
(1955) 10 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 2 of 1955

V.M. Syed Mohamed and Company	Vs	APPELLANT
The State of Andhra		RESPONDENT

Date of Decision : 13-10-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 286

Citation : (1956) 7 STC 465

Hon'ble Judges : Subba Rao, C.J.; Krishna Rao, J

Bench : Division Bench

Advocate : K.V. Venkatasubramanya Iyer, K.B. Krishnamwthy and P. Babulu Reddy, for the Appellant; M. Seshachalapathi, The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, C.J.—This is an appeal against the order of our learned brother Satyanarayana Raju, J,, in Writ Petition No. 314 of 1954.

2. The relevant facts are stated in the judgment under appeal and they may be briefly re-stated. The appellants are a firm carrying on tannery business at Guntur. Though they had taken out a licence u/s 5(vi) of the Madras General Sales Tax Act (hereinafter referred to as the Act) for the year 1951-52, they did not get it renewed for the subsequent years. Nor did they submit a return of their turnover for the year 1952-53. The Commercial Tax Officer, on a scrutiny of the accounts, found that their turnover of sales of tanned hides and skins amounted to Rs. 5,36,001-14-2. To a notice given to them to show cause against assessment on the said turnover, they contended that, as they did not take out a licence, there was no provision under the Act to tax them. Rejecting the plea, the Commercial Tax Officer made the assessment on the basis of the aforesaid turnover and called upon them to pay a tax of Rs. 8,375-0-6. The appellants filed a petition under Article 226 of the Constitution of India for quashing the said order levying sales tax on the appellants for the year 1952-53. Rejecting their

plea that they were not liable to be taxed, Satyanarayana Raju, J., dismissed the application.

3. The contention of Mr. K. V. Venkatasubramanya Iyer, learned counsel for the appellants, may be stated thus : In the case of hides and skins, Section 5(vi) of the Act supersedes the charging Section 3 of the Act and u/s 5(vi) the said commodity is taxable only at such single point in the series of sales by successive dealers as may be prescribed. Rule 16(5) of the Turnover and Assessment Rules prescribing the point of taxation on the turnover of unlicensed dealers has been held to be ultra vires by the Supreme Court. As there is no rule prescribing the single point in the case of unlicensed dealers, there is no charging provision at all under the Act or the rules framed thereunder in their case and therefore the tax imposed upon the appellants was invalid. The Government Pleader, on the other hand, argues that Section 5(vi) gives a concession to dealers in hides and skins only on condition they take out a licence and, as the appellants have not taken a licence for the period in question, by operation of Section 6-A, they are liable to be assessed to tax u/s 3 as if the provisions of Section 5 do not apply to such sales. He further contends that Rule 16(5) is not ultra vires of the powers of the Government and is consistent with the scheme of the Act.

4. To appreciate the rival contentions, it is necessary and convenient at this stage to read the relevant provisions of the Act and the two sets of rules, viz., the Madras General Sales Tax (Turnover and Assessment) Rules and the Madras General Sales Tax Rules framed thereunder-

Section 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.

Section 3. (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 :

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly.

(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 :

Provided that-

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in Clause (i) of this proviso, he shall not be

taxed again in respect of any sale of such goods effected by him.

Section 5.-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.

Section 6-A.-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.

THE MADRAS GENERAL SALES TAX RULES.

Rule 5. (1) Every person who-

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

MADRAS GENERAL SALES TAX (TURNOVER & ASSESSMENT) RULES.

Rule 4. (1) Save as provided in Sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by the dealer.

(2) In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by the dealer.

* * * * (c) untanned hides and skins bought by a licensed tanner in the State, and

(d) untanned hides and skins exported outside the State by a licensed dealer in hides or skins.

Rule 15. (1) Rules 6 to 13 shall not apply to licensed tanners and other licensed dealers in hides or skins in respect of their dealings in hides or skins ; but the provisions of this and the following rule shall apply to them in respect of such

dealings.

Rule 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.

