part of the purchase price.

10. It should be noted that the correctness of the decision in *Bata Shoe Co. v. Board of Revenue, West Bengal* [1949] 1 S.T.C. 193, on the application of the provisions of the Bengal Act was not challenged and was not doubted in *Krishnaswami Mudaliar's* case. Nor was its correctness with reference to the provisions of the Bengal Act challenged before us.

11. The learned counsel for the petitioner urged that the principle laid down in *Krishnaswami Mudaliar's* case [1954] 5 S.T.C. 88 was really left unaffected by the provisions of the impugned Act. The definitions of "sale" and "turnover" in the Act were left untouched. Section 8-B of the Act was still retained. The levy still retained the character of a tax on sales tax, and that, the learned counsel for the petitioner urged, was beyond the legislative competence of the legislature. Entry 54 of List II of the Seventh Schedule of the Constitution is : "Taxes on the sale or purchase of goods other than newspapers." The contention of the learned counsel for the petitioner was that that entry empowered only a tax on sale or purchase of goods, and that it did not empower the legislature to levy a tax on the tax on the sale or purchase of goods.

12. The fallacy that underlies this argument appears to be the assumption, that Section 8-B of the Act limits the legislative competence of the legislature. Obviously it could not have that effect. What was held in *Krishnaswami Mudaliar's* case [1954] 5 S.T.C. 88 was that Section 8-B of the Act disabled the assessing authority from including the amounts collected by way of tax in the taxable turnover of the dealer. The Court had no occasion then to decide, and it did not decide, whether the legislature had the legislative competence to enact that amounts collected by way of tax could be included in the dealer's turnover. The Court only held that the Act as it stood did not provide for the inclusion of the amounts collected by a dealer u/s 8-B of the Act in his taxable turnover. The decision was not that the Act could not make the amounts collected by a registered dealer by way of tax u/s 8-B part of the assessable turnover. The decision was that the Act as it stood then did not make it part of the assessable turnover. That the legislature, which had the competence to enact Section 8-B of the Act, would have had the power to repeal it should be obvious. If Section 8-B had been repealed, amounts collected to cover the sales tax a registered dealer would have to pay could legitimately have been included in his taxable turnover. The legislature would have had the competence to enact that even specifically. That competence is not affected by the retention of Section 8-B of the Act along with the impugned Act.

13. Section 2 of the impugned Act did not make the amounts collected by way of

tax under the authority of Section 8-B of the Act part of the turnover. Section 2 only enacted that such amounts shall be "deemed" to be part of the turnover and for a limited period. It may not be necessary to set out authorities for the well-settled principle of what the effect is of the use of the expression "deemed" in a statute. Was the legislature competent to enact Section 2 including the deeming provision, is the real question. If the validity of Section 2 of the impugned Act is established, there should be little difficulty in upholding the validity of Section 3, which gave effect to the legal fiction enacted by Section 2.

14. Obviously it is not the name the legislature accords to a payment by a purchaser to a seller, who is a dealer as defined by the Act, that determines the question of the legislative competence. No doubt Section 8-B called the payment an amount (collected) by way of tax. It is equally true that the statutory liability to pay the sales tax is laid on the dealer. What is taxable is not each transaction of sale but the total turnover of the dealer, computed in accordance with the provisions of the Act and the Rules. But it is well-recognised that whatever be the form of the statutory provisions, the ultimate economic incidence of the tax is on the consumer, the purchaser. It was that well-settled principle that was restated in *Bengal Immunity Co., Ltd., v. State of Bihar* [1955] 6 S.T.C. 446. Even if the registered dealer collects the amount by way of tax under the authority of Section 8-B of the Act, the payment is by the purchaser on the occasion of the sale by the dealer. Vis-a-vis the dealer it is in reality part of the price the purchaser has to pay the seller for purchasing the goods. A tax on such a payment, in our opinion, is well within the ambit of Entry 54 of List II, Schedule VII, read with Article 246(3) of the Constitution.

15. In *Paprika Ltd. v. Board of Trade* [1944] 1 All E.R. 372 Lawrence, J., pointed out:-

Wherever a sale attracts purchase tax, that tax presumably affects the price which the seller who is liable to pay the tax demands, but it does not cease to be the price which the buyer has to pay even if the price is expressed as X plus purchase tax.

16. That principle was approved of by the Court of Appeal in *Love. v. Norman Wright (Builders) Ltd.* [1944] 1 All E.R. 618 Goddard L. J., observed :-

Of course if a seller quotes a price of ? x plus the purchase tax the buyer must pay the amount of the tax whatever it may be, as part of the purchase price.

17. After analysing the relevant provisions of the English Act, Goddard, L. J., observed at page 620 :-

Where an article is taxed, whether by purchase tax, customs duty or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax

if he desires, to pass it on to the buyer ; if the buyer agrees to the price it is not for him to consider how it is made up, or whether the seller has included the tax or not.

18. We are in respectful agreement with the principles laid down by the learned Judges in the cases quoted above.

19. When the legislature had legislative power to levy a tax on the basis of the amount paid by the purchaser, even though a portion of it was collected by the dealer by way of tax, it should be obvious that the power the legislature exercised in enacting Section 2 of the impugned Act was something less. The legislature enacted a legal fiction for a limited period, up to 1st April, 1954. The continuance of Section 8-B of the Act, with the limitation it imposed on the assessment to conform to the scheme of the Act as a whole, necessitated that legal fiction. That did not affect the competence of the legislature to enact Section 2 of the impugned Act. Section 2 of the impugned Act did not become any the less valid when the legislature directed that it should have retrospective effect.

