East Asiatic Company (India) Ltd. Vs The State of Madras

Court: Madras High Court

Date of Decision: May 5, 1954

Acts Referred: Sales of Goods Act, 1930 â€" Section 18, 19, 20, 21, 22

Citation: (1956) 7 STC 299

Hon'ble Judges: Ramaswami, J

Bench: Single Bench

Advocate: D. Munikanniah, S. Krishnaswamy and A. Balakoteswara Rao, for the Appellant; The Assistant Government Pleader and G. John Arthur, for the Respondent

Judgement

Ramaswami, J.
These are two connected suits filed by the East Asiatic Company Ltd., against the State of Madras, represented by the

Collector of Madras for an injunction restraining the defendant or any of its officers or servants from demanding, collecting or realising from the

plaintiff the sum of Rs. 14,102-5-4 and Rs. 18,295-12-6 or any part thereof being the additional sales tax sought to be illegally levied on the

plaintiff for the years 1945-46 and 1946-47.

2. The case for the plaintiff is: The plaintiff during the assessment years 1945-46 and 1946-47 bought and crushed groundnut kernels as

manufacturer of groundnut oil and cake and effected sales and delivery of part of groundnut oil so manufactured outside the Province. The total

turnover of the oil so sold and delivered outside the Province of Madras in 1945-46 was Rs. 18,29,578-4-1 and Rs. 14,20,234-1-0 for the year

1946-47. The Deputy Commercial Tax Officer, Harbour Division, Madras, did not assess to sales tax these two turnovers relating to sale outside

the Province of Madras. The Commercial Tax Officer, North Madras, on 3rd July, 1947, confirmed this order of the Deputy Commercial Tax

Officer. On 4th March, 1950, the plaintiff received notices dated 24th February, 1950, from the Commercial Tax Officer, North Madras,

appraising the plaintiff of his intention to revise the assessment of sales tax for the years 1945-46 and 1946-47 so as to include these two turnovers

referred to above. The plaintiff thereupon submitted their objections by their letter dated 14th March, 1950, viz., (1) the plaintiff pointed out among

other things that the Commercial Tax Officer having exercised his power in appeal was not competent to assess this assessee to sales tax in respect

of the years ended 31st March, 1946, and 31st March, 1947; (2) that he had no jurisdiction to exercise the powers u/s 12 of the Act and Rule 14

of the Madras General Sales Tax Rules; (3) that his action was illegal; (4) that the Commercial Tax Officer has not conformed to Rule 17 (1) of the

Madras General Sales Tax Rules even if he intended to treat this as a case of escaped assessment; and (5) the terms of contracts in the years

1945-46 and 1946-47 in respect of the said sales of groundnut oil were such that the sales and delivery under the contract terms cannot be stated

as having taken place within the Province of Madras. The plaintiff also urged for due consideration of their rights to a deduction under Rule 18 of

the Madras General Sales Tax (Turnover and Assessment Rules) as they are manufacturers of groundnut oil and cake. The plaintiff also claimed

u/s 7 of the Act a rebate of one half of the tax on the turnover after allowing for the aforesaid deduction in respect of the groundnut kernel

purchased and converted into oil. The Commercial Tax Officer by his order dated 31st March, 1950, directed the Deputy Commercial Tax

Officer to issue a revised B form notice of assessment and demand to the plaintiff. The plaintiff thereupon on 24th April, 1950, filed revision

petitions before the Board of Revenue against the order of the Commercial Tax Officer and by an order dated 25th September, 1950, the Board

of Revenue dismissed those revision petitions. These suits have thereupon been filed for the above mentioned reliefs.

3. The stand taken by the State of Madras is that these impugned sales took place within the Province of Madras and secondly, that the

Commercial Tax Officer had revisional jurisdiction to revise the assessment and thirdly, that the plaintiffs are not entitled to the deduction and the

rebate claimed by them.

4. On these contentions the following issues were framed;

C.S. No. 111 of 1951.

(1) Whether the Commercial Tax Officer is not entitled to reopen and revise the assessment of the sales tax on the turnover of Rs. 14,10,234-1-0

of the plaintiff for the year 1946-47?

(2) Whether the plaintiff is entitled to any deduction or rebate ?

