
(1965) 02 MAD CK 0035
In the Madras High Court
Case No : Writ Appeal No. 197 of 1963

Union Leather Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 19-02-1965

Acts Referred:

Citation : (1966) ILR (Mad) 257 : (1965) 16 STC 1031

Hon'ble Judges : P. Chandra Reddy, C.J.; Kailasam, J

Bench : Division Bench

Advocate : Sivaswami, of Sundararajan and Sivaswami, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—This is an appeal against the judgment of our learned brother, Veeraswami, J., declining to issue a writ of prohibition as prayed for by the appellant herein. The appellant is a dealer in hides and skins. In the year 1960, the assessing authority called upon him to submit his account books for the purpose of assessing the income derived (sic) by him. After looking into the accounts, he found that the turnover consisting of sales of untanned skins and hides could not be assessed under the Madras General Sales Tax Act, as the dealer has not obtained any licence. This conclusion of his was based on a decision of this Court in *M.A. Noor Mohamed & Co. v. The State of Madras* [1956] 7 S.T.C. 792, which held that unlicensed dealers in hides and skins were not liable to be taxed. Incidentally, it may be mentioned here that, on an earlier occasion, this Court struck down Rule 16(5) of the Turnover and Assessment Rules as ultra vires in *Syed Mohamed & Co. v. The State of Madras* [1952] 3 S.T.C. 367. This impelled the Government to omit Sub-rule (5) of Rule 16 from the Statute Book. Sometime later, i.e., on 3rd September, 1955, the Government substituted a new rule with effect from 1st April, 1955, abolishing the distinction between licensed and unlicensed dealers.

2. While matters stood thus, the Supreme Court rendered judgment in *State of*

Madras v. Noor Mohamed & Co. [1960] 11 S.T.C. 570, reversing the decision of the Madras High Court in Noor Mohamed & Co. v. State of Madras [1956] 7 S.T.C. 792, and upholding the validity of Rule 16(5). Basing himself upon this pronouncement of the Supreme Court, the Deputy Commissioner of Commercial Taxes sought to revise the assessment proceedings of the concerned Commercial Tax Officer. For this purpose, he issued a notice u/s 32 to the assessee to show cause why the order of the assessing authority should not be revised. It is to prohibit the Deputy Commissioner of Commercial Taxes from proceeding further in this behalf that the writ petition giving rise to this appeal was presented.

3. The argument advanced on behalf of the appellant that the ruling of the Supreme Court left the non-liability of the unlicensed dealers to sales tax on their turnover untouched, did not commend itself to the learned Judge who dealt with this matter. He opined that the ruling of the Supreme Court lent support to the action proposed to be taken by the assessing authority. In the result, he declined to grant the relief asked for.

4. Before we deal with the grounds of attack against the order under appeal, it is profitable to trace the legislative history of the relative statutory provisions and their contents. In the year 1939, the Madras Legislature enacted what is called the Madras General Sales Tax Act. Section 3 of the Act, which is the charging section, provided:

3(1) Subject to the provisions of this Act--

(a) every dealer shall pay for each year a tax on his total turnover for such year; and

(b) the tax shall be calculated at the rate of three pies for every rupee in such turnover." (unnecessary provisions omitted).

(3) A dealer whose total turnover in any year is less than ten thousand rupees shall not be liable to pay any tax for that year under Sub-section (1) or Sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed/"

(5) The taxes under Sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed.

5. Section 5, in so far as it is material for this enquiry, says:

Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees--

* * * (vi) the sale of hides and skins, whether tanned or untanned shall be liable to tax u/s 3, Sub-section (1), only at such single point in the series of sales by successive dealers as may be prescribed.

6. Section 6-A enacts:

If any restrictions or conditions prescribed u/s 5 or notified u/s 6 are contravened or are not observed by a dealer, or in case a condition so prescribed or notified requires that a licence shall be taken out or renewed, if a licence is not taken out or renewed by the dealer or if any of the conditions of a licence taken out or renewed by him are contravened or are not observed, the sales of the dealer, with effect from the commencement of the year in which such contravention or non-observance took place, may be assessed to tax or taxes u/s 3, as if the provisions of Section 5 or of the notification u/s 6, as the case may be, did not apply to such sales and notwithstanding that a licence, if any, taken out or renewed by the dealer continued or continues to be in force during the year.

7. As contemplated by Section 3 and pursuant to the power conferred on the State Government, rules were framed, called "The Madras General Sales Tax (Turnover and Assessment) Rules", of which Rule 16 is one, and also " The Madras General Sales Tax Rules ". Rule 16, it must be incidentally mentioned, satisfies the requirements of Section 5(vi) of the Act. Rule 16, as it originally stood, read as follows:--

16. (1) In the case of hides and skins the tax payable u/s 3(1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the State or are sold for export outside the State.

(i) In the case of all untanned hides or skins sold to a tanner in the State, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him.

