
(1963) 09 MAD CK 0009
In the Madras High Court
Case No : Tax Case No. 277 of 1962

T.K. Srinivasan Pillai Sons

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 13-09-1963

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1964) ILR (Mad) 628 : (1965) 16 STC 583

Hon'ble Judges : T. Venkatadri, J;K. Srinivasan, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastri, for the Appellant; G. Ramanujam, for Government Pleader, for the Respondent

Judgement

K. Srinivasan, J.—This appeal raises a question of some importance and calls for an examination of the saving provisions of the 1959

Madras General Sales Tax Act in their application to the proceedings that were pending on the date of the repeal of the 1939 Act. The facts are

briefly these:--

2. There was an assessment upon the assesseees for the assessment year 1955-56 by the Deputy Commercial Tax Officer under the provisions of

the 1939 Act. An appeal was taken to the Commercial Tax Officer who was the Appellate Authority under that Act. It is not necessary to enter

into the details of that appellate order. The order was made on 18th August, 1958. Under the provisions of the 1939 Act, the assesseees had two

alternative courses open to them. They could either appeal to the Tribunal from the order made by the Commercial Tax Officer on appeal, or

move the Deputy Commissioner in revision u/s 12(2) of the Act and seek his intervention in respect of any order passed or proceeding recorded

by the Commercial Tax Officer under Sub-section (1) or any other provisions of this Act and against which no appeal had been preferred to the

Appellate Tribunal u/s 12-A. The revisional power of the Deputy Commissioner could, therefore, be invoked either in respect of an order made by

the Commercial Tax Officer on appeal against which a further appeal had not been taken to the Tribunal or in respect of an order made by the

Commercial Tax Officer in the exercise of his powers of revision. In so far as the appellate order of the Commercial Tax Officer is concerned, the

assesseees could, therefore, (a) file an appeal to the Tribunal u/s 12-A; or (b) if they do not file an appeal to the Tribunal, they could move the

Deputy Commissioner by an application and invoke his powers of revision. What the assesseees did in the case was to file an application before the

Deputy Commissioner praying that the Deputy Commissioner might call for the order of the Commercial Tax Officer made on appeal and examine

it in terms of Section 12(2) of the Act.

3. This application of the assesseees was pending before the Deputy Commissioner on the date when the 1939 Act was repealed and replaced by

the 1959 Act and no orders were passed by the Deputy Commissioner thereon.

4. While matters stood thus, after the passing of the 1959 Act, the Board of Revenue, in the exercise of its powers of revision u/s 34 of the

Madras General Sales Tax Act of 1959, revised the orders of the Commercial Tax Officer made in appeal u/s 11 of the 1939 Act.

5. The contention of the assesseees is that this order is erroneous and that the Board had no jurisdiction to make the order in question. Mr.

Chandrasekhara Sastri, for the petitioners, urges that under the provisions of the 1959 Act the revision application which had been filed before the

Deputy Commissioner should have been transferred to the Appellate Tribunal and that application should have received disposal as an appeal filed

before Tribunal. He argues that the Board has no power of revision so long as the Appellate Tribunal is seized of an appeal from the order sought

to be revised by the Board. Section 34 of the Act which confers certain special powers on the Board of Revenue clearly prohibits the Board from

passing any order of revision under that section if the order sought to be revised has been made the subject of an appeal to the Appellate Tribunal.

It is therefore contended that if by operation of the relevant provisions of the

1959 Act, the revision application filed before the Deputy

Commissioner has to be regarded as an appeal filed before the Appellate Tribunal, the Board would not be competent to revise the order of the

Commercial Tax Officer. The question is whether this contention is correct.

6. The 1959 Act made special provisions with regard to proceedings pending at the commencement of that Act. Section 61 of that Act by Sub-

section (1) thereof repealed the Madras General Sales Tax Act, 1939. This sub-section contains a proviso saving any right, title, obligation or

liability already secured, accrued or incurred under the repealed Act. Sub-section (2) is in these terms:

Notwithstanding anything contained in Sub-section (1) any application, appeal, revision or other proceeding made or preferred to any officer or

authority under the said Act and pending at the commencement of this Act, shall after such commencement, be transferred to and disposed of by

the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act if it had

been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.

