
(1976) 03 MAD CK 0037

In the Madras High Court

Case No : Tax Case No's. 298 to 300, 305 and 314 of 1971 (Revision No's. 186, 187, 188, 193 and 202 of 1971)

Yercaud Coffee Curing Works Ltd.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-03-1976

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 16(1)

Citation : (1977) 40 STC 531

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : T.V. Balakrishnan, for C.V. Mahalingam, S. Mathurbutheswaran and K.J. Rebello, for the Appellant; K. Govindarajan, for Additional Government Pleader No. I, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—T. C. Nos. 298 to 300 and 314 of 1971 relate to the assessment years 1962-63 to 1965-66 and T. C. No. 305 of

1971 relates to the assessment year 1966-67. The assessee in all these cases is the same. The assessees are dealers in fertilisers, manure mixtures

and rock phosphate, etc. They purchased number of items of chemical fertilisers both locally and also from outside the State. In some cases, they

mixed organic chemicals in various proportions and manufactured different types of mixture manures called "tea manure", "coffee manure", etc.

Under item 21 of the First Schedule to the Tamil Nadu General Sales Tax Act, the chemical fertilisers enumerated in that item are to be taxed at

single point on the point of first sale in the State. After enumerating 15 items of chemical fertilisers, the entry further provided that any mixture of

one or more of the articles mentioned therein with one or more of the organic

manures would also come within that entry. In the assessment years 1962-63 to 1965-66, the assessee claimed exemption in respect of the mixture manures on the ground that the manufacture of manure mixtures does not involve any manufacturing process and does not also involve any chemical change of the organic ingredients and that, therefore, they are not commercially different goods. On that basis, the assessee claimed that the sale of manure mixture is a second sale in the State as it was made of the organic chemicals purchased by them. The assessing authority found from a check of the records that the assessee had not only purchased organic chemical fertilisers within the State but also a good portion of the turnover related to purchase from outside the State. In respect of the chemicals purchased by the assessee from outside the State, the assessing officer considered that the sale of the same by the assessee would be the first sale within the State and that, therefore, under entry 21 that turnover is liable to be taxed. He also found that the assessee had not been keeping separate accounts for the first and subsequent sales and he accordingly proposed to estimate the first sales with reference to a formula. The formula determined by him was $\frac{\text{"local purchases} \times \text{local sales"}}{\text{total purchases}}$. On this basis, he determined the turnover relating to the second sales and exempted only that portion and subjected to tax the remaining portion. When the question was again considered for the assessment year 1966-67, the assessing authority thought that in the absence of any evidence to show what was the proportion of the organic chemical which was used in the manufacture of manure mixture, no portion of the sales turnover of manure mixture could be exempted as second sales. In that view, he assessed the entire turnover relating to manure mixture for the assessment year 1966-67. He also initiated proceedings u/s 16 in respect of the assessment years 1962-63 to 1965-66 on the ground that that portion of the turnover relating to sales of manure mixture exempted on the earlier occasion had escaped assessment. The assessee preferred appeals both against the reassessment orders made u/s 16 and the assessment order made u/s 12 in respect of the assessment year 1966-67. The Appellate Assistant Commissioner confirmed the order of the assessing authority. The Tribunal also confirmed the decision except in regard to a small portion, which is not the subject-matter of revision in these proceedings.

Before the Appellate Assistant Commissioner and the Appellate Tribunal, the assessee contended that in so far as the assessment years 1962-63

to 1965-66 are concerned, the assessing authority has no jurisdiction to invoke his power u/s 16 as the assessing authority on the earlier occasion

had considered that question and deliberately exempted the turnover as second sales. In those circumstances, the turnover could not be said to

have escaped assessment giving jurisdiction to the assessing authority to invoke his power u/s 16. He also contended that in respect of the

assessment years including 1966-67, the manure mixtures, which he sold are not commercially different goods from that of the organic chemicals

which he has purchased and that, therefore, in so far as the purchases made by him locally the turnover of manure mixture is a second sale and not

liable to be taxed. Both these contentions were not accepted by the Appellate Assistant Commissioner and the Tribunal. Hence these revision

petitions.

2. The question whether the manure mixture is commercially a different commodity and that, therefore, the sale of the same is to be treated as first

sale in the State is covered by the authority and against the assessee. In *Imperial Fertiliser and Company v. State of Madras* [1973] 31 S.T.C.

