

A

APPELLATE ASSTT. COMMR. ETC. ETC.

v.

L.M.S. SADAK TAMBY & CO., ETC. ETC.

October 15, 1974

B

[A. N. RAY, C.J., K.K. MATHEW AND A. ALAGIRISWAMI, JJ.]

Madras Act 37 of 1964, Section 2(1)—Levy of tax on the sale of tanned hides and skins—Tax on the amount for which hides and skins were last purchased in the untanned condition—No distinction between purchases made inside or outside the State—Tax, whether contravenes Article 286 of the Constitution.

C

In *Firm A.T.B. Mehtab Majid & Co. v. State of Madras*, [1963] Supp. 2 S.C.R. 435, the Supreme Court struck down Rule 16 of the Madras General Sales Tax Rules made under Madras General Sales Tax Act, IX of 1939, on the ground that where a tanner buys raw hides and skins inside the State and sells them after tanning he pays the tax only on the purchase price of raw hides and skins whereas a dealer who purchases raw hides and skins from outside the State and sells the tanned hides and skins pays the tax on the price for which tanned hides and skins are sold and therefore pays more tax. In order to deal with this situation, the Madras Legislature passed Act 11 of 1963. As section 2(1) of this Act provided a uniform rate of 2 per cent for sales during the whole of the period between 1st April 1955 and 31st March 1959, it was struck down by the Supreme Court in *A. Hajee Abdul Shakoor & Co. v. State of Madras* [1964] 8 S.C.R. 217.

D

In order to get over this objection section 2(1) had been enacted by Madras Act 37 of 1964. Under this section the tax is leviable on the first seller of dressed hides and skins at the rate of one and nine-sixteenth per cent for the period between 1st April 1955 and 31st March 1957. For the period between 1st April 1957 and 31st March 1959 it is to be at the rate of two per cent. The tax is on the amount for which such hides and skins were last purchased in the untanned condition.

E

On the question whether section 2(1) of Madras Act 37 of 1964 contravenes Article 286 of the Constitution,

F

HELD: What is taxed under the impugned statute is not the purchase of raw hides and skins whether inside or outside the State. In both the cases it is on the first sale of tanned hides and skins. Even if a person purchases raw hides and skins inside the State and sells it after tanning he pays the tax on the sale of the tanned hides and skins and not on the purchase of raw hides and skins though the amount of tax payable is calculated on the amount for which such raw hides and skins were purchased. Similar is the position with regard to raw hides and skins purchased outside the State. Thus there is no discrimination between the sellers of tanned hides and skins whether the raw hides and skins out of which they were tanned were purchased inside the State or outside the State. The tax is not leviable even in the case of raw hides and skins imported from another State but on hides and skins tanned from those raw hides and skins. Only the tax is levied on the amount for which the raw skins and hides were purchased. This amount is used only for the purpose of quantification of the tax. The impugned statute does not suffer from the vice of taxation of the imported raw hides and skins. [430 C-F]

G

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1366, 1850 to 1863 & 2550 to 2551 of 1969, 1355 & 1356 of 1970 and 1292 and 1293 of 1973.

H

From the Judgments & Order dated the 1st March/26th February, 1969/29th July/2nd August, 1971 of the Madras High Court in W.Ps. Nos. 1895 of 1966, 1084, 1192, 1194, 1800, 1896, 1898, 1907—1910, 2089 of 1966, 646 of 1967, 3536-3537 of 1965 and Tax Cases Nos. 57 & 58 of 1969 and 191 & 197 of 1971 respectively.

Govind Swaminathan, Advocate General for the State of Tamil Nadu, A.V. Rangam, K. Venkataswami, N.S. Sivam and A. Subhashini, for the appellants (In all the Appeals & SLP No. 1974/70)

A. Abdul Karim and K. Rajendra Choudhary, for the respondents (In 1366, 1850-53 & 1858-1861/69)

K.V. Pillai, for the respondents (In 1854/69)

E.C. Agarwala, for the applicant/intervener.

A.K. Sen and S. Gopalakrishnan, for respondents (In 2550-51/69, 1355-1356/70 and 1292-1293/73).

The Judgment of the Court was delivered by

ALGIRISWAMI, J.—These appeals raise the question of the validity of section 2(1) of Madras Act 37 of 1964. That section reads as follows :

“Special provisions in respect of tax on sale of dressed hides and skins in certain cases :—

Notwithstanding anything contained in the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the said Act), or in the rules made thereunder (hereinafter referred to as the said Rules), in respect of sale of dressed hides and skins (which were not subjected to tax under the said Act as raw hides & skins), the tax under the said Act shall be levied from the dealer who in the State is the first seller in such hides and skins not exempt from taxation under sub-sec. (3) of Sec. 3 of the said Act :—

- (i) for the period commencing on the 1st April, 1955 and ending on the 31st March 1957, at the rate of one & nine-sixteenth per cent, and
- (ii) for the period commencing on the 1st April, 1957 and ending on the 31st March 1959, at the rate of two per cent, of the amount for which such hides and skins were last purchased in the untanned condition.”

In order to understand the implications of this section it is necessary to refer to certain other provisions of law and two previous decisions of this Court. Rule 16 of the Madras General Sales Tax Rules made under Madras Act IX of 1939 read as follows :

“In the case of untanned hides and/or skins the tax under Sec. 3(1) shall be levied from the dealer who is the last purchaser in the State not exempt from taxation under Sec. 3(3) on the amount for which they are bought by him.

2(i) In the case of hides or skins which have been tanned outside the State the tax under Sec. 3(1) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from taxation under Sec. 3(3) on the amount for which they are sold by him.