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the State but are exported outside the State, the tax shall be levied from the dealer who was the last dealer not exempt from taxation u/s 3(3) who buys them in the State on the amount for which they were bought by him.

(3) Sales by licensed dealers of hides or skins which have been tanned within the State shall be exempt from taxation provided that the hides or skins have been tanned in a tannery which has paid the tax leviable under the Act. If such hides or skins have been tanned in a tannery which is exempt from taxation u/s 3(3), the sale of such hides or skins shall be liable to taxation as under the next Sub-rule below dealing with hides or skins tanned outside the State.

(4) Sales by licensed dealers in hides or skins which have been tanned outside the State shall be exempt from taxation except at the stage of sale by the dealer who is the first dealer not exempt from taxation u/s 3(3) who sells them within the State. The tax shall be levied from such dealer on the amount for which he sells such hides or skins.

(5) Sale of hides or skins by dealers other than licensed dealers in hides or skins shall, subject to the provisions of Section 3, be liable to taxation on each

occasion of sale.

8. It is seen that Sub-rule (5) is concerned with the assessment of transactions of an unlicensed dealer. As stated earlier the decision in *Syed Mohamed & Co. v. The State; of Madras* [1952] 3 S.T.C. 367, led to the deletion of this rule and refraining of Rule 16. The substituted rule runs as follows:

16. (1) In the case of raw hides and/or skins the tax u/s 5~A(iv) shall be levied from the dealer who is the last purchaser in the State not exempt from taxation u/s 3(3) on the amount for which they are bought by him.

(2) (i) In the case of hides or skins which have been dressed outside the State, the tax u/s 5-A(iv) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from taxation u/s 1(3) on the amount for which they are sold by him.

(ii) In the case of dressed hides or skins which have been dressed within the State, the tax u/s 5-A(iv) shall be levied from a person who is the first dealer in such hides or skins not exempt from taxation u/s 3(3) on the amount for which they are sold by him:

Provided that, if he proves that the tax has already been levied under Sub-rule (1) on the raw hides and skins out of which the dressed hides and skins had been produced, he shall not be so liable.

(3) The burden of proving that a transaction is not liable to taxation under this rule shall be on the dealer.

9. It appears from the above narration that, at the relevant period, i.e., between 1st April, 1954, and 31st March, 1955, there was no provision in the rule covering the case of an unlicensed dealer, since Sub-rule (5) had been omitted on 26th February, 1954, and new rule was introduced in September, 1955, with effect from 1st April, 1955.

This appeal is concerned with the effect of hiatus. Before we proceed with this enquiry further, it is necessary to refer to Rule 5 of the General Sales Tax Rules, which enacts thus:

5. (1) Every person who--

(a) deals in cotton and/or cotton yarn other than handspun yarn, or

(b) deals exclusively in cloth woven on handlooms wholly with handspun yarn, or

(c) deals in cloth woven on handlooms wholly or partly with mill yarn, or

(d) deals in bullion and/or specie, or

(e) deals in hides and/or skins whether as a tanner or otherwise, or

(f) for an agreed commission or brokerage buys and/or sells goods of any description on behalf of known principals, shall, if he desires to avail himself of

the exemption provided in sections 5 and 8 or of the concession of taxation only at a single point or of taxation at the rate specified in Section 5, submit an application in Form I for a licence in respect of each of his places of business to the authority specified in Sub-rule (2) so as to reach him not later than the 30th day of April of the year for which the licence is applied for:

Provided that in the case of a business which is commenced in the course of a financial year, the dealer shall submit the application for the licence to such authority so as to reach him not later than thirty days from the date of commencement of his business:

Provided further that, where the exemption or concession aforesaid was conferred for the first time by the Madras General Sales Tax (Amendment) Act, 1947, and the dealer had commenced business before the 1st January, 1948, he shall submit the application for the licence not later than the 1st March, 1948.

(2) The application shall be submitted--

(i) to the assessing authority if the applicant is liable to tax or taxes under the provisions of the Act and the Rules made thereunder, and

(ii) to the Assistant Commercial Tax Officer having jurisdiction over the principal place of business, in other cases.

10. It can be gathered from this rule that every dealer in hides and skins has to obtain a licence to enable him to claim the concession of taxation at a single point at the rates specified in Section 5. This rule makes it abundantly clear that it is only those who observe the conditions contemplated by this rule that could derive the benefits conferred by Section 5.

11. In 1959, the Madras Legislature had repealed Act 9 of 1939 and enacted Act I of 1959 ; but we are not here concerned with the new statute, as the case on hand is governed by the earlier Act.

12. We shall now dispose of the contentions urged on behalf of the appellant. At the forefront of the argument, it is submitted that the absence of provision dealing with the turnover of unlicensed dealers has excluded that turnover from the purview of the Act. We do not think we can accede to this proposition. A consideration of the several statutory provisions extracted above can lead to only one inference, viz., that it is not by virtue of Rule 16(5) that the taxability of an unlicensed dealer in hides and skins is determined, but it is by reason of the Act and the Rules framed thereunder.