(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.

5. The scheme of taxation embodied in the aforesaid provisions may be stated thus : Section 3 is the charging section. Under that section, tax is levied in the manner prescribed on the total turnover of a dealer. If the total turnover is less than Rs. 10,000, the dealer is exempted from taxation. The general scheme adopted is multiple-point taxation. In the case of specified goods, they are made liable at a single point also in addition to the multiple-point tax. It also provides for a tax at a buyer's point or a seller's point but prohibits taxation, in respect of the same transaction of both the buyer and the seller or the same person in respect of the same goods both at the purchase point and the sale point. Section 5 exempts certain commodities from taxation u/s 3(1) and gives some concession in regard to other commodities by providing a single point taxation instead of a multiple-point taxation u/s 3(1). The said concession of single point taxation is shown amongst others to sales of hides and skins. Rule 5(e) of the Madras General Sales Tax Rules prescribes that every person, who deals in hides and skins, shall take out a licence, if he desires to avail himself of the concession of taxation only at a single point as specified in Section 5. The Turnover and Assessment Rules provide for returns and assessment in respect of the turnover liable to tax under the Act including hides and skins. In the case of hides and skins, under the rules, ordinarily they are made liable at the purchase point. The procedure laid down in rules 6 to 13 apply to all taxable transactions under the Act. Rules 15 and 16 enact a special procedure applicable to licensed tanners and other licensed dealers in respect of their dealings in hides and skins. Rule 16, in particular, specifies the single point at which the turnover of the licensed dealer or tanner in respect of the said dealings can be taxed. The tax can be levied only at the stage at which such hides and skins are sold to a tanner in the State or sold for export outside the State. Rule 16(5) says that dealers other than

licensed dealers will be liable to taxation on each occasion of sale.

6. The aforesaid provisions clearly indicate that, under the Act and the rules framed thereunder, the general scheme is multi-point taxation on the turnover of a dealer. It may be at the sale point or at the purchase point. In the case of hides and skins the single point taxation at the purchase point is adopted. Even in the case of the same commodity, if the dealer has not taken the prescribed licence, he falls in line with the dealers of other commodities, i.e., his turnover is taxed at the sale point under the multi-point scheme of taxation.

7. Learned counsel for the appellants contends that Section 5 supersedes Section 3(1) of the Act and that Section 5(vi) read with the Rule 16(5) is the charging section in respect of sales of hides and skins in the case of an unlicensed dealer. He seeks to make a distinction between Sub-sections (i), (iii) and (v) on the one side and Sub-sections (ii), (iv) and (vi) on the other by contending that, in the case of the former set of sub-sections, the persons dealing in the commodities mentioned therein are exempted whereas in the latter set of sub-sections in his words the "totality of the stream of "transactions" " in the commodities mentioned therein is taken out of the operation of the charging Section 3(1). It is true that the latter set of sub-sections shows a concession in respect of transactions in particular commodities whereas the former set, providing exemption, depends upon the particular class of persons mentioned therein. In our view, the said differential basis does not sustain the contention that a new charging section has been enacted for the commodities mentioned in the latter set of sub-sections. Section 5 pre-supposes that Section 3(1) is the charging section. It gives exemption to certain: persons from taxation u/s 3(1). It shows concession in regard to dealings in specified goods including hides and skins by adopting the single point scheme of taxation. But both the exemption made and the concession given are from the operation of Section 3 which remains the charging section. If the condition under which the concession is made is not complied with, Section 6-A withdraws that concession with the result that the commodity, in regard to which the concession is given, becomes liable to be taxed u/s 3(1) of the Act. This construction is supported by the wording of Section 5(vi), which clearly says that the sale 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. One of the conditions prescribed by the rules is the taking out of a licence. This is also emphasised by Section 6-A which says that, when a contravention or non-observance of the condition takes place, the sale will be assessed to tax u/s 3 as if the provisions of Section 5 did not apply to such a sale.

