
(1964) 08 MAD CK 0055

In the Madras High Court

Case No : T.C. No's. 105 and 125 of 1963 (Revision No's. 64 and 81)

The State of Madras

APPELLANT

Vs

T. Narayanaswami Naidu and Another

RESPONDENT

Date of Decision : 11-08-1964

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : AIR 1965 Mad 360 : (1965) ILR (Mad) 83 : (1965) 16 STC 29

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

Bench : Division Bench

Judgement

Ramakrishnan, J.

(1) These two cases were hard together as they raise a common point. We will take up T. C. No. 105 of 1963 first. The assessee is a dealer in cotton and cotton seeds. During the year of assessment 1960-61 it was found that the dealer had with him, at the close of the year, stock of cotton valued at Rs. 2,27,250. Cotton in the year in question was an item of declared goods under S. 14 of the Central Sales Tax Act, 1956, it being considered to be of special importance in inter-State trade or commerce. The consequence of such a declaration is, as per S. 15(a) of the Central Sales Tax Act, that the sales tax law of a State can levy a tax on the sales or purchases of cotton at a rate which shall not exceed two percent and the sales tax shall not be levied at more than one stage. There is a further benefit conferred under S. 15(b), that where a tax has been levied under the State law on any declared goods and such goods are sold by the assessee thereafter in the course of inter-State trade or commerce, the tax course of inter-State trade or commerce, the tax shall be refunded to the assessee subject to certain conditions. We are not now concerned with this last mentioned provision for refund.

Acting upon S. 15(a) of the Central Sales Tax Act, the Government of Madras provided for the tax on declared goods, in S. 4 of the Madras Central Sales Tax Act, 1959, which states that tax in respect of the point specified against each in

the Second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year. In the Second Schedule "cotton" is entered as item 2 and the single point of levy adopted is "at the point of last purchase in the State" and the rate of tax is one per cent. Adopting the interpretation to the words "last purchase in the State" given by the Kerala High Court in *Abdul Salam Rowther v. State of Kerala*, (1961) 12 STC 98 and the Mysore High Court in *Hormusji Hirjibhoy and Co. v. Commercial Tax Officer*, (1962) 13 STC 773 (Mys), the assessing authority in this case levied sales tax on the unsold stock remaining with the assessee at the end of the year, holding that the purchases in respect of it must be deemed to be the last purchase in the State, and liable to be assessed under S. 4 of the Madras General Sales Tax Act read with Schedule II to it.

The gist of the view of the Kerala and Mysore High Courts is that for the purpose of the levy of sales tax, the year shall be taken as the unit, that no event that happens either before or after the year shall be taken into account for the purpose of deciding the stage of single point levy, and that, therefore, the last purchase should be deemed to be the last purchase so far as the year of assessment is concerned. Against the decision of the assessing authority, the appeal filed to the Appellate Assistant Commissioner failed; but the Sales Tax Tribunal allowed the further appeal of the assessee. Now the State has come before us in revision against the decision of the Tribunal.

(2) We will briefly refer to the Kerala and Mysore High Court decisions on which reliance has been placed by the department. In (1961) 12 STC 98, the Kerala High Court had to interpret a provision for single point levy described as "last purchase in the State which is not exempt from taxation under S. 3(3) of the Act." The dealer in that case at the conclusion of the assessment year, had a certain quantity of unsold stock. He asserted that after the assessment year he had sold that stock to the other assessable dealers in the State and, therefore, he was not the last purchaser liable to assessment. The Kerala High Court relied upon certain decisions under the Indian Income Tax Act, which lay down that for the purpose of computing yearly profits and dealings, each year is a separate self-contained period of time in regard to which profits earned or losses sustained before its commencement are irrelevant. One of them is *Sir S. M. Chitnavis v. Commr., of Income Tax, C. P. and Berar*, 6 ITC 453

In another decision, the Supreme Court decision in *Sir Kikabhai Premchand Vs. Commissioner of Income Tax (Central), Bombay*, it was held that for Income Tax purposes, each year is a self-contained accounting period, and the Income Tax authorities could take into account only the income, profits and gains made in that year and they were not concerned with potential profits which may be made to another year. In a third decision, namely, that of the Bombay High Court in *Kishinchand Chellaram and Others Vs. Commissioner of Income Tax, Central, Bombay*, Chagla, C. J., observed that it was difficult to understand on what principle of taxation law, could an assessee rely on a subsequent event in order

to escape taxation which he was properly liable to pay as far as the assessment year itself was concerned. Adopting the view on these decisions, the Kerala High Court held that for fixing the stage of the single point levy in any given assessment year, the fact that the goods were sold subsequent to that year should not be taken into account.