13. Taxes on sales and purchases are imposed u/s 3 of the enactment. Under that provision, all sales and purchases, as the case may be, are subject to multiple taxation. Thus, the general rule is the multi-point. But certain exceptions are created to this rule u/s 3 read with Section 5, the former of which commences with the words " subject to the provisions of this Act." In order that a dealer in hides and skins may avail himself of the benefits envisaged in Sub-

section (vi) of Section 5, he should satisfy certain conditions, i.e., conditions prescribed in the relevant, rules, Rule 5 being relevant in this behalf. This result flows from the language of Section 5, which says: " Subject to such restrictions and conditions." If the conditions enumerated in the relevant rules are not satisfied, the concerned dealer could not get the advantages of the section, having regard to the terms of Section 6-A of the Act, which has already been set out. What follows from sections 5 and 6-A read with Rule 5 of the Tax Rules is that a dealer in hides and skins who does not possess a licence is not entitled to claim the benefits of Sub-section (6) of Section 3. It is thus manifest that the Act, independently of the Rules, renders unlicensed dealers subject to the multiple taxation. So, the absence of any rule which imposes multi-point tax on an unlicensed dealer does not help the latter to escape the payment of sales tax. Rule 16(5) has merely repeated the consequences that flow from the non-observance of the conditions indicated in sections 3, 5 and 6-A read in conjunction with Rule 5 of the Tax Rules. It has not enacted anything new, but has merely emphasised the results that would flow from the failure to obtain a licence. If that were so, the non-existence of Sub-rule (5) at the relevant period does not clothe the unlicensed dealer with a right to claim exemption from payment of tax.

14. This view of ours is strengthened by the pronouncement of the Supreme Court in *State of Madras v. Noor Mohamed & Co.* [1960] 11 S.T.C. 570. The relevant passages in the judgment of their Lordships negative the submission of Sri Srinivasan that the non-taxability of unlicensed dealers has been left untouched by that ruling. It was stated by their Lordships that, if the restrictions and conditions contemplated by Section 5 read with the Rules are not complied with, certain consequences follow as a result of Section 6-A of the Act, which specifically states that, where a condition prescribed or notified requires the taking out or the renewal of a licence, then, in the case of contravention of such conditions or restrictions, the tax is to be levied u/s 3 as if the provisions of Section 5 did not apply to such sales. They added that all that Rule 16(5) did was to emphasise the consequences of non-observance of the conditions which sections 5(vi) and 6-A had in clear terms prescribed and that there was no inconsistency between the section and the Act. It is clear from these observations that dehors this rule the concessions contemplated by Section 5 were unavailable to the dealers who do not choose to comply with the conditions envisaged in the relevant sections of the Act and the Rules framed thereunder. Rule 16(5) was enacted by the Government obviously with a view to bring prominently to the notice of the unlicensed dealers that failure to get a licence would put them to certain disabilities and it was not intended that this rule should take the place of, and substitute, the statutory provisions in this behalf. That being so, it is not the presence or the absence of provision that decides the question as to the liability of unlicensed dealer to pay tax on his turnover. Thus, the judgment of the Supreme Court has placed this matter beyond a shadow of doubt.

15. Abdul Salam and Co. v. Government of Madras [1960] 11 S.T.C. 570, which was called in aid by learned counsel for the appellant, does not interpret State of Madras v. Noor Mohamed & Co. [1962] 13 S.T.C. 629 in a way different from what we have done. It does not support the proposition of Sri Srinivasan that unlicensed dealers could escape liability for payment of tax for the period when there was no provision in the Turnover and Assessment Rules to cover the case of an unlicensed dealer. On the other hand, the learned Judges have referred to the passage in the judgment of the Supreme Court which we have already extracted, viz., "All that Rule 16(5) does is to emphasise the consequences of non-observance of the conditions which sections 5(vi) and 6-A have in clear terms prescribed." And added: "The substance of the decision of the Supreme Court is that the benefit of a single point assessment was available only to licensed dealers or tanners as prescribed by the Rules, and that the unlicensed dealers and tanners came under the general charging section of the Act, inevitably, by reason of the non-obtaining of the licence." It is clear that Abdul Salam & Co. v. Government of Madras [1962] 13 S.T.C. 629 does not come to the rescue of the appellant. On the contrary, it furnishes an answer to the argument advanced by him. On the language of the material provisions of the Act and on the authority of the decided cases, the conclusion is inescapable that the turnover of an unlicensed dealer is exigible to multi-point tax and that he could not plead non-liability on the ground of absence of Sub-rule (5) for the relevant assessment year. Under these circumstances, we have to uphold the decision under appeal and dismiss the appeal with costs. Advocate's fee Rs. 250.