8. The aforesaid provisions clearly, therefore, indicate that Section 3 has not been abrogated or superseded by Section 5. But Section 5, subject to the conditions prescribed, gives a concession, and on the contravention or non-observance of the said condition, the concession is withdrawn. One of those conditions is that the dealer must take out a licence. Admittedly, in this case, the appellants did not renew the licence and, therefore, they have contravened the

condition under which the concession was given and, therefore, u/s 6-A they lost the benefit of the concession and they have become liable to tax u/s 3(1) of the Act unaffected by the provisions of Section 5.

9. Nor can we agree with the contention of the learned counsel for the appellants that Rule 16(5) was held to be ultra vires of the rule-making authority by the Supreme Court of India and, therefore, there is no charging provision under which unlicensed dealers in hides and skins can be taxed in respect of their turnover. The Turnover and Assessment Rules, as we have already pointed out, provide a special procedure for assessing the turnover of licensed dealers and tanners at a single purchase point. In the case of dealers other than licensed dealers, Rule 16(5) says that they will be liable to taxation on each occasion of sale. Assuming this rule is ultra vires of the rule-making authority on the ground that it is inconsistent with Section 5(vi) of the Act, which prescribes in the case of sales of hides and skins a single point taxation, we cannot see how that fact helps the appellants. The effect would be as if Sub-rule (5) is struck out from the rules. If the contravention of the condition prescribed under the rules, namely, the taking out of a licence or its renewal has the effect of withdrawing the concession given u/s 5, then the turnover of the appellants is assessed and they are taxed u/s 3(1), (4) and (5) in the manner prescribed under the rules.

10. We are also unable to agree with the learned counsel that Sub-rule (5) of Rule 16 is ultra vires of the rule-making authority. The Madras General Sales Tax (Turnover and Assessment) Rules were made by the Governor of Madras in exercise of the powers conferred on him by Section 3(4) and (5) of the Madras General Sales Tax Act, 1939. The rules, as we have already stated, provide for returns and assessment in respect of the turnover of the dealers. Rules 6 to 13 prescribe the manner in which returns should be made by the dealers and the assessment to be effected by the Sales Tax Authorities in respect of the turnover of all taxable commodities including hides and skins. Rules 15 and 16 prescribe a special procedure for licensed tanners and licensed dealers who have taken licences or renewed them under Rule 5 of the Madras General Sales Tax Rules, in respect of their dealings in hides and skins. Sub-rule (5) only declares the legal effect of not taking out a licence by dealers in hides and skins. As, by the operation of Section 6-A of the Act, the concession given by Section 5(vi) of the Act and Rules 15 and 16 of the Madras General Sales Tax (Turnover and Assessment) Rules is withdrawn, dealers other than licensed dealers are liable to be taxed just like other dealers, in other commodities on each occasion of sale. Rule 16(5) does not purport to say anything more than the legal effect of the withdrawal of the concession. In this view, there is no inconsistency between Section 5(vi) of the Act and Rule 16(5) of the Turnover and Assessment Rules. While Section 5(vi) says that the sale of hides and skins shall be liable to tax only at such single point in the series of sales by successive dealers as may be prescribed, Rule 16(5) prescribes that, in the case of dealers other than licensed dealers, the sale shall be liable to taxation on each occasion of sale. Doubtless, there is an apparent inconsistency between these two provisions and ordinarily,

according to well-known rules of construction, the rule, which is inconsistent with the section, shall be struck out as being ultra vires of the rule-making authority. But this position ignores the effect of the opening words of Section 5, and the provisions of Section 6-A. If Section 5(vi) is read in the context of the aforesaid provisions, it must be read to say that the sales of hides and skins shall be liable to tax only at such single point in the series of sales by successive dealers as may be prescribed if the dealer concerned has complied with the conditions laid down in the rules made thereunder. If so read, Sub-rule (5) of Rule 16 will be consistent with Section 5(vi) for Sub-rule (5) only provides for the contingency of the contravention or non-observance of the condition prescribed by the rules. We, therefore, hold that Sub-rule (5) of Rule 16 is not ultra vires of the rule-making authority.

