
(1974) 01 MAD CK 0036

In the Madras High Court

Case No : Writ Appeal No. 100 of 1973 against W.P. No. 46 of 1970

The Sales Tax Officer, Enforcement Branch

APPELLANT

Vs

K.M.S. Mari Chettiar

RESPONDENT

Date of Decision : 28-01-1974

Acts Referred:

Income Tax Act, 1961 — Section 44

Citation : (1975) ILR (Mad) 367 : (1975) 35 STC 148

Hon'ble Judges : Veeraswami, C.J.;Natarajan, J;Gokulakrishnan, J

Bench : Full Bench

Advocate : K. Venkataswami, the Additional Government Pleader, for the Appellant; K. C. Rajappa, for the Respondent

Final Decision : Allowed

Judgement

Veeraswami, C.J.—This matter has been placed before a Bench of three Judges, because a Division Bench which heard the matter in the first instance felt that the view in *Veeri Chettiar v. Sales Tax Officer* [1970] 26 S.T.C. 579 required reconsideration. The question is whether Section 19(3) of the Bombay Sales Tax Act, 1959, enabled assessment of a defunct firm. *Veeri Chettiar v. Sales Tax Officer* [1970] 26 S.T.C. 579 decided by this court answered it in the negative, but a Division Bench of the Bombay High Court in *Roopchand Raghavji Phande and Others Vs. Abhyankar and Others*, has answered it in the affirmative. We are of the opinion that the Bombay view is the correct one. The respondent was a firm of dealers in handloom goods and textiles and imported those goods during the period from 1st April, 1960, to 23rd December, 1964. The firm stopped doing business from 2nd June, 1965, and was dissolved with effect from 31st March, 1966. The revenue in the State of Maharashtra served on the dealer in Tamil Nadu with a notice dated 26th October, 1969, asking him to show cause as to why the erstwhile firm should not be assessed under Sub-section (5) of Section 33 of the Bombay Sales Tax Act. To quash this notice, the respondent moved this court successfully. The appeal arises from the order of the learned single Judge

who merely followed *Ponnammal v. Sales Tax Officer* [1971] 27 S.T.C. 123, which in turn was based on *Veeri Chettiar v. Sales Tax Officer* [1970] 26 S.T.C. 579.

2. Broadly speaking, tax enactments contain provisions of a pattern governing three aspects: (1) charge, (2) assessment, and (3) recovery. These provisions may be separate and distinct or any or more of them may overlap one another. The Bombay Act, by Section 6 which is the charging section, directs that subject to the provisions of the Act and to any Rules made thereunder, there shall be paid by every dealer, who is liable to pay, the tax or taxes leviable in accordance with the provisions of the chapter. In this case we are not concerned with the question whether the transactions sought to be charged are really liable to tax, because that will have to be left to the assessing process. A dealer is defined by the Act as any person who carries on a business and a person is defined to include, inter alia, a firm. Having defined a dealer thus and provided for charging a dealer to tax in certain circumstances, Section 33 lays down the procedure for assessment. This section contemplates various contingencies and Sub-section (5) directs assessment of a dealer who had not furnished returns in respect of any period by the prescribed date therefor. Since this was a case where the respondent had not submitted returns to the Maharashtra Revenue, mention in the notice was made of Section 33(5).

3. Whether a defunct firm in the absence of an enabling provision could be assessed to tax was decided by *State of Punjab v. Jullundur Vegetables Syndicate* [1966] 17 S.T.C. 326. The Supreme Court there held that, as, for the purposes of taxing, a firm is treated as a legal entity and on its dissolution it ceases to be such an entity, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no scope for assessing the firm which has ceased to have legal existence. The court was there concerned with the East Punjab General Sales Tax Rules, in particular Rule 40, which merely declared the joint and several responsibility of a dealer and his partner to payment of tax, penalty or any amount due under the Act or Rules. The rule said :

A dealer and his partner or partners shall be jointly and severally responsible for payment of the tax, penalty, or any amount due under the Act or these Rules.

