
(1967) 04 MAD CK 0028

In the Madras High Court

Case No : Tax Case No. 188 of 1964 and Revision No. 127 of 1964

The State of Madras

APPELLANT

Vs

M. Angappa Chettiar and Sons

RESPONDENT

Date of Decision : 25-04-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 9

Citation : (1968) 22 STC 226

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

Bench : Division Bench

Advocate : The Additional Government Pleader, for the Appellant; N.R. Raghavachariar, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—The petitioner in this revision case is the State of Madras represented by the Deputy Commissioner of Commercial

Taxes, Coimbatore Division, and the respondents are a firm of jewellers, Messrs Angappa Chettiar and Sons, Tiruppur. The short question raised

for decision in this revision case is whether the Sales Tax Authorities were justified in awarding a penalty on the respondents for the alleged failure

to disclose a turnover assessable under the Central Sales Tax Act during the year 1959-60 to which the assessment relates. The question about the

existence of such omitted turnover arose because on the inspection of the premises of the dealer, a small note-book and certain slips were

discovered which showed that the dealer had despatched goods by V.P.P. to addressees outside Madras State to the value of Rs. 27,840 in the

year in question. The department therefore inferred that this represented omitted turnover of inter-State sales and this was added to the turnover

revealed by the assessee's accounts. In addition to adding the turnover, the assessing authorities levied a penalty on the respondents of Rs. 2,923

u/s 16(2) of the Madras General Sales Tax Act, 1959, read with Section 9(3) of the Central Sales Tax Act, 1956. The Appellate Assistant

Commissioner confirmed the addition of the turnover and also the levy of penalty in the appeal filed before him. The respondents filed a further

appeal before the Sales Tax Appellate Tribunal. That Tribunal, however, while confirming the additional assessment, cancelled the penalty in the

view of the Tribunal the only provisions under the Sales Tax Act for levy of penalty are Sections 10 and 10A. But they do not cover a default like

the one mentioned in Section 16(2) of the Madras General Sales Tax Act, 1959, which deals with penalty for failing to disclose a relevant

turnover. In the view of the Tribunal, Section 9(3) of the Central Sales Tax Act, when it refers to a power granted to the Sales Tax Authorities of

the appropriate State to collect and enforce payment of any tax, including any penalty, payable by a dealer under that Act (the Central Sales Tax

Act), would cover only the penalty payable under the Central Sales Tax Act. But in the absence of any provision in the Central Sales Tax Act for

levy of penalty for the contravention referred to in Section 16(2) of the Madras General Sales Tax Act, 1959, the provision of Section 9(3) of the

Central Sales Tax Act cannot be applied for the levy of penalty on a dealer for a contravention of the kind contemplated in Section 16(2) of the

Madras General Sales Tax Act.

2. Against this decision the department has filed this revision case. In our opinion, the order of the Tribunal has to be supported on more than one

ground. There is first of all the reason given above by the Tribunal, namely, that Section 9(3) is only a procedural section in the sense that it

empowers the authorities of the State Government to collect tax, penalty etc., under the Central Sales Tax Act in the same manner as the tax,

penalty etc., under the sales tax law of the State. The power to collect penalty thus conferred must be only such penalty as has been made leviable

under the provisions of the Central Sales Tax Act and it will not include a power to impose the penalty itself, for a contravention or omission for

which the Central Sales Tax Act does not contain a provision apart from the Madras General Sales Tax Act. This principle has been upheld in an

unreported decision of a Bench of this Court in T.C. No. 57 of 1964 Since reported as D.H. Shah & Co. v. The State of Madras [1967] 20

S.T.C. 146 where the learned Judges observed:

Unless a penalty can be levied under the provisions of the Central Sales Tax Act, like the tax on turnover under that Act, there will be no liability to

penalty only by reason of the provisions of the Madras General Sales Tax Act, 1959. The only provision in the Central Sales Tax Act providing for

penalty is Section 10 and that does not cover a penalty of the type contemplated by Section 12(3) of the Madras General Sales Tax Act, 1959.

3. The difference is that here we are dealing with a penalty contemplated by Section 16(2) of the Madras General Sales Tax Act, 1959, but in

other respects the circumstances are identical.

4. A further argument in this connection can also be considered. Section 9(3) of the Central Sales Tax Act incorporates by reference, the

provisions of the General Sales Tax Act, 1939. But that Act has undergone substantial amendments in 1959. The Central Sales Tax Act enacted in

1956 does not purport to incorporate by any subsequent amendment the provisions of the 1959 Madras General Sales Tax Act. It is significant to

note that in the 1939 Madras General Sales Tax Act, there was no provision for the levy of a penalty like the one in this case. Only in the 1959

Act, provision for the levy of such penalty is found. There is a general rule that the Legislature cannot with propriety make a law to adopt by

reference the provisions of a statute law as it stands amended by the Legislature from time to time. Legislation by reference must be applied only

by incorporating an Act actually on the statute book at the relevant date. However, in a decision reported in Haji J. A. Kareem Sait v. Deputy

Commercial Tax Officer [1966] 18 S.T.C. 370 an exception has been drawn to this rule in regard to the assessment of escaped turnover under the

Central Sales Tax Act. It was observed that while the General Sales Tax Act, 1939, did contain a provision for assessment of escaped turnover, in

the rules framed thereunder, in the amended Act of 1959, this provision for assessment of escaped turnover was substantially re-enacted in Section

16 . In such a context, the Bench observed that the above was a case where the law as re-enacted by the local Legislature, was not substantially

different from what it was when the Central Legislature enacted the Central Sales

Tax Act by reference to the earlier law. But in the present case that exception to the general principle is clearly not applicable. The 1939 Madras General Sales Tax Act, as already mentioned, contained no provision at all for levy of penalty in a case like the present one, and such a provision was enacted for the first time only in the 1959 Act. Therefore, the principle that legislation by reference must be confined to an enactment as it stood at the date of the reference, would clearly apply to the present case. From this point of view also, the award of penalty in this case cannot be upheld. Therefore we hold that the order of the Tribunal is right, and the revision case is dismissed with costs. Counsel's fee Rs. 100.