(3) Whether the sale of groundnut oil was outside the Province as alleged by the plaintiff and, if so, of what quantity ?

(4) Whether the Commercial Tax Officer has jurisdiction to exercise powers u/s 12 of the Act and Rule 14 of the General Sales Tax Rules, and

whether he has conformed to Rule 17(1) in treating the assessment as escaped assessment ?

(5) To what reliefs are the parties entitled ?

C.S. No. 112 of 1951.

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of the plaintiff for the year 1945-46 ?

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(4) Whether the Commercial Tax Officer has jurisdiction to exercise powers u/s 12 of the Act and Rule 14 of the General Sales Tax Rules, and

whether he has conformed to Rule 17(1) in treating the assessment as escaped assessment ?

(5) To what reliefs are the parties entitled ?

5. Before me the plaintiff examined one of their managers as P.W. 1 in both the suits and the defendant adduced no oral evidence. The plaintiff

filed Exhibits P. 1 to P. 17 in C.S. No. 111 of 1951 and Exhibits P. 1 to P. 15 in C.S. No. 112 of 1951.

6. On a review of the entire circumstances of the case I have come to the conclusion that the sales in question took place within the Province of

Madras; secondly, that the Commercial Tax Officer had revisional jurisdiction to impose additional assessment which he has done; that as regards

1945-46 the levy of assessment is hit at by Rule 17(1) and that there is no such impediment in regard to 1946-47 and that the plaintiff is entitled to

the deduction claimed but not to the rebate asked for. Here are my reasons.

7. Point 1 :-In a sale as defined under the Act, the following characteristics must be present, viz., (a) a transfer of property (b) in goods (c) from

one person to another (d) in the course of trade or business (e) for cash or deferred payment or other valuable consideration. A correct and clear

concept of what the word ""sale"" means and includes is essential as the tax is levied on a sale of goods. It is always difficult to determine the exact

time and place of passing of property so as to attract the levy of sales tax. Lord Macmillan in delivering the judgment of the Privy Council in King

v. Dominion Engineering Co., Ltd. AIR 1947 P.C. 94, observed as follows :-

In imposing a sales tax one of the difficulties which confront the legislature lies in the selection of the point of time at which the tax shall attach and

become due. In the case of an ordinary retail sale for cash across the counter of a shop, the stages of agreement, appropriation of the goods to the

contract, delivery, payment of the price and passing of property are all practically simultaneous. But in more complicated transactions for the sale

of goods to be produced or manufactured these stages may be spaced in time in various ways.

8. The passing or transfer of property constitutes the most important element in the law relating to contracts for the sale of goods. If goods are

destroyed by fire or otherwise, it is essential to know who has to bear the loss ; and in bankruptcy of either party, it is essential to know whether

goods vest in bankrupt''s trustee or not. Section 18 of the Indian Sale of Goods Act and the five following sections of the said Act deal with the

question of transfer of property as between seller and buyer and distinguish for that purpose a contract for the sale of unascertained goods from a

contract for the sale of ascertained goods. According to the principle underlying Sections 18 and 19 of the Sale of Goods Act the property in the

goods does not pass to the purchaser until he exercises an option and selects the article. Consequently where it was left to the purchaser to choose

one of the two tins of ""Rung"" the sale would not be complete until he had exercised his choice and on his failure to do so he could not be held liable

for the price : Pukraj v. Maghraj (1939) Mar. L.R. 103 Civ.

9. Thus the ascertainment of the goods is a condition on which the transfer of the property depends. In any given case there may be a question

whether this condition is fulfilled or not, and it may be that the property will not pass even if it is fulfilled, but until it is, there is no possibility of the

property passing ; or as put by Lord Blackburn, "" It is essential that the article should be specified and ascertained in a manner binding on both

parties, for unless that be so the contract cannot be construed as a contract to pass the property in that article...". It is a question of the

construction of the contract in each case at what stage the property shall pass and a question of fact whether that stage has been reached: Seath v.

