

The State of Madras Vs. S. Mohammed Samiulla Sahib and Company

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Court : Chennai

Decided On : Oct-26-1972

Reported in : [1973]32STC179(Mad)

Judge : Ramanujam and ;V. Ramaswami, JJ.

Appeal No. : Tax Case No. 196 of 1968 (Revision No. 134 of 1968)

Appellant : The State of Madras

Respondent : S. Mohammed Samiulla Sahib and Company

Advocate for Def. : C. Venkataraman, Adv.

Advocate for Pet/Ap. : K. Venkaiaswami, Adv. Assistant Government Pleader

Disposition : Patition allowed

Judgement :

V. Ramaswami, J.

1. The only question that arises in this case is whether the sales of chemicals effected by the respondent, a dealer at Madras, to the tune of Rs. 2,36,633.17 could be brought to tax under the Madras General Sales Tax Act. The account books maintained by the respondent in Madras showed that he had sold the chemicals at Bombay for Rs. 2,36,633.17. The assessing authority called upon the

respondent to show that the sales to the extent of Rs. 2,36,633.17 had, in fact, been effected at Bombay. The respondent did not produce any material nor did he give the names of the purchasers to whom the goods had been sold at Bombay. Since the respondent did not produce any material to show that the chemicals had actually been sold at Bombay, the assessing authority disbelieved the case of the respondent that the chemicals had been sold at Bombay and held that the turnover of Rs. 2,36,633.17 should represent local sales of chemicals.

2. The said assessment order was taken up in appeal but without success. There was a further appeal to the Tribunal by the respondent. The Tribunal set aside that portion of the assessment which related to the said turnover of Rs. 2,36,633.17. The reason given by the Tribunal for deleting the said turnover from assessment was that the initial onus was on the assessing authority to prove that the sales took place at Madras and as there is no material to show that the sales actually took place at Madras, the assessing authority had no jurisdiction to assess the transactions of sale. We are not inclined to agree with the said reasoning of the Tribunal. Admittedly, the respondent had imported chemicals and had disposed of the same by sale. It is also found by the Tribunal that the respondent had no branch at Bombay. In such circumstances, the assessing authority is, in our view, entitled to call upon the respondent to show that he had, in fact, effected the sales at Bombay. If the respondent had not chosen to adduce any evidence that the sales of chemicals were at Bombay, the assessing authority is entitled to draw adverse inference that the sales should have taken place in Madras where the respondent normally carries on business. The respondent cannot insist on the assessing authority accepting the entries made by him in his accounts without proving the truth of these entries. The Tribunal's view that under Section 10 of the Madras General Sales Tax Act, the onus is on the department to prove prima facie that the sales were effected within the Madras State so as to bring them to tax under that Act, can not' be accepted in the circumstances of this case, where the sales had been admitted but the situs of the sales is said to be at a place outside Madras State. As the respondent had admitted that he had effected the sales, it is for him to show that the sales are not taxable under the Madras General Sales Tax Act, as the sales had taken place outside the State. If the view of the Tribunal is taken to be correct, then in every case the assessee will desist from producing

any material to establish the situs of the sale and put the onus on the assessing authority prima facie to establish the situs of the sale and his right to assess the transaction under the Madras General Sales Tax Act.

3. Having regard to the circumstances of the case, where the sales are admitted, the onus is on the assessee to show that those sales are not taxable in this State being outside sales. In such cases, if the assessee fails to establish that the sales are outside sales, then the taxability of the transaction can be presumed having regard to the place of business of the dealer concerned.

4. The learned counsel for the respondent, however, contends that in view of Section 10 of the Madras General Sales Tax Act it is for the assessing authority to establish that a particular transaction is taxable under the provisions of the Act. Reliance is placed by the counsel on a decision of this court in *T.A. Kumarasamy Pathar v. State of Madras* [1969] 23 S.T.C. 447. But we are not able to see how that decision will help him. In that case, the scope of the expression 'total turnover' occurring in Section 7 came up for consideration. Having regard to the definitions of 'turnover' and 'sale' occurring in the Act, the expression 'total turnover' was construed as not including any turnover relating to inter-State transactions, for inter-State transactions are outside the scope of the Madras General Sales Tax Act. It is not possible for us to accept the above contention of the respondent, which, if accepted, would entirely defeat the purpose and object behind Section 10.

5. In our opinion, the decision of the Tribunal so far as the above turnover is concerned cannot be upheld. The tax case is, therefore, allowed with costs. Counsel's fee Rs. 150.