

(1960) 11 MAD CK 0046

In the Madras High Court

Case No : Tax Case No. 151 of 1958 and Revision 81

State of Madras

APPELLANT

Vs

Asher Textiles Ltd.

RESPONDENT

Date of Decision : 08-11-1960

Acts Referred:

Citation : (1961) 12 STC 233

Hon'ble Judges : Srinivasan, J;Rajagopalan, J

Bench : Division Bench

Advocate : G. Ramanujam, for Government Pleader, for the Appellant; T.R. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Rajagopalan, J.—In the assessment finalised by the Commercial Tax Officer on appeal on 24th December, 1955, he applied the principle laid down in Bengal Immunity Co., Ltd. v. State of Bihar [1955] 6 S.T.C. 446 and held that turnover of Rs. 7,87,671-2-0 was not assessable as that represented the turnover of inter-State sales. Subsequent to that, on 30th January, 1956, the President promulgated the Sales Tax Validation Ordinance, which was followed up by the Sales Tax Validation Act, VII of 1956. Under that enactment the ban imposed by Article 286 on the levy of tax on inter-State sales was lifted so that what were called "explanation sales" could be taxed if the appropriate State Legislature provided for that. The Deputy Commissioner, Coimbatore, purporting to exercise the revisional powers vested in him by Section 12 of the Act, issued a notice to the assessee to show cause why the order of the Commercial Tax Officer dated 24th December, 1955, should not be revised, and why the turnover of Rs. 7,87,671-2-0, which had been exempted from tax by the Commercial Tax Officer, should not be subjected to the levy of sales tax at the appropriate rate. The Deputy Commissioner eventually overruled the objections of the assessee and revised the order of the Commercial Tax Officer and directed the levy of sales tax on the turnover in dispute. The assessee appealed to the Tribunal. The Tribunal

set aside the order of the Deputy Commissioner. The Tribunal held that there was nothing improper or illegal in the order of the Commercial Tax Officer, because it was correct and legal as the law stood on the date that order was passed by the Commercial Tax Officer ; subsequent enactment with retrospective effect did not make the order of the Commercial Tax Officer illegal. The Tribunal was also of the view that it was really a case of escaped turnover, and the Tribunal held that the revisional jurisdiction vested by Section 12(2) of the Act did not authorise the Deputy Commissioner to assess escaped turnover.

2. The Tribunal's view, that it was a case of escaped turnover, cannot be sustained. The Tribunal referred to the decision of Krishnaswami Nayudu, J., in *Louis Dreyfus and Co., Ltd. v. Province of Madras* [1952] 3 S.T.C. 19. Apparently it was not brought to the notice of the Tribunal that the decision on that point was reversed by the Full Bench of this Court in *State of Madras v. Louis Dreyfus and Co., Ltd.* [1955] 6 S.T.C. 318. In that case the difference between escaped and under-assessment or non-assessment of a disclosed turnover was explained and the relative fields of the revisional jurisdiction and the power to assess escaped turnover-it is now Rule 17(1) of the General Sales Tax Rules-was also explained by the Full Bench. At page 328, it was pointed out:

...in cases where the entire turnover of an assessee is before the assessing authority and is considered by it and such authority by error of fact or law treats the turnover or any part thereof as not assessable or grants a deduction or exemption to which the assessee is not entitled under the Act, the case is not one of escaped turnover but of an improper or illegal assessment order which is revisable under Rule 14(2).

3. Revisional jurisdiction in the present case was exercised u/s 12(2) of the Act, but the principle remains the same. The Tribunal was thus in error in treating it as a case of escaped turnover. Incidentally, we have to point out that, even if it had been the escaped turnover, the Deputy Commissioner would have had jurisdiction to assess that escaped turnover under Rule 17(3-A) read with Rule 17(1) of the Sales Tax Rules. But that question, of course, does not arise for further investigation.

4. The next question is, whether the Deputy Commissioner was entitled to revise the order of the Commercial Tax Officer, which was quite consistent with the law, as it stood on the date that order was passed by the Commercial Tax Officer, but was inconsistent with the provisions of Act VII of 1956. The view taken by the Tribunal, that it could not be treated as a case of impropriety or illegality within the meaning of Section 12(2) of the Act, because on the date the Commercial Tax Officer passed his order it was quite consistent with the law as it stood then, will have to be overruled in the light of the observations of the Supreme Court in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, . Those principles were applied in *State of Madras v. Asher Textiles, Ltd.* [1959] 10 S.T.C. 584 in exercise of revisional jurisdiction vested in the High Court u/s 12-B of the Act. The same principle would also govern either cases of rectification for

which the Income Tax Act provides or cases of revisional jurisdiction u/s 12(2) of the Act. The principle remains the same. When the law is amended with retrospective effect, it was the law that should be deemed to have been administered even on the date of the original order. Judged by that test, the original order of assessment finalised by the Commercial Tax Officer was wrong, because if what was enacted by Act VII of 1956 was the law on the date of the original assessment, the original assessment was illegal. Learned counsel for the respondent-assessee urged that the ambit of Section 12(2) was more circumscribed than that for instance of Section 12-B of the Act, and that the order of the Commercial Tax Officer should not be characterised either as illegal or improper when it was correct and consistent with the law as it stood on that date. But that contention we must negative in view of what we have stated above. The principle laid down in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, , applies with equal force to cases of revision u/s 12(2) of the Act also.

5. The petition is allowed. The order of the Tribunal is set aside and the order of the Deputy Commissioner is restored. The petitioner will be entitled for the costs of this petition. Counsel's fee Rs. 100.