(3) The Mysore High Court in (1962) 13 STC 773 (Mys), dealt with a case where groundnuts, according to the schedule in the Measure Sales Tax Act, was to be assessed to sales tax, on the last purchase in the State. It was found that the dealer had sold after the expiry of the year of assessment, a certain quantity of groundnuts to another dealer, and he claimed at the time of assessment, that the turnover represented by this subsequent sale, should be excluded from his assessable turnover in the year of assessment. There was no allegation that the person to whom groundnuts were sold by the dealer subsequent to the year of assessment had been called upon to pay sales tax. According to the judges of the Mysore High Court, the provision that sales tax should not be levied at more than one stage had not been transgressed in the case that came up before them. The argument was pressed before that Court that the incidence of tax was not on the last purchase in the assessment year, but only the last purchase in the chain of transactions after which there was no sale of the goods. The Mysore High Court negatived this contention, and reached the conclusion that the words "last purchase" in the corresponding provision of the Mayors Act, should refer to the last purchase, "the price for which was included in the turnover of the purchase in each year".

The Mysore High Court also stated that any other construction, would lead to the incongruous result that every dealer who was the last purchaser in his assessment (year), could by making a subsequent sale during the next year, pass on the liability to his purchaser, who could in his turn, do the same thing making the levy of tax impossible, until a purchaser was found who made no further sale himself.

(4) With respect, we are unable to accept the view taken by the Measure and Karen High Courts, for fixing the stage of single point levy in the above manner. In our, view the term "last purchase in the State", which is the relevant provision in the Second Schedule, should be interpreted in the context of the legislation for single point levy. S. 15 of the Central Sales Tax Act, to which we have adverted, contains an absolute direction that the State law in respect of declared goods, shall make provision for levy sales tax, at only one stage. The stage thus indicated must refer to a succession of sales to which a commodity will be subjected to in the normal course of trade or commerce. It cannot be viewed in any other restricted sense to imply only the sales which fall within the assessment year. Declared goods, by definition, are goods of special importance of inter-State trade or commerce. The object of single point levy for them, together with a fixation of a particular upper limit to the rate of tax, is to ensure that the price of such goods to the manufacturer or consumer, is not unduly

enhanced by the multi-point levy of tax at different stages, and also at variable and high rates of assessment by different States. The successive sales of goods, mark, therefore, successive stages in a chain. The stage of last purchase or last sale in a State will be reached just before the goods are caught up in the stream of export and go outside the State, or just before the goods find their ways to a factory when they are manufactured into some other goods.

It is clear that the term "last purchase in the State" is a compendious way of covering either of the above situations, viz., the stage before export outside the State, and the stage before consumption where the goods lose their identity by manufacture. In rare cases, as pointed out by Sri. K. Rajah Iyer for the respondent, the goods themselves may be destroyed by fire or accident, and that may also mark a last stage, of purchase or sale. But this contingency is very remote and need not be considered at all for our purpose. In our view, there is no scope for picking out a period of time limited by the year of assessment, in the course of the successive stages of sales and purchases in which a particular item of declared goods might be involved and look only within that period of one year, for locating the last purchase or last sale. Both the Kerala and Mysore High Courts seek to justify this view, because in the event of any other construction of the term, the assessing authority would be taking into account an event happening subsequent to the year of assessment, a course not permitted by decisions under the Income Tax Law. But, as the following discussion will show, there is no room for apprehending such a result.

(5) In *State of Madras Vs. K.H. Chambers Ltd. and Others*, a Full Bench of this Court has clearly drawn a distinction between the taxable event, and the stage which attracts the levy of tax in the case of goods subject to single point levy. The Full Bench observed:

".....the tax is really one of the transaction of purchase anterior to the export, the factum of the export figuring merely as marking the final stage of a series of purchases by one licensed dealer from another, on the occurrence of which the taxable event, namely, the last purchase, is determined."

In *Government of Andhra v. Nagendrappa*, (1956) 7 STC 568: AIR 1957 And 297, the Andhra High Court dealing with a similar provision, at p. 574, observed:

"The single point is selected by making the last purchase in the series of sales liable for the tax and it is only when the stage of export is reached in the series of sales by successive dealers, that the tax becomes eligible.....The taxable event is really the purchase....."

The two cases above mentioned dealt with single point levy on hides and skins, as per R. 16 of the Madras General Sales Tax (Turnover and Assessment) Rules. The terms defining the stage for single point levy in the above rule were different from the terms used in this case, namely, "last purchase in the State". For untanned goods, the stage was purchase by a tanner not exempt under S. 3(3), or purchase for export by a tanner not exempt under S. 3(3). For tanned goods,

the stage was first sale in the State by a dealer not exempt under S. 3(3). But the principle laid down in the above decisions appears to us to be applicable in this case also. Therefore, term "last purchase in the State" must be understood in the sense we have already referred to, viz., that out of successive sales or purchases which take place in the State, the last purchase is the one in the series which takes place before the goods are exported outside the State or before they are consumed in a factory. The taxable event in the case of cotton is the purchase, but the tax liability is attracted to it only when that purchase also satisfied the test of being at the stage of last purchase, which stage has to be decided not by the fact that the year of assessment comes to a close before another sale takes place, but the fact of export outside the State or consumption by a factory occurs thereafter.