4. There was no other provision which contemplated assessment of a defunct firm. Rule 40 just extracted was interpreted to apply only to an existing firm. The position was more or less the same under the Madras General Sales Tax Act before the introduction of Section 19-A. The wording of Section 19 was in pari materia with the Punjab rule. In view of *State of Punjab v. Jullundur Vegetables Syndicate* [1966] 17 S.T.C. 326, Section 19-A was introduced. The Bombay Sales Tax Act, 1953, contained Section 26 which inter alia dealt with the liability of the partner of a dissolved firm in respect of goods allotted to him on dissolution. There was no other provision. But the Bombay Sales Tax Act, 1959, has Section 19 which is a special provision regarding liability to pay tax in certain cases. It deals with the procedure to assess the liability of a dealer in respect of his business carried on during his lifetime or of a joint Hindu family after partition in

respect of the transactions before that event and then the liability of a defunct firm with reference to tax business carried on prior to the dissolution. Sub-section (3), with which we are concerned, reads :

Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable u/s 18, the tax (including any penalty) due from the firm under this Act or under any earlier law, up to the time of dissolution, whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid or is assessed after dissolution.

5. Roopchand Raghavji Phande and Others Vs. Abhyankar and Others, held that this provision enabled assessment of a defunct firm. But Veeri Chettiar v. Sales Tax Officer [1970] 26 S.T.C. 579, took the opposite view on the ground that Sub-section (3) of Section 19 contained no express enabling provision.

6. In our opinion, as we said, the Bombay view is the correct view. The whole of Section 19 is designed to lay down the procedure for quantifying the liability and realisation thereof, of a defunct firm and of a Hindu family after partition or of a person after his death.

7. It seems to us that the expression "whether such tax has been assessed before such dissolution but has remained unpaid or is assessed after dissolution" is clearly indicative of the fact that the legislature addressed its mind to assessment and collection of tax not only from an existing firm but also from a defunct firm in respect of its transactions when the firm existed. There can be no doubt that charge, assessment and collection, though they are all related, have got to be separately provided for. But such provision may be express or implied. The implication must be clear and the circumstances should warrant it to be necessary. The words "is assessed after dissolution", to our minds, are not ambiguous and are capable of being understood as "is assessed after dissolution as if the firm exists". No other construction appears to us to be reasonable. The object of the legislature being clear, namely, that where the joint and several liability of the partners of a firm has been declared, it is followed by a provision to quantify it by laying down the procedure therefore and the provision so laid down provides both for assessment and collection of tax from a defunct firm.

8. The contention for the respondent is based on Section 33(5). Mr. Rajappa says that Section 19 is not an assessing provision but only deals with collection. According to him, Section 33(5) is the only provision which enables assessment. With reference to the last submission about Section 33(5), we accept it. Assessment of a dealer who had not furnished returns can only be and is always u/s 33(5). But when a defunct firm is to be assessed as if it continues to exist for the purpose of assessment, that enabling provision-and in this case it is Section 19(3) will have to be read with Section 33(5). In other words, Sub-section (3) of Section 19 may be treated as a proviso to or an explanation of Section 33(5). But because Sub-section (3) of Section 19 is of a general nature applicable to a

defunct firm, whether the existing firm made returns or not, it applies separately. That will not detract from the fact that Sub-section (3) of Section 19 provides for a procedure for assessing a defunct firm by deeming the defunct firm as continuing to exist for the purpose of assessment.

9. Reference was made to Section 44 of the Income Tax Act and the decided cases thereon. But that section contains express provision enabling a defunct firm to be assessed to Income Tax. Though the language of Section 44 of the Income Tax Act is not in pari materia with Section 19(3) of the Bombay Act, on a construction of the latter provision we have, as already indicated, come to the conclusion that it does provide for a procedure for assessing a defunct firm.

10. The appeal is accordingly allowed.