390, a Division Bench of this Court, to which one of us was a party, considered almost an identical question. In that case also, the assessee

purchased various items of chemical manure referred to in item 21 of the First Schedule and by mixing one or more of the said articles with one or

more of any organic manure he produced certain manure mixtures. The question for consideration was whether the turnovers relating to the mixture

were liable to be taxed. It was held that for getting an exemption on the ground that it is a second or subsequent sale, the assessee had to establish

that there has been a sale of the same goods at an anterior point of time and if there was no identity between the product sold and that which was

purchased by the assessee, it was not possible to treat the sale by the assessee as a second sale. This view was followed by a subsequent decision

reported in *State of Tamil Nadu v. Rallis India Ltd.* [1974] 34 S.T.C. 532, which also related to mixture manures coming under item 21 of the

First Schedule. It was pointed out that though no manufacturing process is involved in the mixing of such mixture the components of the mixture

have different chemical properties of their own and their use also is different and that, therefore, it is not possible to treat the manure mixture as the same article as the components themselves. These decisions clearly cover the merits of the contention of the learned counsel. Though tea manure and coffee manure and the other mixtures sold by the assessee are manufactured by the mixing of the organic fertilisers by human labour, since the chemical properties of the mixture are different from organic properties which formed the components, they are different articles and intended for different purposes. We are accordingly of the view that the turnover relating to the sales of these manure mixtures are liable to be taxed.

3. It was then contended by the learned counsel for the assessee that in respect of the assessment years 1962-63 to 1965-66, there was no

escapement of the turnover from assessment to tax and that, therefore, the assessing authority had no jurisdiction to reassess the turnover u/s 16.

According to the learned counsel, if a turnover had been considered by the assessing authority at the stage of original assessment and either by

reason of the mistake of fact or mistake of law or for any other reason it deliberately omitted to assess the same, it would not be open to the

assessing authority, on a mere change of opinion without any fresh materials, to invoke his power u/s 16. Section 16(1) of the Madras General

Sales Tax Act, 1959, which is the relevant provision, reads as follows :

Assessment of escaped turnover.-(I) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped

assessment to tax, the assessing authority may, subject to the provisions of Sub-section (2), at any time within a period of five years from the

expiry of the year to which the tax relates, determine to the best of its judgment the turnover which has escaped assessment and assess the tax

payable on such turnover after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show

cause against such assessment.

(b) Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it

is assessable, the assessing authority may, at any time within a period of five years from the expiry of the year to which the tax relates, reassess the

tax due after making such enquiry as it may consider necessary and after giving

the dealer a reasonable opportunity to show cause against such reassessment.

4. In one of the earliest cases in *State of Madras v. Louis Dreyfus and Company Ltd.* [1955] 6 S.T.C. 318, which considered a corresponding provision in Rule 17 of the Madras General Sales Tax Rules, a Full Bench of this Court observed:

The "escape" that serves as the foundation of the jurisdiction to reopen an assessment is that of "turnover" and not, be it noted, an assessment.

"Turnover" escapes when it is not noticed by the officer either because it is not before him by reason of an inadvertence, omission or deliberate concealment on the part of the assessee, or because of want of care on the part of the officer the turnover though in the books has not been taken notice of. This would be the natural and normal meaning of the expression turnover which has escaped" in Rule 17(1).

5. But, in a subsequent case arising under the Bihar Agricultural Income Tax Act, 1938, the Supreme Court in the decision reported in

Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, held with reference to a provision which is almost identical with Section 16, that by

the use of the words "for any reason" all those fetters and limitations which are normally associated with the assessment of escaped turnovers have

been removed and that it was competent in a reassessment proceeding to assess an item of income which had been omitted to tax earlier even

though in the return that income was included and the Agricultural Income Tax Officer then thought that it was exempt. In the light of this decision,

this court again considered the scope of Section 16 in the decision reported in *F.K. Hasheeb & Co. v. State of Madras* [1966] 17 S.T.C. 38. This

court was of the view that many of the observations contained in the judgment of the Full Bench in *State of Madras v. Louis Dreyfus and Company*

Ltd. [1955] 6 S.T.C. 318 are no longer good law and that even a turnover which was considered and exempted by the assessing authority could

be brought to reassessment as a turnover which has escaped assessment u/s 16. Again in *East India Corporation Ltd. v. State of Madras* [1973]

31 S.T.C. 330, a Division Bench, to which one of us was a party, held :

Section 16 covers within its ambit even cases where in respect of a turnover the assessing authority has considered the liability to tax and wrongly

excluded it from tax, whether on the ground of erroneous view of the nature of the transaction or on a wrong understanding of the provisions of the

Act or for any other reason.

6. A similar view was taken also by the Kerala High Court with respect to a corresponding provision in the decision reported in *Narayana Shenoi*

v. State of Kerala [1961] 12 S.T.C. 665. But the learned counsel laid strong reliance on the two decisions of the Supreme Court reported in

Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E.