7. The entire argument of Mr. Chandrasekhara Sastri for the appellants is based upon this provision. He claims that the revision petition filed

before the Deputy Commissioner which was pending on the date of the commencement of the 1959 Act should have been transferred to the

appropriate authority who in such a case is the Appellate Tribunal. It seems to us that on an examination of the provisions of the Act and in

particular the above sub-section, this contention has to be negated.

8. While under the 1939 Act a person could either appeal to the Appellate Tribunal or move by way of revision before the Deputy Commissioner

and canvass the correctness of an order made by the Commercial Tax Officer on appeal u/s 11 of that Act, the 1959 Act effected a departure

from that position. This Act gave no right to an assessee to move any authority by way of revision challenging an order made on appeal from an

order of assessment. The order by the appropriate appellate authority, who corresponds to the Commercial Tax Officer under the 1939 Act, is

under the 1959 Act made appealable only to the Appellate Tribunal. The right to move any revisional authority against that order has been

expressly taken away under the provisions of the 1959 Act. The question then would arise as to what should happen to a revision petition which the assessee had filed under the 1939 Act before the Deputy Commissioner. The contention of the learned Counsel for the assessee is that that revision petition should assume the guise of an appeal because only an appeal is provided for under the new Act fails to impress us. It is true that Sub-section (2) of Section 61 states that a proceeding under the old Act pending at the commencement of the new Act should be transferred to and disposed of by what may be broadly described as the corresponding authority under the new Act. Here the case, however, is that in so far as the proceeding that was pending was one by way of revision against an appellate order of the Commercial Tax Officer, no corresponding authority exists under the new Act. It seems to us that this position was not unnoticed by the Legislature, for the direction that the pending proceeding should be transferred and disposed of is not one which stands unqualified. It can be so transferred and disposed of only by the officer or authority who would have had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred. Firstly, the use of the distinctive expressions, application, appeal, revision and or other proceeding, made in no less than three places in this short sub-section inclines us to the view that each class of proceedings so indicated could not be construed to be included in another class of proceeding. The first inference is, therefore, that a revision made under the old Act and pending at the commencement of the new Act could be disposed of only as a revision under the new Act; next the officer or authority who could dispose of it after the passing of the new Act is one who if the new Act had been in force on the date of making the application for revision would have had jurisdiction to entertain that revision. As we have pointed out, under the new Act, there is no authority who could entertain a revision against an order made in appeal. If that is so, we are unable to see to whom, following the strict language of this sub-section, the revision petition that was pending could in law have been transferred. The argument of the learned Counsel that while two rights, viz., one of appeal and one of revision, were available to the assessee under the old Act and only one right, viz., that of an appeal, is available to him

under the new Act, the revision petition under the old Act should be construed as an appeal under the new Act and disposed of as such, derives

no assistance from the manner in which this sub-section has been couched. The provisions of the new Act deliberately cut one of two remedies

which were available under the old Act. The further argument that since all the rights which had accrued to the assesseees under the 1939 Act are

saved by the proviso to Sub-section (1), they cannot be denied the relief which would have flowed to them as a result of that revision petition,

does not appear to be sound. It is true that under the proviso to Sub-section (1), the rights under the old Act were saved. But that is not to say that

the Legislature had no competence to deprive a person of a right of appeal or revision. It is not a guarantee against future legislation affecting such

rights. It is also noticeable that Sub-section (2) starts by saying notwithstanding anything contained in Sub-section (1). This clause, therefore, has

the effect of cutting down certain rights which might have been guaranteed by the proviso to Sub-section (1). We are, therefore, driven to the

conclusion that the right of revision which was available to the assesseees under the old Act lapsed and it was undoubtedly the deliberate intention of

the Legislature to take away that right.

