

(1956) 04 MAD CK 0040

In the Madras High Court

Case No : Tax Rev. Case No's. 41, 48, 49, 51, 53, 55, 56, 77, 78 and 110 of 1955

State of Madras

APPELLANT

Vs

Bangalore Automobiles, Salem and Others

RESPONDENT

Date of Decision : 06-04-1956

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 3, 3(1), 3(2), 8B

Citation : AIR 1957 Mad 682 : (1956) 69 LW 618 : (1956) 7 STC 537

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

Bench : Division Bench

Advocate : Assistant Government Pleader, for the Appellant; S. Swaminathan, A.D. Souza for John and Row, N.R. Govindarajachari, L.V. Krishnaswami Aiyar, V.C. Gopalaratnam and S. Nagaraja Aiyar, for the Respondent

Final Decision : Allowed

Judgement

Rajagopalan, J.—These are petitions u/s 12(B) of the Madras General Sales-tax Act to revise the orders of the Appellate Tribunal.

2. The respondents were dealers in motor cars and their accessories. On the turnover of the sales of those goods, they were liable to pay sales tax

at the standard rate of Re. 0-0-3 in the rupee, prescribed by Section 3d) (b) of the Act in addition they were liable to pay tax at the rate of Re. 0-

0-6 in the rupee u/s 3(2) (iv) of the Act. The assessing authorities included in the taxable turnover of each of these dealers amounts collected by

them by way of tax u/s 8-B of the Act and assessed that part of their total turnover also at the rate of Re. 0-0-9 in the rupee.

In Deputy Commr. of Commercial Taxes Coimbatore Division, Coimbatore and Others Vs. M. Krishnaswami Mudaliar and sons, Vellore and

Others, this Court held that the turnover made up of amounts collected by way

of tax by a registered dealer could not be assessed at all to any tax

under the Act Subsequent to that the Madras Legislature enacted Act XVII of 1954 to validate the levy of tax on amounts collected by a dealer by

way of tax. The validity of that Act has been upheld by us in *Sundarajan and Co. Ltd v. State of Madras*, 1956 7 STC 105: ((S) AIR 1956 Mad

298. (B) and that has been reiterated by us in TRC Nos. 46 etc. of 1955 (C) in which we have just delivered judgment.

3. The only question that remains for determination in these cases is whether the Tribunal was right in the view it took that amounts collected by

way of tax and deemed to be part of the turnover of a dealer u/s 2 of Act XVII of 1954 were liable to be assessed only u/s 3(1) (b) of the Sales-

tax Act and that it would not be subject to the additional tax authorised by Section 3(2) (iv) of the Act.

4. The tax authorised by Section 3(1) of the Act is on the total turnover of a dealer; see Section 3(1) (b). The additional tax authorised by Section

3(2) of the Act is among others on the first sale of the goods mentioned in Section 3(2) (iv); and Section 3(2) directed that the additional levy shall

be in addition to the tax, to which the dealer seller is liable under sub-Section (1) of his total turnover for the year. Section 2 of Act XVII of 1954

runs:

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. ... shall be deemed to have formed part of his turnover.

Turnover"" had been defined by Section 2(1) of the Act, ""Turnover"" means the aggregate amount for which goods are either bought by or sold by

a dealer ... for ... valuable consideration. The expression ""sale"" has been defined in Section 2(h) of the Act. It is with reference to these provisions,

that we have to answer the question at issue, whether the amounts collected by way of tax by a dealer on the sale of goods that fell within the

scope of Section 3(2) (iv) of the Act are liable to pay the additional tax u/s 3(2) (iv) of the Act.

5. The Tribunal recorded ""tax collected by the dealer becomes part of his total turnover by reason of the Validation Act, and it follows that it will

be subject only to the three pies rate u/s 3(1) (b)"". That the amounts collected by the dealer by way of tax became part of his turnover u/s 2 of Act

XVII of 1954 does not admit of any controversy at this stage. That it was part of the total turnover within the meaning of Section 3(1) (a) should

also be beyond dispute. It should follow that on that turnover also the dealer is liable to pay the tax prescribed by Section 3 (1) (b). But the

question still remains, is the dealer also liable to pay the additional tax prescribed by Section 3(2) (iv).

6. As we pointed out, what Section 3(2) (iv) authorises is the levy of the additional tax of Re-0-0-6 on the sale of any of the goods mentioned

therein. What did the amounts collected by the dealer by way of tax under the authority of a 8-B of the Act represent? In 1956 7 STC 106: AIR

1956 Mad 298 (B) we pointed out that the amounts collected by way of tax under the authority of Section 8-B of the Act were paid by the

purchaser on the occasion of the sale by the dealer. We also pointed out ""vis-a-vis the dealer it is in reality part of the price the purchaser has to

pay the seller for purchasing the goods.

"What was sold by the dealer was goods which fell within the scope of Section 3 (2) (iv) of the Act. What the purchaser, paid on the occasion of

that sale was the price for the goods the ""valuable consideration"" for the sale within the meaning of ""sale"" and ""turnover"" defined by the Act. No

doubt the bill showed the price charged by the dealer and the amount collected by way of tax separately. But both the amounts were paid by the

purchaser for effecting the sale in his favour and so both constituted the price he had to pay.

It was the total that represented the consideration for the sale and as such the total of each of these sales constituted the turnover. Suppose the

dealer had shown as separate items in his bill (i) his cost price, (ii) his profit and (iii) the tax which as a dealer he had to pay under the Act, all of

them together would still constitute the consideration for the sale, which the purchaser had to pay, and it is that total that would merge in the total

turnover within the meaning of Section 3(1) of the Act. The fallacy in the reasoning of the Tribunal, as we see it, was to interpret the expression

total turnover"" in Section 3(1) (a) divorced from the definition of ""sale"" and ""turnover"" in Section 2 of the Act, They also overlooked the fact, that

though the Act called the extra amount the purchaser paid as an amount collected by way of tax under the authority of Section 8-B. it was in reality

part of the purchase price that the purchaser paid.

That was the basis on which we upheld the validity of Act XVII of 1954. The concept of a consolidated purchase price, the consideration for the

sale, necessarily involves correlation to the goods sold, and if the goods sold are liable to the additional tax, then it is the entire purchase price that

should furnish the basis for the computation of the tax lawfully leviable. For the purpose of taxing the two items, the price of the goods and the

amount collected by way of tax, cannot be split up. Turnover includes the amounts collected by the dealer, the amounts paid by the purchaser on

the occasion of the sale. They constituted consideration for the sale.

There was no separate consideration passing from the dealer for the amounts collected by way of tax on the occasion of the sale. The goods sold

still constituted consideration for that sale. As we stated, this was the fundamental feature of the turnover which specifically became taxable u/s 2 of

Act XVII of 1954, and this feature, in our opinion, appears to have been overlooked by the Tribunal. It should, however, be noticed that our

decision in 1956 7 STC 105 : AIR 1956 Mad 298 (B) was long subsequent to the decisions rendered by the Tribunal.

7. We differ from the Tribunal, and we hold that the items in question which were excluded by the Tribunal from the scope of the additional levy

u/s 3(2) (iv) of the Act, are subject to the additional levy. The petitions are allowed. There will, however be no order as to costs.