Nainan, . In the first case, the facts were these: In the original assessment order made in respect of the assessment year 1958-59, the assessing

authority, though the turnover was before him, did not include it in the taxable turnover on the ground that it was not liable to tax. Subsequently, by

a notice dated 29th October, 1963, the Deputy Commissioner of Agricultural Income Tax and Sales Tax, who is the revising authority, proposed

to revise the assessment u/s 15(1) of the Travancore-Cochin General Sales Tax Act, 1125 M.E. u/s 15(1), the Deputy Commissioner may suo

motu call for and examine the record of any order passed or proceeding recorded under the provisions of the Act by any officer subordinate to

him, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceeding and may pass such

order with respect thereto as he thinks fit. This power could be exercised by the Deputy Commissioner within a period of four years from the date

on which the assessment order was communicated to the assessee. Under Rule 33(5) read with Rule 33(1) of the Travancore General Sales Tax

Rules, 1950, framed under the Travancore-Cochin General Sales Tax Act, if for any reason the whole or part of the turnover of business of a

dealer has escaped assessment to the tax in any year, the Deputy Commissioner may also at any time within a period of three years next

succeeding that to which the tax relates determine to the best of his judgment the turnover which has escaped assessment and assess the tax

payable after making such enquiry as he considers necessary. The assessee contended that the Deputy Commissioner could have proceeded only

under Rule 33(5) and assess the turnover as one that has escaped assessment and since the notice dated 29th October, 1963, was beyond the

period of three years, he had no jurisdiction to proceed under that provision. The notice purported to have been issued u/s 15, which gave him a

larger period of limitation, was therefore not valid. The Supreme Court, relying on the decision in State of Kerala Vs. Shri M. Appukutty, , held

that in the context of the powers u/s 15 and Rule 33(5) vested in the same authority only in cases where Rule 33(5) is not applicable, the Deputy

Commissioner could invoke his power u/s 15 and the case before them was one falling u/s 15(1) and not under Rule 33(5). In that view, the

Supreme Court upheld the proceedings initiated u/s 15. This decision was followed in State of Kerala Vs. K.E. Nainan, in almost on identical

facts. It may be seen from the decision that the Supreme Court was concerned with the power of one authority, namely, the Deputy

Commissioner, who had both the power to assess an escaped turnover and also the power to revise an assessment on the ground of illegality or

impropriety. In the context of both the powers found in two different provisions on the same authority, the Supreme Court held that if it is a case of

escaped turnover it will not fall under the revisional jurisdiction and if it is a case falling under the revisional jurisdiction, it could not fall under the

jurisdiction to assess escaped turnover. The decision in State of Kerala Vs. Shri M. Appukutty, , which was relied on by the Supreme Court is

also to the same effect. That decision was concerned with the powers of the Deputy Commissioner u/s 12 of the Madras General Sales Tax Act,

1939 and Rule 17(3-A) of the Madras General Sales Tax Rules, 1939. Since both conferred power on the Deputy Commissioner, the Supreme

Court held that without exercising the power to assess escaped turnover, under Rule 17(3-A), the Deputy Commissioner could rely, while revising

an order of the assessing authority, on Section 12(2). But the scheme of the present Act is different. While the assessing authority's jurisdiction is

dealt with u/s 16, the Deputy Commissioner's power to revise is found u/s 32. Therefore, the words ""escaped turnover"" in Section 16 and the

words ""illegality, impropriety or irregularity"" in Section 32, in our opinion, have to be understood in the context in which it is now found in the Act.

The Supreme Court in State of Kerala Vs. Shri M. Appukutty, , Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs.

Dhanalakshmi Vilas Cashew Co., and State of Kerala Vs. K.E. Nainan, considered the words ""escaped turnover"" in the context of the power

given to the same authority to revise an assessment on the ground of illegality and impropriety and, therefore, their Lordships have restricted the scope of these words "escaped turnover". In the absence of such different provisions vesting the power on the same authority, we are of the view that a restricted meaning either for the words "escaped turnover" or for the words "illegality, impropriety or irregularity" is not warranted. But as pointed out by this court in *East India Corporation Ltd. v. State of Madras* [1973] 31 S.T.C. 330, the conditions or limitations on which each could invoke their powers are different and had to be found only in the respective provisions of Sections 16 and 32. We are therefore, of the opinion that the decisions in *F. K. Hasheeb & Co. v. State of Madras* [1966] 17 S.T.C. 38 and *East India Corporation Ltd. v. State of Madras* [1973] 31 S.T.C. 330 do not require any reconsideration even after the decisions in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Dhanalakshmi Vilas Cashew Co.*, and *State of Kerala Vs. K.E. Nainan*, . We, accordingly, hold that the reassessment proceedings were validly initiated by the assessing officer in respect of the assessment years 1962-63 to 1965-66. No other points survive for consideration in these tax revision petitions. The petitions, accordingly, fail and they are dismissed with costs. Counsel's fee Rs. 150 in each.