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**(1972) 09 MAD CK 0021**

**In the Madras High Court**

**Case No :** T.C. No. 294 of 1967 Revision No. 169 of 1967

State of Madras

APPELLANT

Vs

K.O. Mohamed Sulaiman and Co.

RESPONDENT

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**Date of Decision :** 27-09-1972

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 5

**Citation :** (1980) 46 STC 162

**Hon'ble Judges :** V. Ramaswami, J; Ramanujam, J

**Bench :** Division Bench

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## Judgement

Ramanujam, J.

Appendix

1. The respondents herein are dealers in hides and skins. But for the assessment year 1954-55, they did not take out a licence u/s 5 of the Tamil

Nadu General Sales Tax Act, 1939. After considering the assessability of the transaction of sales of hides and skins by the respondents during that

year, the assessing officer passed a nil assessment order on 17th October, 1959, following the decision of this Court in Noor Mohamed and Co.

v. State of Madras [1956] 7 S.T.C. 792, wherein it was held that an unlicensed dealer in hides and skins cannot be brought to charge under the

Act. But this nil assessment order passed by the assessing authority was not communicated to the respondents.

2. Later, on 12th August, 1960, their Lordships of the Supreme Court in State of Madras v. Noor Mohammed and Company [1960] 11 S.T.C.

570 held that an unlicensed dealer in hides and skins cannot claim immunity from payment of sales tax and that while a licensed dealer in hides and

skins is entitled to the benefit of a single point tax u/s 5, an unlicensed dealer being not entitled to that benefit, is liable to be taxed in respect of his

sales. Taking advantage of the above decision, the Deputy Commissioner of Commercial Taxes issued a notice to the respondents on 20th July,

1961, proposing to revise the nil assessment order passed by the assessing authority and to assess the respondents on a turnover of Rs.

19,80,562-13-3 being the turnover of sales of hides and skins liable to tax under the Act. As against the said notice proposing a revision of the

nil"" assessment order, the respondents filed Writ Petition No. 855 of 1961 (K.O. Mohamed Sulaiman and Co. v. Deputy Commissioner of

Commercial Taxes, Vepery, Madras [1964] 15 S.T.C. 593) before this Court. That writ petition was allowed by this Court on 22nd April, 1963,

on two grounds : (1) The order of assessment has been passed without issuing a pre-assessment notice to the respondents calling for their

objections and, therefore, it is non est in the eye of law ; (2) The assessment order not having been communicated to the respondents, the Deputy

Commissioner cannot exercise the powers of revision. The decision of this Court in the said writ petition had become final.

3. Later, on 24th July, 1963, the nil assessment order passed on 17th October, 1959, was communicated to the respondents. As against the said

order, which did not impose any tax liability on the respondents, they, however, filed an appeal before the Appellate Assistant Commissioner. The

Assistant Commissioner in disposing of the appeal set aside the ""nil"" assessment and fixed the taxable turnover of the respondents at Rs.

19,80,562-13-3 by an order dated 30th November, 1963. Against the said appellate order, the respondents filed an appeal before the Tribunal.

Before the Tribunal it was contended by the respondents that as this Court in K.O. Mohamed Sulaiman and Co. v. Deputy Commissioner of

Commercial Taxes [1964] 15 S.T.C. 593 (Writ Petition No. 855 of 1961) had held that the nil assessment order is non est in view of the fact that

there has been no pre-assessment notice, there cannot be any valid appeal against an order which is non est. The Tribunal accepted the above

contention and held that the nil assessment order appealed against was non est and, therefore, no appeal lay against the said order. In that view,

the Tribunal allowed the appeal by an order dated 9th January, 1967. The revenue has challenged the order of the Tribunal before us.

4. We are not in a position to say that the order of the Tribunal is erroneous in the facts and circumstances of this case. This Court in K.O.

Mohamed Sulaiman and Co. v. Deputy Commissioner of Commercial Taxes [1964] 15 S.T.C. 593 (Writ Petition No. 855 of 1961) filed by the

respondents challenging the notice proposing the revision has categorically held, inter alia, that the nil assessment order should be treated as non est

in view of the fact that the assessing authority did not issue the pre-assessment notice as required under the provisions of the Act. The decision of

this Court having become final, the revenue cannot now proceed on the basis that the ""nil"" assessment order dated 17th October, 1959, is valid,

notwithstanding the fact that it has not been preceded by a pre-assessment notice. The Tribunal is therefore justified in holding that the ""nil

assessment order is non est in view of the decision of this Court in the writ petition and in allowing the appeal on the ground that no appeal lay

against a non est order. We, therefore, agree with the Tribunal and dismiss the tax case. It is, however, made clear that, on the facts and in the

circumstances of this case, the assessment proceedings should be taken to be pending before the assessing authority and that he is at liberty to

continue the proceedings from the stage from which it was found to be illegal. There will be no order as to costs in this case.