11. But it is contended that it is not open to us to hold so in view of the decision of the Supreme Court in *Syed Mohammed & Co. v. The State of Andhra* (1954) 1 M.L.J. 619. That decision was given in an appeal filed by the asses-sees against the judgment of the Madras High Court in *V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another*, Before considering the decision of the Supreme Court, it would be useful to notice the decision of the Madras High Court wherein this point was raised. The assesseees were doing business as tanners in Eluru. They held a licence as tanners under the Act. They were assessed to tax in respect of their turnover by the Sales Tax Authorities. As the tax was not paid, the Commercial Tax Officer instituted proceedings u/s 15(b) of the Act for recovery of the amount. The assesseees took out an application in the High Court of Madras for issuing a writ of certiorari to quash those proceedings. It was argued before the learned Judges that Section 16-A which precluded the assessee from questioning the validity of an assessment of any tax in a Criminal Court was ultra vires. It was also contended that the provisions of the Madras General Sales Tax Act and the rules framed thereunder were discriminatory in that they imposed sales tax in some cases on the purchaser and, therefore, offended Article 14 of the Constitution. Both the contentions were negatived by the learned Judges. In the course of the judgment, the following paragraph appears at page 613 :-

Now the contention of the petitioners is that where there are sales by unlicensed dealers to unlicensed tanners or unlicensed dealers, there is the possibility of multiple taxation and that would be in violation of Section 5(vi). It is not disputed on behalf of the Government that Rule 16(5) is repugnant to Section 5(vi). It must therefore be held to be ultra vires. But this can bring no relief to the petitioners, as they are all licensed tanners and are in no manner hurt by the operation of Rule 16(5). This was conceded by the learned advocate for the petitioners.

12. It will be seen from the aforesaid passage that the validity of Rule 16(5) did not directly arise in that case for the simple reason that the assesseees were all licensed tanners. Further, the observation was made by the learned Judges on a

concession made by the Advocate-General. In the Supreme Court also, the observations on which reliance is placed are made in similar circumstances. At page 621, Das, J., who delivered the judgment on behalf of the Court, observed :-

Lastly, the learned advocate urges that Rule 16(5) clearly contravenes the provisions of Section 5(vi) of the Act. This sub-rule has been held to be ultra vires by the High Court and, indeed, the learned Advocate-General of Madras did not in the High Court, as before us, dispute that Rule 16(5) was repugnant to Section 5(vi). That sub-rule, however, affects only unlicensed dealers and the appellants who are Admittedly licensed dealers are not affected by that sub-rule. Further, it has not been suggested before us that the appellants were ever called upon to pay any tax on purchase of hides or skins in respect of which tax had been previously paid by some prior purchaser. That sub-rule is clearly severable and cannot affect the validity of the rules which may otherwise be within the ambit of the Act. Our attention has not been drawn to any other infirmity in the rules.

13. It is manifest from the aforesaid passage that the question of the validity of Rule 16(5) did not directly arise for consideration on the facts established in that case. The learned Judge only recorded the concession made by the Advocate-General and did not express his view on the question for the simple reason that it did not arise on the facts of that case. Though the observations of the Madras High Court, which are in the nature of obiter, indicate that the said Court accepted the concession as representing the correct law on the subject, the Supreme Court did not even adopt the concession. The Supreme Court, on the other hand, expressly stated that that question did not arise for consideration on the facts of that case. With great respect to the learned Judges of the Madras High Court, we cannot accept the observations made by them that the said rule was ultra vires. So far as the Supreme Court is concerned, there were neither observations nor a decision to the effect that the view expressed by the Madras High Court or the concession made by the Advocate-General was correct. In the circumstances, we are not precluded from expressing our view on the validity of Rule 16(5).

