(1972) 09 MAD CK 0017

In the Madras High Court

Case No : Tax Case No''s. 286 to 288 of 1967

The State of Madras APPELLANT

Vs

Dr. Sathu V. Narayanaswami Pillai RESPONDENT

Date of Decision : 26-09-1972

Acts Referred:

Citation : (1973) 31 STC 522

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

Bench : Division Bench

Advocate : K. Venkataswami, First Assistant Government Pleader Tax, for the Appellant; C. Venkataraman, for the Respondent

Judgement

Ramanujam, J.—These cases relate to three assessment years 1959-60, 1961-62 and 1962-63 and arise out of a common judgment

rendered by the Tribunal. The respondent who is the same in all these three cases is an ayurvedic medical practitioner and he has been selling

medicines and medicinal oils as also tooth-powder with the name (sic). The taxes and the penalty in respect of each of the years levied by the

assessing authority are set out below :

2. The assessing officer took the view that the sales of the above articles by the respondent are liable to sales tax and, therefore, proceeded to

assess the respondent on the basis of his best judgment after rejecting the turnover shown in the books of account of the respondent. According to

the respondent, all the above articles sold by him were medicinal preparations supplied only to his patients on the prescriptions issued by him and

not to any other persons and that as such, he is entitled to the benefit of the notification u/s 17 exempting sales of medicines by every medical practitioner owning dispensaries and dispensing medicines to his patients only, from the payment of tax from 1st April, 1959. The assessing officer

rejected the above contention holding that the respondent is found to have sold medicines in certain cases to outsiders and that, therefore, he is not

entitled to the benefit of the exemption.

3. So far as the account books are concerned, the assessing officer was not inclined to accept the same and proceeded to make the assessment on

the basis of certain statements made by the respondent in the course of the assessment proceedings. The assessing officer also dealt with the

medicinal oils as edible oils and subjected the same to 3 per cent at single point.

4. So far as the turnover relating to tooth-powder is concerned, the assessing officer following the decision of this court in Somasundara Mudaliar

v. State of Madras [1963] 14 S.T.C. 943, held that tooth-powder is liable to be taxed only at the general rate of 2 per cent.

5. There were appeals to the Appellate Assistant Commissioner in respect of all these years but without success. The respondent, therefore, filed

three appeals before the Tribunal questioning the said assessments. The Tribunal held, disagreeing with the view taken by the authorities below,

that the facts clearly establish that the respondent has been supplying medicines only to his patients on prescriptions from the dispensary run by him

and that, therefore, he is entitled to the benefit of the exemption under the notification referred to above. He, therefore, set aside the assessment so

far as it related to the medicinal preparations. So far as tooth-powder is concerned, the Tribunal agreed with the view of the assessing authority

that it is taxable only at multi-point at the rate of 2 per cent and not at the rate of 3 per cent single point. But it held that as the taxable turnover in

respect of each of the years is less than Rs. 10,000, the turnover relating to tooth-powder could not be brought to charge. In that view, the

Tribunal set aside the assessment in entirety in respect of all the years.

6. In these tax cases filed by the revenue, it is contended that the view of the Tribunal that the respondent is entitled to the benefit of the exemption

set out above is not correct and that, in any event, the setting aside of the entire assessment orders in respect of the three years is not justified. We

are not able to accept the first contention that the respondent is not entitled to the benefit of the notification referred to above in respect of sales of medicinal preparations. The Tribunal has specifically found that the respondent has supplied medicines on prescriptions to his patients from the

dispensary and that there has been no sale of medicines to outsiders. On this finding, we are of the view that the respondent is entitled to the benefit

of the G. O. and the Tribunal is right in giving the benefit of the exemption to the respondent in respect of the medicinal preparations.

7. On the other question as to whether the Tribunal was justified in setting aside the entirety of the assessment orders, it is pointed out by the

learned Government Pleader that the sales of tooth-powder are taxable under the Act and that the Tribunal itself has upheld the assessment at 2

per cent on the sales of tooth-powder ; but it has set aside the assessment on that turnover only on the ground that the taxable turnover was less

than Rs. 10,000. According to the revenue, the Tribunal has not properly understood the scope of Section 3(1) read with the definition of ""total

turnover"" in Section 2(q). The above contention, in our view, has considerable force. The Tribunal''s view that unless a person has got a taxable

turnover of Rs. 10,000, he is not assessable u/s 3(1) does not seem to be in accord with the statutory provisions. Section 3(1), at the relevant time,

stated that every dealer whose total turnover for a year is not less than ten thousand rupees, shall pay a tax for each year at the rate of two per cent

of his taxable turnover. ""Total turnover"" has been defined u/s 2(q) as referring to the aggregate turnover in all goods of a dealer at all places of

business in the State, whether or not the whole or any portion of such turnover is liable to tax. The view that an assessee should have a taxable

turnover of Rs. 10,000 to make him liable for sales tax runs counter to the definition of ""total turnover"" in Section 2(q). We, therefore, disagree

with the Tribunal and hold that the respondent whose total turnover even according to the books of account is more than Rs. 10,000 for 1961-62

and 1962-63 is liable to pay tax on the turnover relating to tooth-powder. In respect of the assessment year 1959-60, it is conceded that the total

turnover itself is less than Rs. 10,000 and, therefore, the Tribunal is right in setting aside the assessment.

8. The result is that T. C. No. 288 of 1967 relating to the assessment year 1959-60 is dismissed ; but T. C. Nos. 286 and 287 of 1967 are

allowed in part and the assessment orders so far as they relate to the turnovers in tooth-powder are held to be valid. There will be no order as to costs.