Moore. (1886) 11 App. Cas. 350. The term ""specified goods"" is defined in the Act as meaning goods identified and agreed upon at the time a

contract of sale is made. Chief instances of ""unascertained goods"" are ""future goods"", that is to say, articles to be manufactured or acquired, or a

certain quantity of goods in general, without a specific identification of them, or an ""appropriation"" of them to the contract. ""Ascertained goods

probably mean goods identified in accordance with the agreement after the time a contract of sale is made"". Per Atkin, J., in In re Wait [1927] I

Ch. 606. Therefore when it appears that the contract attaches to specific or ascertained goods, so that it is possible that the property may be

transferred to the buyer, it becomes necessary to determine whether it has been transferred in fact, and as Lord Blackburn wrote (Blakburn on

Sale, p. 123) ""this is properly speaking a question depending upon the construction of the agreement, for the law professes to carry into effect the

intention of the parties as appearing from the agreement, and to transfer the property when such is the intention of the agreement, and not before.

In this, as in other cases, the parties are apt to express their intention obscurely, very often because the circumstances rendering the point of

importance were not present to their minds, so that they really had no intention to express. The consequence is that, without absolutely losing sight

of the fundamental point to be ascertained, the courts have adopted certain rules of construction which in their nature are more or less technical.

Section 19 of the Sale of Goods Act reproduces this statement in statutory form, and the rules of construction adopted by the courts are those set

out in Sections 20 to 24. Sub-sections (1) and (2) of Section 19 expressly declare that in each case the intention of the parties, as expressed in the

contract or to be inferred from their conduct and other circumstances of the case, is to be regarded.

10. Applying these principles to the facts of this case, the circumstances relied upon by the State for establishing that the sales took place within the

Province are: The terms of the contract in the above sales are that the buyers should supply well-cleaned and sound empty drums for packing the

purchased oil. The buyers were to bear the costs of packing the goods to be of the quality which was the average for the factory at the time of

delivery. The buyers were given the option of checking the weight and quality of the goods before packing and before they left the factory. The

buyers either actually ascertained and accepted the weight and quality of the goods or by implication the weight and quality as ascertained by the

sellers when the goods were packed and before they left the mill for shipment to Calcutta. The price was for delivery ex-sellers'' Royapuram oil

factory, freight paid on buyers'' account at Madras. The expenses such as carting, shipping and harbour dues and other charges were to be

incurred on buyers'' account. The contract deeds were signed by the Madras Office of the sellers. On shipment of the goods at Madras a

telegraphic advice is sent to Calcutta for arranging payment of the price at Madras. The shipments from Madras to Calcutta have gone as export

by the buyers and under their export licences, the sellers acting as mere shippers. The goods were shipped to Calcutta to account of the buyers.

Insurance for all risks was arranged by buyers commencing from ship''s sailings to destination. Any damages or loss to goods during shipment are

for account of buyers. On reaching destination payment was to be by cash payment against documents to be presented to buyers in Calcutta

through sellers'' office there and no Madras sales tax was to be charged. The delivery was ex-sellers'' Royapuram oil factory as per quality and

weight ascertained at the mill during specified months as stocks permit but not later than the last day of each month in advance at Calcutta, for

which 1/4 per cent. transfer commission for buyers'' account was charged. On goods reaching the destination if the buyers did not take delivery

and make cash payment there were stipulations that time would be extended for payment or that they would be sold at the risk of the buyers. The

State of Madras contend that these circumstances show that the sales were effected in the Province of Madras and not in Calcutta as represented

by the plaintiff company and believed by the assessing officer: vide Louis Dreyfus & Co. v. South Arcot Groundnut Market Committee AIR

[1945] Mad. 383, Siddique and Co. v. Mysore Textiles Agencies AIR [1947] Mad. 455, Poppatlal Shah Vs. The State of Madras, and

Poppatlal Shah v. State of Madras AIR 1953 Assam 68.

11. On the other hand, the contention of the plaintiff company is that the contract between the parties was that the property in the goods was to

pass only at Calcutta, that the supply of drums by the buyers was only optional, that clause 13 and other clauses of the contract were not intended

to be operative as is evident from the several blanks left unfilled in the contract forms, that the understanding between the parties was that the

property in the goods should pass only at Calcutta, that the conduct of the parties made it clear that the property was not intended to pass and

could not have passed until the goods were delivered at Calcutta and that till that time there was no ascertainment of goods and the property

continued to be legally and physically with the company till the buyers paid at the Calcutta office and took delivery and that the carriers'' documents

were in the name of the company. The only point of substance that is urged on behalf of the company is that the entry in all the contracts against

delivery is cash payment against documents to be presented to buyers in Calcutta through sellers'' office there, as the other circumstances are all

consistent with the transfer of property within the Province of Madras. Therefore, the question which has got to be decided is, did possession of

the documents by the company show that the plaintiff reserved the right of disposal or the possession of these documents was nothing more than a

lien of the unpaid seller ?