A (ii) In the case of tanned hides or skins which have been tanned within the State, the tax under sec. 3(1) shall be levied, from a person who is the first dealer in such hides or skins not exempt from taxation under Sec. 3(3) on the amount for which they are sold by him.

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

C This Rule was struck down by this Court on the ground that where a tanner buys raw hides and skins inside the State and sells them after tanning he pays the tax only on the purchase price of raw hides and whereas a dealer who purchases raw hides and skins from outside the State and sells the tanned hides and skins pays the tax on the price for which tanned hides and skins are sold and therefore pays more tax. The judgment of this Court in *Firm A.T.B. Mehtab Majid & Co. v. State of Madras* is reported in [1963] Supp. (2) S.C.R. 435. Thereafter the Madras Legislature passed Act 11 of 1963 to deal with this situation. Section 2(1) of that Act reads as follows :

D "Special provision in respect of tax on sale of dressed hides and skins in certain cases:—

E Notwithstanding anything contained in the Madras General Sales Tax Act 1939 (Act IX of 1939) (hereinafter referred to as the said Act), or in the rules made thereunder (hereinafter referred to as the said Rules), during the period commencing on 1st April, 1955 and ending on the 31st March, 1959, in respect of sale of dressed hides and skins (which were not subjected to tax under the said Act as raw hides and skins) the tax under the said Act shall be levied from the dealer who in the State is the first seller in such hides and skins not exempt from taxation under sub-sec. (3) of Sec. (3) of the said Act at the rate of two per cent of the amount for which such hides and skins were last purchased in the untanned condition."

F It would be noticed that this section deals with the sales during the period between 1st April 1955 and 31st March 1959. From 1st April 1955 to 31st March 1957 the rate of taxation in Madras State was one and nine-sixteenth per cent. As the section provided a uniform rate of two per cent for sales during the whole of the period between 1st April 1955 and 31st March 1959 it was struck down by this Court in *A. Hajee Abdul Shakoor & Co. v. State of Madras* [1964] 8 S.C.R. 217) on the ground that for the period from 1st April, 1955 to 31st March, 1957 there was a discrimination between a tanner who tans from raw hides and skins purchased inside the State who would pay only one and nine-sixteenth per cent on the raw hides and skins purchased by him and a tanner who purchased skins and hides from outside the State who would have to pay at the rate of two per cent under this section. It

is to get over this objection that the section first referred to has been passed.

Under the section the tax is leviable on the first seller of dressed hides and skins at the rate of one and nine-sixteenth per cent for the period between 1st April 1955 and 31st March 1957. For the period between 1st April 1957 and 31st March 1959 it is to be at the rate of two per cent. The tax is on the amount for which such hides and skins were last purchased in the untanned condition. It would be noticed that it does not make any distinction between the purchase of raw hides and skins inside the State and outside the State. The tax itself is on the first sale of the tanned hides and skins but it is calculated on the basis of the purchase price of the raw hides and skins whether they were purchased inside the State or outside the State. The out-of-State purchase of raw hides and skins is not taxed. That would be subject to tax under the Central Sales Tax Act. But what is taxed under the impugned statute is not the purchase of raw hides and skins whether inside or outside the State. In both cases it is on the first sale of tanned hides and skins. Even if a person purchases raw hides and skins inside the State and sells it after tanning he pays the tax on the sale of the tanned hides and skins and not on the purchase of the raw hides and skins though the amount of tax payable is calculated on the amount for which such raw hides and skins were purchased. Similar is the position with regard to raw hides and skins purchased outside the State. Thus there is no discrimination between the sellers of tanned hides and skins whether the raw hides and skins out of which they were tanned were purchased inside the State or outside the State. The tax is not leviable even in case of raw hides and skins imported from another State but on hides and skins tanned from those raw hides and skins. Only the tax is levied on the amount for which the raw skins and hides were purchased. This amount is used only for the purpose of quantification of the tax. The tax is not on the purchase of the raw hides and skins. We do not, therefore, see how the tax levied on the sale of tanned hides and skins contravenes Articles 286 of the Constitution. Actually as the value of hides and skins in their tanned condition is higher than the value of raw hides and skins from out of which they are tanned the person importing raw hides and skins from outside the State can have no grievance that the tax is levied not on the amount for which the tanned hides and skins are sold but on the amount for which raw hides and skins have been purchased. Nor does he pay a higher tax than the person who sells hides and skins tanned from locally purchased raw hides and skins. It was open to the State to have levied the tax on the sale price of tanned hides and skins in which case there could have been no argument that it was a tax on the imported raw hides and skins. But the State chose to levy the tax on the basis of the purchase price of raw hides and skins which would mean lesser tax. It does not suffer from the vice of taxation of the imported raw hides and skins.

We are unable to understand the view of the High Court that if the sale price were taxed and rebate were given then there would be no objection to the tax. We do not understand how that can be done.

- A We asked the learned advocates appearing for the respondents to tell us how that can be done and they were not able to do so. The cost of conversion of the raw hides and skins to tanned hides and skins might differ from tanner to tanner. It is much easier to get figures for the purchase price of the raw hides and skins or the sale price of the tanned hides and skins than the cost of conversion. As the scheme of taxation is not on the basis of the sale price of tanned hides and skins the suggestion of the High Court cannot be adopted.
- B We, therefore, hold that the High Court was in error in striking down the impugned provision of law.

In S.L.P. No. 1974 of 1970, special leave to appeal is granted and the appeal allowed.

The appeals are allowed with costs.

Appeals allowed.

V.M.K.