14. Learned counsel then argued that the classification embodied in Sections 5 and 6-A of the Act between licensed dealers in hides and skins and unlicensed dealers in the same commodity offends Article 14 of the Constitution. Article 14 has been the subject of judicial scrutiny and the principle has been authoritatively laid down by the decisions of the Supreme Court, the latest of them being that of Budhan Chowdhary v. State of Bihar (1955) AIR 1955 S.C. 191. Das, J., after reviewing the case law on the subject, made the following observations at page 193 :-

It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order however to pass the test of permissible classification, two conditions must be

fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases ; namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

15. To this, we will add the statement of Professor Willis that:

If any state of facts can reasonably be conceived to sustain a classification, the existence of the state of facts must be assumed and that one, who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis.

16. It is also necessary to bear in mind the presumption of law laid down in *Middleton v. Texas Power and Light Company* 249 U.S. 152 at p. 157:

It must be presumed that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.

17. It is argued that there is no reasonable justification for differentiating dealings between a licensed dealer and those of an unlicensed one, so as to impose one point purchase tax in the case of the former and the multi-point taxation in the case of the latter. What is the object of the legislature and the rule-making authority in distinguishing the aforesaid two categories ? While the legislature for one reason or other thought it fit to introduce single point taxation on purchases of hides and skins, it was also anxious to see that the said dealings did not escape taxation. In the case of multi-point taxation even if the goods escape taxation at one point, they are caught at another, whereas, in the case of single point taxation, once they escape, they escape for ever. It is, therefore, necessary that, in the interest of the State Exchequer, some controlling provision should be made to catch it in the net of taxation. With that view, under the Act and the rules made thereunder, it is made incumbent on a dealer to obtain a licence, if he seeks to take advantage of the single point taxation so that a licensed dealer may be under the control of the taxing authority and not in a position to escape taxation. If the dealer is not willing to take out a licence, the rule of multi-point taxation is made applicable to his transactions. The differentiation, therefore, between licensed dealers and unlicensed dealers is presumably made to achieve the said object.

18. *Rajamannar, C. J., in State of Madras Vs. K.H. Chambers Ltd. and Others*, upheld a classification under the provisions of the Madras General Sales Tax Act between a licensed dealer and an unlicensed dealer. At page 322, the learned

Judge observed :

The scheme of assessment under the Madras General Sales Tax Act certainly makes a difference between a licensed dealer and an unlicensed dealer. For instance, a sale of untanned hides and skins by an unlicensed dealer is included in the seller's turnover under Rule 4(1), whereas a sale by a licensed dealer of such goods is included in the buyer's turnover. So far as the final export is concerned, neither the licensed dealer nor the unlicensed dealer can be taxed. Nor are they taxable under the rules, read with Article 286. It is not correct to say that while the unlicensed dealer escapes taxation in view of Article 286, the licensed dealer has to pay the tax. He is not liable to pay any tax in respect of the export sale. It is the prior purchase that is taxable. Different results would follow in different circumstances, namely, where an unlicensed dealer sells to a licensed dealer, when an unlicensed dealer sells to an unlicensed dealer, when a licensed dealer sells, to an unlicensed dealer and when a licensed dealer sells to a licensed dealer. It may be that in one or other of these contingencies, there might be difficulty in assessment. This is inevitable, but that fact alone would not justify us in holding that there has been an unwarranted discrimination. Ultimately, the burden of the sales tax falls on the consumer, as the dealer paying the tax, whether he be licensed or unlicensed, generally passes on the tax.

19. We express our respectful accord with the aforesaid observations. We cannot, therefore, say that the aforesaid classification is unreasonable or has no relation to the object sought to be achieved. The classification being valid, the provisions of the Act do not offend Article 14 of the Constitution.