12. The following three extracts will make the point clear. In Mirabita v. Imperial Ottoman Bank (1878) 3 Ex. D 164, Lord Justice Cotton

observed:-

Under a contract for sale of chattels not specific the property does not pass to the purchaser unless there is afterwards an appropriation of the

specific chattels to pass under the contract, that is, unless both parties agree as to the specific chattels in which the property is to pass, and nothing

remains to be done in order to pass it. In the case of such a contract the delivery by the vendor to a common carrier, or (unless the effect of the

shipment is restricted by the terms of the bill of lading) shipment on board a ship of, or chartered for, the purchaser, is an appropriation sufficient to

pass the property. If, however, the vendor when shipping the articles which he intends to deliver under the contract, takes the bill of lading to his

own order, and does so not as agent or on behalf of the purchaser, but on his own behalf, it is held that he thereby reserves to himself the power of

disposing of the property, and that consequently there is no final appropriation, and the property does not on shipment pass to the purchasers.

When the vendor on shipment takes the bill of lading to his own order he has the power of absolutely disposing of the cargo, and may prevent the

purchaser from ever asserting any right of property therein and accordingly in Wait v. Baker (1848) 2 Ex. 1, Ellershaw v. Magniac (1843) 6 Ex.

570 n, and Gabarron v. Kreeft (1875) 10 Ex. 274, (in each of which cases the vendors had dealt with the bills of lading for their own benefit) the

decisions were that the purchaser had no property in the goods, though he had offered to accept bills or had paid the price. So, if the vendor deals

with or claims to retain the bill of lading in order to secure the contract price, as when he sends forward the bill of lading with a bill of exchange

attached, with directions that the bill of lading is not to be delivered to the purchaser till acceptance or payment of the bill of exchange, the

appropriation is not absolute, but, until acceptance of the draft, or payment or tender of the price, is conditional only, and until such acceptance, or

payment or tender, the property in the goods does not pass to the purchaser and so it was decided in Turner v. Trustees of Liverpool Docks

(1851) 6 Ex. 543, Shepherd v. Harrison (1869) L.R. 4 Q.B. 196, and Ogg v. Shuter (1875) 1 C.P.D. 47. But if the bill of lading has been dealt

with only to secure the contract price, there is neither principle nor authority for holding that in such a case the goods shipped for the purpose of

completing the contract do not on payment or tender by the purchaser of the contract price vest in him. When this occurs there is a performance of

the condition subject to which appropriation was made, and everything which, according to the intention of the parties is necessary to transfer the

property is done ; and, in my opinion, under such circumstances, the property does on payment or tender of the price pass to the purchaser.

In The Parchim [1918] A.C. 157, Lord Parker observed: ""The English cases, however, on which the Sale of Goods Act was founded seem to

show that the appropriation would not be such as to pass the property if it appears or can be inferred that there was no actual intention to pass it.

If the seller takes the bill of lading to his own order and parts with it to a third person, not the buyer, and that third person, by possession of the bill

of lading, gets the goods, the buyer is held not to have the property so as to enable him to recover from the third party, notwithstanding that the act

of the seller was a clear breach of the contract: Wait v. Baker (1848) 2 Ex. 1 and Gabarron v. Kreeft (1875) 10 Ex. 274. This seems to be

because the seller''s conduct is inconsistent with any intention to pass the property to the buyer by means of the contract followed by the

appropriation. On the other hand, if the seller deals with the bill of lading only to secure the contract price, and not with the intention of withdrawing

the goods from the contract, he does nothing inconsistent with an intention to pass the property, and, therefore, the property may pass either

forthwith subject to the seller''s lien or conditionally on performance by the buyer of his part of the contract: Mirabita v. Imperial Ottoman Bank

(1878) 3 Ex. D. 164, Van Castle v. Broker (1848) 2 Ex. 691, Browne v. Hare (1858) 3 H. & N. 484, Joyce v. Swann (1864) 17 C.B.N.S. 84,

The prima facie presumption in such a case appears to be that the property is to pass only on the performance by the buyer of his part of the

contract and not forthwith subject to the seller''s lien. Inasmuch as, however, the object to be attained, namely, securing the contract price, may be

attained by the seller merely reserving a lien, the inference that the property is to pass on the performance of a condition only is necessarily

somewhat weak, and may be rebutted by the other circumstances of the case....

