

P.M. Batcha and Co. Vs. State of Madras

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Court : Chennai

Decided On : Aug-31-1964

Reported in : [1965]16STC59(Mad)

Judge : Ramakrishnan and ;Ramamurti, JJ.

Appeal No. : T.C. No. 127 of 1963 (Revision No. 83)

Appellant : P.M. Batcha and Co.

Respondent : State of Madras

Advocate for Def. : T. Selvaraj, Adv. for ;Government Pleader

Advocate for Pet/Ap. : T.S. Krishnamurthy Iyer, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Ramakrishnan, J.

1. The assessment relates to the year 1953-54. The assessee was a dealer in hides and skins. In accordance with the law then in force as laid down by this High Court, it required a licence before a dealer could be assessed to turnover in hides and skins. The dealer, however, did not have a licence since he did not pay the

required amount of licence fee but had only paid a part of it. He was found to have a nil turnover, and the assessment file contains a note that the order of nil turnover along with a copy of the 'C' form notice (for refund of the licence fee paid by him) was 'despatched'. The note bears the initial of a clerk dated 20th March, 1957. Subsequently, the Supreme Court reversed the earlier decision of the Madras High Court and held that even unlicensed dealers in hides and skins could be taxed. In accordance with this decision of the Supreme Court, the Deputy Commissioner of Commercial Taxes took up the case for revision suo motu under Section 32 of the Madras General Sales Tax Act, 1959, and assessed the turnover under hides and skins, by an order passed on 20th March, 1961. An appeal to the Appellate Tribunal was also unsuccessful. The assessee has now come before us in revision.

2. In *A.M. Safrilla & Co. v. State of Madras* T.C. No. 26 of 1963, we have expressed our view that an order of assessment even if it is for a nil turnover, and therefore, with no liability to pay sales tax, still requires to be communicated to the assessee in order to have a binding effect on him. In particular, we had to decide in that case, whether the Deputy Commissioner, acting under the power conferred in Section 32 (2)(a) of the Madras General Sales Tax Act, 1959, could revise an assessment order which had not been communicated to the assessee. Under Section 32(2)(a), the Deputy Commissioner cannot pass an order in., revision as long as the time for appeal against the order has not expired. Therefore, we held that where an assessment order, even if it was for a nil turnover, has not been communicated, the Deputy Commissioner had no jurisdiction to revise it as long as the order had not been communicated and the time for appeal therefore had not expired. Section 31 of the Act gives the assessee a period of thirty days for filing an appeal from the date on which the order was served on him in the manner prescribed in the rules.

3. The question therefore in this case is whether the order of assessment had been communicated to the assessee. In our opinion, the note made on the file, 'despatched', is not sufficient to show that the order was duly communicated to the assessee. At the time when the nil assessment order in this case was passed under Rule 28 of the General Sales Tax Rules, framed under the provisions of the

1939 Act, four alternative methods for effecting service were provided for, viz., (a) by giving or tendering to the dealer or his agent, (b) if the dealer or his agent is not found, by leaving it at his last known place of business or residence or tendering it to an adult member in the family, or (c) if the address of such dealer is known, by sending it by registered post, or (d) if none of the methods aforesaid is practicable, by affixing in a conspicuous place at the last known place of business. The mere making of a note 'despatched' on the files is not sufficient to show that one of these prescribed methods of service had been adopted. Despatch could be by a messenger, or could be by ordinary post, or could be by registered post. If it is sent by messenger then there must be evidence that one of the alternative methods (a), (b) or (d) mentioned above had been adopted. If it was sent by R.P. ack. due there must be evidence of the registered postal acknowledgment of the addressee, or if it is sent by R.P. without acknowledgment due, at least an acknowledgment of the post office of the receipt of the cover, will be necessary to show that the method of despatch by registered post was in fact adopted, in this case. That there was no despatch at all, could also be inferred from the circumstance that though the file shows that 'C' form notice for refund of the licence fee paid was also despatched, the assessee is stated to have complained to the Deputy Commissioner during the suo motu revision proceedings that he never received the refund order at all, and consequently he was prepared to pay the extra licence fee, with penalty if necessary, so as to get the benefit of a licence. If the dealer had received the 'C' form notice he must have surely taken steps to get the refund in time. These are circumstances from which we can infer, in this case, that the order of assessment was not communicated to the assessee in any of the modes which the law has prescribed for the purpose.

4. The learned Government Pleader argues that the normal presumption of due performance in regard to official acts should be applied to this case. But, in the present case as mentioned above, the word 'despatched' is by itself not sufficient to show which one of the methods of service prescribed by the rules was adopted. Since one cannot conclude from the mere use of the word 'despatched', that service by registered post was the method of service resorted to, one cannot apply any such presumption, about the due performance of official acts.

5. Therefore, our decision in A.M. Safrilla & Co. v. State of Madras T.C. No. 26 of 1963 will apply to this case, and we hold that the order of the Deputy Commissioner is without jurisdiction. The petition is allowed and the assessment on the disputed turnover is set aside. There will be no order as to costs.

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