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STATE OF MADRAS

v.

P. M. BATCHA & COMPANY

April 12, 1967

B [J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Madras General Sales Tax Act, 1939, ss. 5 and 11; Madras General Sales Tax Act, 1959, s. 32—'Nil' assessment made by Commercial Tax Officer under s. 5 of 1939 Act—Order not communicated to assessee—Change of judicial view regarding taxing provisions—Power of Deputy Commissioner of Commercial Taxes under s. 32 of 1959 Act to revise order of 'Nil' assessment—Assessee's whether had right to file appeal
C *against 'Nil' assessment under s. 11 of 1939 Act—Effect of such right on powers of Deputy Commissioner under s. 32.*

The respondent firm carried on business in hides and skins in Madras. For the assessment year 1953-54 they applied for a licence under s. 5 of the Madras General Sales Tax Act, 1939. The Commercial Tax Officer relying on a judgment of the Madras High Court held that the respondent was not liable to tax and made a 'Nil' assessment. The order
D was however not communicated to the respondent. The aforesaid judgment of the Madras High Court was later reversed by this Court. The Deputy Commissioner of Commercial Taxes Madras, being of the view that the order of 'nil' assessment relating to 1953-54 was illegal commenced proceedings under s. 32 of the Madras General Sales Tax Act, 1959 and thereafter assessed the respondent. The Sales Tax Tribunal confirmed the order of Commercial Tax Officer. The High Court in revi-
E sion held that since the Commercial Tax Officer had not communicated his order to the assessee the time for appeal had not expired and therefore the Deputy Commissioner had no power to revise the order under s. 32 of the Act of 1939. The State appealed.

HELD : In the present case no tax was assessed, not even the taxable turnover was determined. No appeal could therefore lie under s. 11 of the Act of 1939 against the order of 'Nil' assessment. There was thus
F no bar against the exercise of jurisdiction of the Deputy Commissioner under s. 32(1) to commence proceedings of re-assessment. [621D]

M/s. M.A. Noor Mohamed & Company v. *State of Madras & Anr.*, A.I.R. 1957 Mad. 33 and *State of Madras & Anr.* v. *M/s. M. A. Noor Mohamed & Company*, A.I.R. 1960 S.C. 1254, referred to.

S. B. Periasami Nadar and Company v. *State of Madras*, 13 S.T.C.
G 328, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 578 of 1966.

Appeal by special leave from the judgment and order dated August 31, 1964 of the Madras High Court in Tax Case No. 127
H of 1963 (Revision No. 83).

P. Ram Reddy and *A. V. Rangam*, for the appellant.

R. Ganapathy Iyer, for the respondent.

The Judgment of the Court was delivered by

Shah, J. The respondents are a firm carrying on business in hides and skins in the State of Madras and is registered as a "dealer" under the Madras General Sales Tax Act 9 of 1939. For the assessment year 1953-54 the respondents applied for a licence under s. 5 of the Madras General Sales Tax Act and provisionally paid a sum of Rs. 450 towards licence fee. The respondents were directed to pay an additional amount of Rs. 400. The respondents declined to pay the additional amount and informed the assessing authority that the transactions carried on by them were of the nature of export of hides and skins and no sales-tax was payable on goods exported to places outside India.

The Commercial Tax Officer scrutinised the accounts of the respondent for the year 1953-54 and by order dated March 29, 1957 determined their turnover from purchases of hides and skins from dealers outside the State and from dealers within the State both tanned and untanned and of sales of tanned hides and skins on behalf of resident and non-resident principals. But, following the judgment of the Madras High Court in *Messrs. M. A. Noor Mohamed & Company* v. *The State of Madras and Another*(1), the Commercial Tax Officer held that the respondents were exempt from tax and no licence fee for the year 1953-54 was payable. He, therefore, declared that there was no demand under s. 8(B)(2) of the Act, that the tax due for the year was nil and that a notice in Form 'C' be issued for refund of Rs. 450 paid by the respondents.

No intimation of this order was given to the respondents.

The judgment of the Madras High Court in *M. A. Noor Mohamed's* case(1) was carried in appeal to this Court and this Court reversed the judgment : see *State of Madras & Another* v. *M/s. M. A. Noor Mohammed & Company*(2). In the meantime the Madras General Sales Tax Act 9 of 1939 was repealed and was replaced by the Madras General Sales Tax Act 1 of 1959. The Deputy Commissioner of Commercial Taxes, Madras, being of the view that the "order of nil assessment" dated March 29, 1957 was illegal and that the respondents were liable to pay sales-tax on their turnover of hides and skins for the year 1953-54, commenced proceeding under s. 32 of the Madras General Sales Tax Act 1 of 1959 and issued a notice to the respondents calling upon them to file their objections, if any, to the proposal to revise the "order of nil assessment". The Deputy Commissioner rejected the contention of the respondents that he had no jurisdiction to revise the assessment and determined the turnover of the respondents at Rs. 11,25,000 odd. The Sales Tax Appellate

(1) A.I.R. 1957 Mad. 33. (2) A.I.R. 1960 S.C. 1254.

A Tribunal substantially confirmed the order of the Deputy Commissioner.