The following passage from Mr. Benjamin''s treatise (Benjamin on Sale, 7th Edn., p. 383) indicates at what stage property in goods shipped from

one country to another may pass to the firm ordering the goods:-

If A in New York orders goods from B in Liverpool without sending the money for them, B may execute the order in one of two modes, without

assuming risk : B may take the bill of lading, making the goods deliverable to his own order, or that of his agent in New York, and send it to his

agent with instructions, not to transfer it to A except on payment for the goods. Or B may draw a bill of exchange for the price of the goods on A,

and sell the bill to a Liverpool banker, transferring to the banker the bill of lading for the goods to be delivered to A on due payment of the bill of

exchange. Now in both these modes of doing business it is impossible to infer that B had the least idea of passing the property to A at the time of

appropriating the goods to the contract. So that, although he may write to A, and specify the packages and marks identifying the goods, and

although he may accompany this with an invoice, stating that these specific goods are shipped for A''s account, and in accordance with A''s order,

making his election final and determinate, the property in the goods will nevertheless remain in B till the bill of lading has been endorsed and

delivered up to A. And a third course now, under the Act, is available to the seller. He may draw upon the buyer a bill of exchange for the price,

and may send it, together with the bill of lading direct to him. In such a case, however, he trusts the buyer. In this class of cases it is often a matter

of great nicety to determine whether or not the seller''s intention was really to reserve a right of disposal.

13. Applying these principles, the circumstances of this case show that the intention of the seller was not to retain the jus disponendi but only a lien

for unpaid seller''s price. That this was the intention is also made clear by P.W. 1 who to a question put that for the balance of payment of price the

company held the document or with their agent only for the purpose of security or for the purpose of having a lien on the unpaid purchase money,

replied in the affirmative. Therefore, the position was that the seller after the goods left the factory was only the buyer''s agent or bailee and delivery

terminated the lien of this unpaid seller ; see ""The Sale of Goods"" by Clive M. Schmitthoff (1951 Edn.) pages 109, 131 etc. Therefore, point (1)

has got to be decided and is hereby decided in favour of the State, viz., that the sales in question took place within the State of Madras,

14. Point 2 :-To appreciate the discussion under this head I have prepared and appended a comparative table of Section 12(1), Section 19, Rule

14(2) and Rule 17(1) in Act IX of 1939, amended Act XXV of 1947, and amended Act VI of 1951, which came into force on 1st October,

1939, 1st January, 1948, and 15th May, 1951, respectively.

14a. In regard to this point there can be no dispute that the Sales Tax Act, as amended by Act VI of 1951, is not applicable because it came into

existence long after the revised assessment in question. Therefore the only two Acts which have got to be considered are the Sales Tax Act as

amended by Act IX of 1939, which came into force on 1st October, 1939, and the Sales Tax Act as amended by Act XXV of 1947, which came

into force on 1st January, 1948. The Commercial Tax Officer has purported to act u/s 12 of the Madras General Sales Tax Act, read with Rule

14(1) of the Madras General Sales Tax Rules framed under the Madras General Sales Tax Act, 1939, as amended by Madras Act XXV of 1947.

15. In regard to the invocation of revisional authority by the Tax Officer, two objections are preferred, viz., that first of all this rule has no

retrospective effect in regard to the assessment of 1945-46 ; and secondly, that the Madras General Sales Tax Rules framed under the General

Sales Tax Act IX of 1939, which would apply to this case does not confer authority on the Government to frame rules u/s 19 as it has done under

Rule 14(2) conferring revisional powers on the Commercial Tax Officer ; and even assuming that this rule is intra vires under Rule 17 (1)

thereunder the assessment cannot be revised beyond a period of one year, whereas in this case it is revised beyond one year and within a period of

three years.

