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Court : Chennai

Decided On : Nov-17-1960

Reported in : [1961]12STC175(Mad)

Judge : Rajagopalan and ;Srinivasan, JJ.

Appeal No. : Tax Case No. 8 of 1959 (Revn. No. 7 of 1958)

Appellant : The State of Madras

Respondent : The Erode Yarn Stores

Advocate for Def. : K. Srinivasan and ; D.S. Meenakshisundaram, Advs.

Advocate for Pet/Ap. : G. Ramanujam, Adv. for ;The Government Pleader

Disposition : Petition allowed

Judgement :

ORDER

Srinivasan, J.

1. The question that is raised by this revision petition filed by the State of Madras is what is the turnover for purposes of the licence under Section 5 of the Act. The assessee is a dealer in yarn. In respect of the assessment year 1955-56, the assessing authority determined the turnover taxable at 3 pies in the rupee at Rs.

71,846-2-6 and the turnover subject to tax at 1/2 per cent, at Rs. 3,87,032-6-6. The turnover covered by the licence was fixed at Rs. 39,99,544, for which a licence fee of Rs. 2,000 was levied. On appeal, a certain part of the turnover was deleted from that assessable to tax at 1/2 per cent, and the licensable turnover was accordingly fixed at Rs. 37,18,933.

2. In the appeal before it, the Tribunal took the view, following earlier decisions of its own, that the licence turnover is the turnover which is assessed to single point tax on the strength of the licence, and that the turnover that gets exempt with or without the licence should be excluded from the computation of the licence fee. Accordingly, the Tribunal fixed the turnover liable to licence fee at Rs. 2,71,611.

3. The contention of the petitioner State is that the totality of the turnover which is Rs. 39,90,544, is the turnover on which the licence fee should be paid. It is claimed that where the taxability or exemption of a given turnover is dependent or conditional on taking out of a licence, it is that turnover which becomes eligible for either exemption or the concessional rate of tax or levy of tax at a single point, that is the turnover for purposes of the licence, and that the view of the Tribunal that the liability to the licence fee is limited to the taxable turnover is not in accordance with the provisions of the Act or the rules thereunder.

4. It seems to me that the contention of the State has to be upheld. Section 5 of the Act provides for exemptions and reductions of tax in certain cases and also provides for the levy of tax at a single point in the case of certain articles. This is made 'subject to such restrictions and conditions as may be prescribed, including the conditions as to licences and licence fees'. Clearly then, unless a licence is taken in accordance with the rules and such restrictions and conditions as may be imposed by the licence are complied with, the concessions contemplated by Section 5 will not be available. That the scheme of the Act is a multi-point levy and that Section 5 marks a departure from that scheme under certain conditions is now well established by decisions. Section 6-A further lays down that if a licence as required under Section 5 is either not taken out or if any of the restrictions or conditions of the licence are contravened, the dealer loses any right to the concessional levy contemplated by Section 5 and becomes liable to be assessed

under Section 3. These provisions accordingly make it abundantly clear that a licence is essential for the purpose of getting the benefits of the concessions contemplated by the Act.

5. It would not normally speaking be necessary to explain the scope of Section 5 but for the fact that the scope of the relevant rule defining the turnover in cases where Section 5 of the Act is attracted calls for scrutiny. Rule 6 of the Madras General Sales Tax Rules as it stood in the relevant year dealt with licences. Under Sub-rule (4)(a) a graduated scale of fees for the grant or renewal of licences was fixed. It would be noticed that under Section 5 as it stood six different commodities were dealt with. Section 5(1) relates to the sale of handspun yarn or cloth woven on handlooms which is declared to be totally exempt from taxation under Section 3 of the Act. Sub-rule (4)(b) of Rule 6 also provided that the licence for dealing in that commodity was to be free of any charge or fee. In the case of the other commodities covered by Section 5(ii) to (vi), Sub-rule (4)(a) provided different rates of licence fees. For instance, for dealing in cotton or cotton yarn other than handspun yarn, the licence fee was Rs. 75. For dealing in cloth woven on handlooms wholly or partly with mill yarn the licence fee was Rs. 25. For dealing in bullion and/or specie the fee was Rs. 100. This was the minimum fee upto the limit of turnover of Rs. 20,000 per annum in each of these cases. The expression used against the column fixing the fee is 'if the turnover does not exceed Rs. 20,000 per annum.' The question really centres round what is meant by 'turnover' in this rule. On behalf of the State it was the contention that this expression should be taken as defined in the body of the Act itself, where it means 'the aggregate amount for which the goods are either bought by or sold by a dealer....' It is claimed therefore that the turnover means the totality of the sales of the dealer. We are unable to give this expression such an extended meaning. Inherent in the provision for a scale of graduated licence fee and for a different quantum of fee in respect of different goods, the expression 'turnover' found here must be interpreted in relation to its context and the turnover would accordingly mean only that part of the total turnover of the dealer in respect of which a licence is required under Section 5. Otherwise there would be no meaning in differentiating the various goods covered by various sub-sections of Section 5 and in fixing a different scale of fees in respect of each of those commodities. We have already referred to Section 6-A of

the Act, which provides for the denial of the concessions contained in Section 5 of the Act if a licence is not taken out. That clearly points to the conclusion that no part of the turnover which is taxable at the normal rate under Section 3 of the Act could be brought into the turnover for purposes of Section 5 of the Act or for the computation of a licence fee under the rules.

6. It seems to us therefore that for the purpose of computation of the licence fee only that part of the turnover of the dealer which comes within the scope of Section 5 either eligible to total exemption from tax or to concessional rate of tax at a preferential rate or at a single point that should be turnover for purposes of computation of the licence fee.

7. In the view we have taken we set aside the order of the Tribunal and restore that of the Commercial Tax Officer in so far as computation of the turnover for the licence fee is concerned.

8. It is not denied that as a result of the decision in *Guruvayya Naidu v. State of Madras* [1957] 8 S.T.C. 699 the maximum licence fee leviable cannot exceed Rs. 1,000. Subject to this, it will be open to the department to fix the licence fee on the turnover indicated above.

9. The petition is allowed. There will be no order as to costs.

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