The High Court in exercise of their revisional jurisdiction under s. 38 of Act 1 of 1959 set aside the order of the Tribunal holding that it was obligatory upon the Commercial Tax Officer to communicate the order dated March 29, 1957 : if it was not B so communicated the time to appeal against the order cannot be deemed to have expired and the Deputy Commissioner had no jurisdiction under s. 32 of the Madras General Sales Tax Act 1 of 1959 to revise the order. In recording their conclusions the learned Judges followed the judgment in *The State of Madras* v. *M/s A. M. Safiulla & Company*(1) in which the rule was stated C as follows :

> "To sum up in the case of an assessment completed and signed by the Officer, but not communicated to the assessee, our conclusions are as follows :
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> "(a) The order of assessment can be communicated to the assessee without any time limit, but no D liability would arise till communication;
>
> (b) The limitation for the assessee to prefer either an appeal or a revision would commence to run only after the order is communicated to him;
>
> (c) The time for exercising powers of revision would E commence to run from the date of the order itself and there cannot be an enlarged period of limitation merely because the Department takes its own time to communicate the order."

In our judgment, the order of the High Court cannot be sustained. The Commercial Tax Officer commenced proceeding in F the manner provided by s. 9 of Act 9 of 1939 for assessment of sales-tax due by the respondents, but ultimately held that no tax was due by the respondents. Section 11 of the Act provided that an assessee objecting to an assessment made on him under s. 9 sub-s. (2) may within thirty days from the date on which he was served with notice of the assessment, appeal to such authority G as may be prescribed.

Rule 15 of the rules framed by the Governor of Madras under the Madras General Sales Tax Act required the dealers in hides and skins to submit a return in Form A-4 to the assessing authority on or before the 25th day of every month. The Commercial Tax Officer had to process the return submitted by the dealer. H If no return was submitted in respect of any month or if the return was submitted without payment of the full amount of tax, or the return was otherwise defective, the Commercial Tax Officer could determine the turnover to the best of his judgment. Rule

16 dealt with the levy of tax on hides and skins. There was no provision in the Act or the Rules framed by the State Government which required that an order made under s. 9 shall, before it may be regarded as validity made, be communicated to the dealer. An appeal lay under s. 11 by an assessee objecting to an assessment made on him under s. 9(2). Since the assessment was "nil", no question of the respondents objecting to the assessment arose, and no appeal could be contemplated to be filed by them.

We agree with the view of the Madras High Court in *S. B. Periasami Nadar and Company* v. *The State of Madras*(1) at p. 333 that :

> "In a case where the assessee is not levied with tax, there is no rule which compels the assessing authority to inform the assessee that the tax levied against him is nil. The word "assessment" may have a wide connotation including several aspects of the assessment proceedings.
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> But however wide the significance of the expression "assessment" may be, it is impossible to hold that an assessment is incomplete or invalid in the absence of the order of assessment being served upon the assessee. Once the competent authority makes an assessment under the Madras General Sales Tax Act after scrutinising the return submitted by the assessee, and after giving the assessee a reasonable opportunity of proving the correctness and completeness of any return submitted by him it is complete and valid."

It is true that when proceedings for re-assessment were commenced, Act 9 of 1939 stood repealed and was replaced by Madras Act 1 of 1959, and the authority which the Deputy Commissioner could exercise was under s. 32(1) which read as follows :

> "The Deputy Commissioner may, of his own motion, call for and examine an order passed or proceeding recorded by the appropriate authority under section 4-A, section 12, section 14, section 15, or sub-sections (1) and (2) of section 16 and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon as he thinks fit."

Sub-section (2) provided, insofar as it is material :

> "The Deputy Commissioner shall not pass any order under sub-section (1) if—

(1) 13 S.T.C. 328.

A (a) the time for appeal against the order has not expired;"

There was, however, no assessment of tax against the respondents. There could be no appeal against the order of "nil assessment" under s. 11 of Act 1 of 1959, and no bar to the jurisdiction of the Deputy Commissioner under sub-s. (1) of s. 32 of the Act B could arise. The High Court was, in our judgment, in error in holding that because "the order of nil assessment" was not communicated, the respondent could not appeal against that order, and the time for appealing against that order had not expired within the meaning of sub-s. (2) of s. 32 of Act 1 of 1959. We are unable also to agree with the High Court that in an appeal C under s. 11 of Act 9 of 1939 an assessee may object to a mere statement setting out the sales and purchases during the course of his business, or even his turnover. An appeal lies against the assessment of tax. In the present case, no tax was assessed : not even the taxable turnover was determined. No appeal, in our judgment, could lie under s. 11 of Act 9 of 1939 against the D order of "nil assessment". There was therefore no bar against the exercise of jurisdiction of the Deputy Commissioner under s. 32(1) to commence proceedings for re-assessment.

Our attention was invited to s. 31(1) of Act 1 of 1959, which confers a right of appeal upon any person who objects to an order passed by the appropriate authority under various sections E including s. 4A, s. 12, s. 14 and others. But if no appeal lay against the order of "nil assessment" under s. 11 of Act 9 of 1939, it is difficult to appreciate how an appeal could still be filed by the respondents against that order under Act 1 of 1959, which came into force two years after the order.

It is unnecessary in that view to consider the alternative argu- F ment advanced by counsel for the State that it was open to the Deputy Commissioner to revise the order of "nil assessment" under the power reserved to him to revise a "proceeding recorded".

The order passed by the High Court is set aside, and the order passed by the Sales Tax Tribunal restored, with costs in this Court and the High Court.

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G.C. *Appeal allowed.*