16. On the facts of this case there can be no doubt that for the assessment of 1945-46 the Act and the rules applicable are those of the General

Sales Tax Act of 1939, and the rules framed thereunder and as they stood before they were amended in 1947 and 1951. The rule that all statutes

shall be deemed to be prospective only and not retrospective in their effect and operation has been the law of all nations from the earliest times and

had been well established in England even by the time of Lord Coke : Omnis Novaconstitution futuris temporibus fornam imponeri debet non

proeteritis. Prima facie a new law affects future transactions, not the past. That a new law ought to be construed so as to interfere as little as

possible with vested rights except in special cases has been a well known and a trite maxim to the interpreter of laws. The rule is one based on

justice and expediency and on the ground that all deprivation of existing rights is prima facie wrong. The law always views with disfavour ex post

facto legislation except where it is absolutely necessary in the interests of the State or the safety and well being of its subjects or the exigencies of

society. In each case it is a matter for the legislature to decide and one lying entirely in its discretion. Indian decisions have laid down the same rule

in unmistakable terms. The Privy Council has laid down in one of the leading cases on the subject, AIR 1927 242 (Privy Council) that provisions in

a statute which touch a right in existence at the passing of the same are not to be applied retrospectively in the absence of express enactment or

necessary intendment of the same. An exception is made in cases of provision dealing with matters of procedure which may properly be

retrospective in effect but even here an exception is made in cases where such construction would be textually inadmissible (Ibid). The Privy,

Council pointed out in the above case that provisions, which if applied retrospectively would deprive orders, which were final at the date a statute

came into force, of their existing finality, were provisions which touch existing rights. Their Lordships based their judgment on the leading cases of

Colonial Sugar Refining Co, v. Irving [1905] A.C. 369, which has since been uniformly cited and quoted with approval in all the Indian Courts.

See the following Madras decisions on prospective and retrospective operation Venkataperumal v. Kamudu, AIR 1915 Mad. 1022 ; Chunnilal

Sowcar v. Srinivasa Rao, AIR 1946 Mad. 262 ; In re Kondepu Chinna Rangiah, AIR 1943 Mad. 170 ; Swaminatha Iyer v. Ramanatha Iyer, AIR

1943 Mad, 573; Pannirselvam v. Veeriah Vandayar, AIR 1931 Mad. 83; Viswanatha Sastri v. Sitalakshmi, AIR 1921 Mad. 126; Doraiswami v.

Vaithilingam, AIR 1918 Mad. 548; Veerabhadrayya v. Rajah Naganna, AIR 1927 Mad. 41; Rajah of Kalahasti v. Kamakshamma, AIR 1916

Mad. 1035; Srinivasulu v. Damodaraswami, AIR 1938 Mad. 779.

17. But the right which had accrued to the assessee, viz., that the escaped assessment of tax cannot be reopened beyond a period of one year,

cannot be described as a matter relating to procedure only and it is a matter which was more than one relating to procedure, that is to say, it

touched a right in existence. Thus, amendments in the Income Tax law made in the course of a financial year take effect only from the assessment

relating to the next financial year except when expressly laid down to the contrary : MISHRIMAL GULABCHAND OF BEAWAR, IN RE., .

See also Commissioner of Income Tax, West Bengal Vs. Isthmian Steamship Lines, . But the date from which an amendment or a new provision in

the law takes effect does not necessarily preclude the application of the new provision to a reopening of already concluded matters. The fact that a

section came into operation on a certain date does not necessarily mean that it cannot be applied to earlier facts ; the new or amended section has

to be examined on its own words. If under the ordinary rule of construction it can be discovered whether and to what extent it has retrospective

effect, then retrospective effect can be given effect to. This is not the case here and neither by explicit terms nor by necessary implication can we

deduce a retrospective effect so as to entitle the disturbing of the finality reached by the assessment under Rule 17(1) of the amended Madras

General Sales Tax Rules, 1939.

18. On this view it is unnecessary to discuss elaborately whether Rule 14(2) framed under the rule-making powers given u/s 19 of Act IX of 1939

is intra vires or ultra vires. I have no doubt in my mind that Rule 14(2) is intra vires of the rule-making powers of the State u/s 19 of the Act.