20. Learned counsel for the appellants strongly relied upon the latest Full Bench decision of the Madras High Court in *Hajee Abdul Shukoor & Company v. State of Madras* [1955] 6 S.T.C. 352 and contended that that ruling decided the point now raised before us in his favour. We have carefully gone through the judgment and we do not see any justification for that contention. There, the assessee, which is a firm, was a dealer-tanner in hides and skins and held a licence u/s 5 of the Act and the Rules framed thereunder. The assessee purchased hides and skins from Bombay. The sales tax authority included those purchases in the turnover of the assessee for taxation. It was argued that a purchase from an unlicensed dealer was not liable to be included in the turnover of a tanner assessee. After elaborately considering the provisions of the Act and the Rules framed thereunder, Rajagopala Ayyangar, J., who delivered the judgment on behalf of the Bench, gave his conclusion at page 364 as follows :-

The conclusion we have reached as a result of the above discussion is that (1) the charging provision, Section 3 is subject, in the case of transactions in hides and skins, to the terms of Section 5(vi) under which a single point of taxation in a series of sales has to be fixed by the rules; (2) Rule 4(2) is not the fixation of a single point within Section 5(vi) but is merely designed to determine whether it is the buyer or the seller that shall be liable to be taxed ; (3) the single point is fixed and the liability to tax is established only under Rule 16; and (4) that under

Rule 16(2)(i) it is only the sale of untanned hides and skins by a licensed dealer to a licensed tanner who tans the same that gives rise to a tax liability and that purchases of untanned hides and skins by tanners from persons other than licensed dealers are not within the taxing provisions.

21. At page 364 the learned Judge, after noticing the judgment in V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another, at p. 612 wherein the Madras High Court held that Rule 16(5) was ultra vires observed :-

What the effect of this is upon the liability of an unlicensed dealer to taxation does not arise for consideration in the present case because the assessee whose case is referred is a licensed dealer. But in considering the scheme of taxation enacted by Rule 16, we cannot ignore the existence of Sub-rule (5).

22. Again at page 367, the learned Judge in dealing with the observations of Satyanarayana Rao, J., in Mohamed Zackria & Co. v. Government of Madras (1954) 2 M.L.J. 658 made it clear that he would prefer not to rest his conclusion on the invalidity of Rule 16(5), for the learned Judge observes :-

The only reservation which we desire to make is that the conclusion does not really flow by reason of the invalidity of Rule 16(5) but because of the proper construction of Rule 16(2) for Rule 16(5) has to do with the taxation of unlicensed dealers whereas the question now under issue is -the transactions of licensed dealers though their purchases are from unlicensed dealers. Rule 16(5) could have no bearing either as imposing or exempting any tax liability in such a case.

23. In the face of such a clear and unambiguous statement made by the learned Judge in his judgment, it is neither permissible nor possible to argue that the learned Judge has expressly or by necessary implication decided the question of the liability of an unlicensed dealer to tax u/s 3(1) of the Act. That decision is only authority for the position that the purchases of a licensed tanner from an unlicensed dealer cannot be included in the turnover of the former, and that conclusion was based upon an interpretation of Rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules. It is not necessary in this case to express our opinion on the correctness of that decision, for that point does not arise for consideration before us.

24. Learned counsel then argued that if our view were correct, it will lead to many anomalies. It is said that, in the chain of transactions, one dealer may be a licensed dealer and the other an unlicensed one with the result that the burden of multi-point taxation which the licensing machinery is designed to avoid will be passed on to the licensed dealer and that it would result in the object of the rule of the taking out of a licence being frustrated. That consequence may follow not because of any defect in the making of the rules but because of the negligence or indifference of the dealers in the specified commodity in not obtaining a licence which they are empowered to take under the rules. If the other view be accepted, it will lead not only to the anomaly but to the breaking up of the

scheme itself. If the learned counsel's contention be accepted a licensed dealer will be taxed at one purchase point, whereas an unlicensed dealer escapes assessment altogether. That result unless it inexorably flows from the provisions of the Act should not be accepted by any Court. As pointed out by us, the provisions of the Act and the rules can reasonably be construed to give effect to the legislative intention.

25. We, therefore, agree with the conclusion arrived at by the learned Judge and dismiss the appeal with costs which we fix at Rs. 200.