20. Section 3 of the impugned Act, as we pointed out, was really consequential. Even apart from that aspect of the case, we are of opinion, that the legislature had the competence to enact Section 3, which validated the assessments, which would have been invalid under the provisions of the Act as they stood before the date of the validating Act as those provisions were explained in Krishnaswami Mudaliar's case [1954] 5. S.T.C. 88. It is well-settled that the power to validate illegal assessments made by executive authorities is incidental to the power to levy the tax, provided, of course, the legislature had the power to levy the tax. In the present case the power to levy the tax was based upon Entry 54 in List II of Seventh Schedule of the Constitution.

21. In *United Provinces v. Atiqua Begum* [1940] F.C.R. 110, Gwyer, C.J., observed at page 136 :-

The validation of doubtful executive acts is not so unusual or extraordinary a thing that little surprise would be felt if Parliament had overlooked it, and it would take a great deal to persuade me that legislative power for the purpose has been denied to every legislature including the Central or Federal Legislature in India. It is true that "validation of executive orders" or any entry even remotely analogous to it is not to be found in any of the three Lists; but I am clear that legislation for that purpose must necessarily be regarded as subsidiary or ancillary to the power of legislating on the particular subjects in respect of which the executive orders may have been issued.

22. The learned Chief Justice was, of course, considering the Lists of the Government of India Act, 1935.

23. The same principle was laid down by the High Court of Australia in *Werrin v. The Commonwealth* 59 C.L.R. 150, Rich, J., observed :-

As to the validity of the section, I should have thought it was clearly within the competence of the Federal Parliament to say that a sum of money erroneously collected under a tax Act by administrative officers acting in good faith should be retained. There may be obligations or liabilities resulting in a money claim which have a constitutional basis, but, if there be such, this is not one of them.

24. Starke, J., expressed himself thus :-

It is argued that the provision above set forth is not a law with respect to taxation or incidental thereto but a mere confiscation of the moneys of the subject in respect of which the Parliament cannot give to the Commonwealth immunity from suit.... The prompt collection of revenue is of the utmost public importance both for the performance of the functions of Government and the meeting of public liabilities. It would upset public finance unless some safeguards were provided against mistakes in assessment or the illegal exaction and collection of taxes. Generally a system is provided for the correction of such errors by appeal and so forth.... But the Parliament is not so confined; its power is plenary.... It might be necessary as in the present case, where apparently large sums of moneys were involved, to safeguard revenue that had been paid and collected and protect it in the manner prescribed by Section 12-A and of that the Parliament alone can judge.

25. But the provision, if not a tax, is, in my judgment, clearly a law with respect to taxation and within the competence of the Parliament.

26. The view of Dixon, J., at page 165 was:-

For the enforcement of the taxation laws, as of other laws, is the function of the Government.... It is a matter incidental to that function or power to receive payments, on account of tax including sums which, through some mistake of fact or law, are collected although not strictly payable. Unless therefore the Constitution contains some provision which fetters the power of the Federal Parliament to bar an existing cause of action against the Commonwealth, I should unhesitatingly say that Section 12-A was a valid enactment making the failure of the present action inevitable.

27. The validity of Section 3 of the impugned Act was attacked further on the ground, that it set aside decrees of court, and that that amounted to an usurpation of the powers assigned to the judiciary by the Constitution. The basic assumption of this argument was that the Constitution enshrined the doctrine of separation of powers. That contention must be negatived in view of the pronouncements of the Supreme Court, one of which is in *Ram Jaway a Kapur v. State of Punjab* (1955) S.C.J. 504 Mukherjea, C.J., observed :-

The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one

organ or part of the State, of functions that essentially belong to another.

28. The pith and substance of the impugned Act was to validate the assessments made by the assessing authorities. That some of the assessments were set aside by decrees of courts did not make them any the less assessments under the Act. It was these assessments that were validated despite the decrees of courts. The legislature had the competence to enact that as incidental to the declared objective of the Act, to Validate the assessments for the periods before 1st April, 1954.

29. The learned counsel for the petitioner contended that the impugned Act fell within the mischief of Article 14 of the Constitution and was therefore void. He pointed out that the legislature discriminated between the assessments for the periods before 1st April, 1954, and those for the subsequent periods. We are unable to see any real substance in this contention. The Income Tax Act, for instance, cannot become void retrospectively and the assessments made thereunder illegal, because the rates of levy are changed from time to time by the Finance Acts. If, for example, the Sales Tax Act were to be repealed by the legislature, the assessments made under the Act before the repeal could not become illegal, and the plea of discrimination and denial of equal protection of laws would not be available. So long as the taxing power is there, it is open to the legislature to decide the basis of taxation and to alter that from time to time. Such alterations would not fall within the mischief of Article 14 of the Constitution.

30. We are of opinion that Act XVII of 1954 is intra vires and valid.

31. The only point raised in this revision was the validity of Act XVII of 1954, and that contention we have to negative. This revision case is dismissed with costs. Counsel's fee Rs. 100.