Section 19 (1) enables the Provincial Government to make rules to carry out the purpose of the Act and ""in particular and without prejudice to the

generality of the foregoing power, such rules may provide for any other matter for which there is no provision or no sufficient provision in this Act

and for which provision is in the opinion of the Provincial Government, necessary for giving effect to the purposes of this Act."" The enactment

giving power to make rules and other powers are subject to two limitations. First of all, authority so given cannot be delegated with which we are

not concerned here. Secondly, the rules made in pursuance of a delegated authority to that effect must be consistent with the statute under which

they came to be made. The authority is given to the end that the provisions of the statute may be better carried out into effect and not with a view

to neutralising or contradicting those provisions. This is especially so in the case of the Madras General Sales Tax Act because in almost in all the

States that have imposed this tax it has been adopted as an emergency measure enacted in a hasty search for new revenue. Loose drafting has

always left something to be desired ; and much has been left for the rules to supplement : Haig Shup, Sales Tax in American States, page 24. The

purposes of this Act are twofold, viz., the levy of a general tax on the sale of goods to supplement the lost revenues and for promoting the general

public good ; and secondly, to see that this is done under the provisions of the Act and not by carrying out in a capricious or arbitrary manner.

Therefore, a revisional authority has to be created. What is revision ? The essence of revisional jurisdiction lies in the duty of the superior tribunal

or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and

that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence and correction

in appropriate cases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various Acts

and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income Tax Act etc. The jurisdiction of suo motu revision is not

cribbed and cabined or confined by conditions and qualifications. The purpose of such an amplitude being given suo motu revisions appears to be

as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order

against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer

unless its interests are safeguarded by the exercise of such supervisory jurisdiction as the one given to the authorities abovementioned. So, when

this revisional jurisdiction has been conferred upon the Board of Revenue u/s 12 and when extensive rule-making powers have been granted to the

Government u/s l9 and when as a result of the practical working of the Act the Government have found that to safeguard the interests of the

exchequer as well as the interest of the assessee, Rule 14 (2) should be enacted in order to make good the want of sufficient provision in the Act

for giving ""effect to the purpose of this Act, it cannot be said that this is not intra virus of the rule-making powers conferred by Section 19 of the

Act.

19. But for reasons already stated I have to hold that in regard to the assessment of 1945-46 by reason of the one year period prescribed under

Rule 17(1) of the unamended Act the Commercial Tax Officer was not justified in invoking his revisional powers and reopening the assessment,

albeit for a legitimate reason, viz., that a portion of the turnover had been wrongly exempted from assessment.

20. The learned Government Pleader wants to get over this impediment by confining the phrase ""turnover of business of a dealer has escaped

assessment"" to mistakes of omission only. But ""escaped assessment"" cannot be confined to mistakes of omission only. It is instructive to study the

expositions of this phrase as arising u/s 34 of the Indian Income Tax Act in the standard treatises : Sri V. S. Sundaram, Law of Income Tax in

India, 7th Edn. 1954, page 959 :-

The words in the second alternative "assessed at too low a rate" in Section 34(2) of the Income Tax Act, (Indian) show that the escape need not

necessarily be due to inadvertence. It is therefore open t6 an Income Tax Officer to reopen an assessment deliberately wrongly made: In re Sri

Krishna Chandra Gajapathi Narayan Deo AIR (1926) Mad. 387. The Madras view was endorsed by the Calcutta High Court in ANGLO-

PERSIAN OIL CO. (INDIA), LTD. Vs. COMMISSIONER OF Income Tax., , but not by the Lahore High Court who held that income known

or disclosed to the authorities cannot be said to have "escaped" assessment. The word "escape" connotes failure by the taxing authority to tax the

income owing to accidental or deliberate omission of the assessee to declare it or to some similar circumstances. It does not, according to the

Lahore view, include cases where income is known or disclosed to the taxing authorities and has been the subject of assessment which has been

set aside by superior authority owing to some mistake in procedure or to the income being treated in a wrong category: (1933) 1 ITR 143 . In a

later case, the same High Court after reviewing all the rulings decided that in view of the words "for any reason" occurring before the words

"escaped assessment" the interpretation placed by the Calcutta arid the Madras High Courts was the more correct one : (1935) 3 ITR 117 Lahore

The words "have been under-assessed" now occurring in the section obviate these difficulties.