(6) It appears to us, that there will be no difficulty in adhering to this principle for fixing single point levy, and at the same time adopt the requirement that while making an assessment in one year, it will not be proper to take into account an event that happens in another year. For example, let us take a case where a dealer has made a purchase of cotton in the 30th March 1960 and sells it to another dealer in the State on the 2nd April 1960. According to the view of the Kerala and Mysore High Courts the assessee would be liable to pay the tax on the purchase on the 30th March as the last purchase in the assessment year ending 31-3-1960, on the principle that the subsequent sale on the 2nd April 1960 is irrelevant, since it fell outside the assessment year. But if we take the year of assessment alone into account and exclude from consideration the subsequent event of the next year, the above mentioned purchase on a strict interpretation of the term "last purchase in the State", cannot be assessed even for the assessment year ending 31-3-1960, because the stage for single point levy was not reached in that year.

But if it happens that the dealer, who made the purchase on the 2nd April 1960 exports it before 31-3-1961, or consumes it in his factory before that date, he can be assessed in the assessment year ending 31-3-1961. Thereby we will be conforming to the principle of single point levy without offending the rule that one cannot take into account the event in the subsequent year for the purpose of assessment in an earlier year. One can visualise a case for example, where goods mentioned above purchased on the 30th March 1960 may be exported by the purchaser himself, outside the state on the 2nd April 1960. In that case the goods could not be assessed in 1960-61, in the hands of the exporting purchaser, because the taxable event did not occur in that year; it could not be assessed in the hands of the seller in 1959-60, because though the taxable event occurred that year the single point stage was not reached in that year. One possible way of dealing with such a case is to assess it subsequently as escaped turnover. But we are not now called upon to decide whether such a course is legally permissible, and we do not propose to decide it.

But the point we want to make, is that in order to avoid any possible difficulty in

making an assessment in a marginal instance like the one just now mentioned, it will not be proper to limit the stage for fixing the single point levy, by confining attention to the sales which take place in the assessment year. In fact, if such a restriction is made, as Sri K. Rajah Iyer, points out, the same goods can be taxed over and over again on the basis of sales in successive years and the price payable by the consumer will be increased correspondingly. Since there was not provision in the statute during the assessment year for granting refund of tax collected in such cases, the very mischief that the Central legislation has sought to prevent, will arise in such a contingency.

(7) The learned Government Pleader has pointed out that acting upon the principle laid down by the Kerala and Mysore High Courts, the Madras State Legislature has amended S. 4 of the General Sales Tax Act, providing for a refund where a tax at the point of last purchase in the State has been levied and collected under the Act, in respect of goods liable to tax at such point, and where the said purchase ceases to be the last purchase in the State by reason of a subsequent purchase of such goods by another dealer in the State. The Statement of objects and reasons, with reference to the amendment, appearing in the memorandum appended to the Bill, mentions that the Government had decided with reference to "judicial decisions" that transactions in the assessment year should alone be taken into account to decide whether a dealer is the last purchaser or not, and under that system, goods purchased in a year are likely to be taxed at more than one point, if they are purchased by another dealer in the State in a subsequent year. Unfortunately, for the dealer in this case, this amendment came into force only on 1st April 1963, and he cannot avail himself of its benefit. That apart, as the statement of objects and reasons mentioned above indicates, the amendment was intended to carry out the principles laid down in certain "judicial decisions".

These decisions apparently are those of Kerala and Mysore High Courts aforesaid. What we have mentioned above indicates our view, that the proper way of fixing the single point is with reference to the chain of successive sales or purchases until the last sale or purchase before export or consumption is reached, and not confine them to transactions taking place within the assessment year. No doubt, for the purpose of assessment, the taxable event, viz., the purchase or sale, and the stage which makes the tax eligible, viz., the export or consumption as the case may be, should both occur in the assessment year, and only those transactions which satisfy both tests within the assessment year, can be assessed to tax. As pointed out above, there may be marginal transactions where the eligible event and the eligible stage may fall in different years. But the remedy for dealing with such a marginal cases must be by resort to other provisions of law, but they cannot be dealt with by giving an artificial meaning to the term "last purchase in the State", which will offend the principle of single point levy and lead to multi-point taxation, and a heavy price burden to the consumer of declared goods. We wish to point out that goods which are of importance in inter-State trade or commerce are likely to move rapidly from dealer to dealer. If a

careful analysis is made, it is quite likely that the bulk of the transactions may satisfy the test of sale and the test of last stage for single point levy both occurring in one and the same year of assessment. The transaction where these two events fall in different years may turn out to be marginal cases, quite a few in number.

(8) For the reasons mentioned above, we are of the opinion that the assessment of the disputed turnover in the present case, solely on the ground that they remained as unsold stock at the end of the assessment year, and without considering whether the sales tax had become eligible with reference to the stage for single point levy mentioned in the Second Schedule, is improper. Therefore, we confirm the order of the Sales Tax Appellate Tribunal and dismiss the revision. There will be no order as to costs.

(9) T. C. No. 125 of 1963:--No one appeared for the respondent before us in this case: But the principle laid down above will apply to this revision case also. Therefore, this revision case is dismissed. There will be no order as to costs.

(10) Revision dismissed.