9. Learned Counsel has referred to *Nathulal Chhotelal v. Deputy Commissioner of Sales Tax and Anr.* [1962] 13 S.T.C. 853, a decision of the

High Court of Madhya Pradesh. It is true that this decision lays down the general rule that statutes are presumably prospective in operation unless

the contrary is very plainly and unequivocally expressed or necessarily implied. It was also held that the impairment of a right of appeal by putting a

new restriction thereon or imposing a more onerous condition is not a mere matter of procedure. It impairs a substantive right and an enactment

which does so is not retrospective unless it says so expressly or by necessary intendment. These general principles are well recognised. But in the

particular case which was before the Madhya Pradesh High Court, the Act did not as far as we can see contain any provision analogous to Section

61 (2) of the Madras Act. On the other hand, Sub-section (3) of Section 52 of the Madhya Pradesh Act of 1959 provided that any second appeal

pending at the commencement of the Act shall continue to be governed by the provisions of the repealed Act. Such a provision read along with the

saving proviso which saved all rights acquired, including the right of appeal, was relied upon by the learned Judges to hold that a right of revision

that had been given previously was in the nature of a vested right. But, in so far as Section 61 (2) of the Madras Act, 1959, is concerned, it

provides for the disposal of pending matters only in the light of the new Act and by that authority who if the new Act had been in force on the date

of the application would have been competent to dispose of it. This seems to us to express the necessary intendment of the Legislature that certain

classes of proceedings should notwithstanding the saving clause terminate. We are, therefore, satisfied that the revision application which the

assessee had made under the 1939 Act to the Deputy Commissioner could not receive any disposal after the coming into force of the new Act,

and that right of revision must be held to have lapsed. That revision could not be equated to an appeal before the Appellate Tribunal. It follows that

the Board of Revenue was not by the terms of Section 34 of the new Act read with Section 61(2) thereof prevented from exercising its revisional

jurisdiction.

10. This petition coming on for further hearing the Court delivered the following judgment:--

Srinivasan, J.

11. The question that remains to be considered, after we had decided the preliminary point of jurisdiction in relation to proceedings pending before

the Deputy Commissioner on the date of repeal of the 1939 Act, is whether in the case of the sales of rice by the assessee to dealers in Travancore

State, there was delivery outside this State for the purpose of consumption in the Travancore State. Before the Board, a turnover of Rs. 86,300

and odd was in dispute. In respect of a turnover of Rs. 2,395 admittedly there is no evidence of any delivery. The Board, however, took the view

that though these were inter-State sales, yet there was competence in the taxing authorities to bring these transactions of sale to tax, under the

Madras General Sales Tax Act. But this period is prior to the decision in *The Bengal Immunity Company Limited Vs. The State of Bihar* and

Others, , and up to that date there is no dispute that the Explanation to Article 286(1)(a) would really apply. That is the view that has been taken

by us in several cases, on a detailed consideration of even later decision of the

Supreme Court. It follows, therefore, that if there is proof that there was delivery for the purpose of consumption in the purchasing State, it should follow that the sale is not taxable under the Madras General Sales

Tax Act. It was for the purpose of enabling the appellant to produce affidavits from the purchasers in Ernakulam that the matter was adjourned.

12. The appellant has now produced affidavits from four dealers of Ernakulam covering a turnover of Rs. 60,917-14-0. This sum accordingly

represents the turnover of sales in which there was actual delivery for the purpose of consumption in the outside State. It should follow that this

turnover is not liable to be taxed.

13. With regard to the remaining part of the turnover Mr. Chandrasekhara Sastry claims at this distance of time he has been unable to contact the

dealers, that one of the dealers, one Anthru, had closed his shop about four years ago and that his whereabouts are not known. Another dealer

one Verghese was unable to furnish an affidavit as his account books were not available. For these reasons it is urged that the appellant's affidavit

should be accepted as satisfactorily establishing that these transactions also fall within the scope of the constitutional Explanation to Article 286(1)

(a). We are, however, unable to do so. The result is that this appeal is allowed to the extent indicated, that is to say, the turnover covered by the

four affidavits mentioned above. There will be no order as to costs.