Messrs Kanga and Palkhivala"s Income Tax Act, 2nd Edn., pages 748-749:-Income is said to have escaped assessment within the meaning of

Section 34 (1) when it has not been charged in the hands of the assessee in the proper assessment year : it is immaterial that the income was

charged or included in some other assessment: Commissioner of Income Tax v. Ved Nath Singh [1940] ITR 222, or that the failure to charge the

income was entirely due to oversight or inadvertence on the part of the Income Tax authorities : The State of Bihar Vs. Sir Kameshwar Singh

Bahadur, .

Income shown in return: Section 34(1) is not confined to cases where income has not been returned at all. It also covers cases where an item of

income is included in the return made by the assessee but is left unassessed by the Income Tax Officer : (1935) 3 ITR 438 , explaining

Rajendranath Mookerjee v. Commissioner of Income Tax, Bengal [1934] 2 ITR 71, (1936) 4 ITR 287 , PROVINCE OF BIHAR Vs. RAI

BAHADUR KHETRA MOHAN KUNAR., , contra MAHARAJA BIKRAM KISHORE OF TRIPURA Vs. PROVINCE OF ASSAM., . Sri

A.C. Sampath Aiyangar''s Indian Income Tax Act, 4th Edn., pages 918 to 920: Escaped assessment:-This may happen in one of several ways.

One very common way is where the Income Tax Officer being unaware of the existence of the assessee completely misses him and takes no steps

at all to assess.... A second case is where the Income Tax Officer being aware of the existence of the assessee and in proceeding to assess, fails to

take the requisite preliminary steps and hence the assessment is annulled.... A third case would be where the particular Income Tax Officer who

has made the assessment is found to have no jurisdiction over the assessee in question and therefore a court of law annuls the assessment.... In all

the above cases, there is a total escape of the assessee from assessment. There is another sense also in which ""escaped assessment"" might be said

to arise ; and that is where one entire source of income or one entire head out of the several heads of income of the assessee has escaped

assessment.

Income under-assessed: In the absence of such a language as this in the Act before 1939, arguments were being advanced that if a particular

source of income was assessed in fact, but was not fully assessed, there was no ""escaped assessment"". It had to be held, to meet that argument,

that to the extent to which full tax was not levied or the full income was not brought to charge, there was, quoad such income, an escape, though

really it was a case of under-assessment. To remedy the defect, definite language was introduced to include cases of underassessment. ""...A fourth

instance would be where an income is deliberately exempted from charge by the Income Tax Officer on a certain view of the law which he takes,

which happens to be incorrect."" The Commissioner of Income Tax Vs. D.R. Naik, . On the basis that a sole surviving male member of a joint

family continued to be the manager thereof, a deduction of Rs. 75,000 was granted for super-tax, the deduction permissible to an individual being

only Rs. 30,000. After the decision of the Privy Council in the cases of Kalyanji Vithaldas v. Commissioner of Income Tax, Bengal [1937] 5 I.T

R. 90 and Commissioner of Income Tax, Bombay v. Swami Gomedalli Lakshminarain [1937] 5 ITR 416, pointing out the law that the manager

should be assessed only as an individual, the Income Tax Officer sought to assess the difference of Rs. 45,000 to super-tax. Held proper. Perhaps

the decision could be justified on the ground of a mistake on facts. In that case, it was only by enquiries made after the first assessment that the

Income Tax Officer came to know that the assessee was the sole surviving male member. In that view the decision would be correct also under the

present Act. See also MAHARAJA BIKRAM KISHORE OF TRIPURA Vs. PROVINCE OF ASSAM., . Assessee exempted from

agricultural Income Tax, accepting his contention that his income was agricultural. Subsequently re-assessed by fresh notice calling for return.

Similarly, interesting is the study of the phrase ""discovers"" u/s 41 of the English Income Tax Act, 1952 : (Simon''s Income Tax Act, 2nd Edn., Vol.

4, page 72).

In Konstam''s Income Tax Act, (12th Edn., Sweet and Maxwell), the following commentary is found: If the Inspector ""discovers"" that in the

assessments made any properties or profits chargeable to tax have been omitted, that any person has not been assessed, or has been under-

charged, or has obtained any unauthorised allowance, deduction or relief, or that any person has not made a return, or has not made a full return,

an ""additional first assessment"" is to be made.... The word ""discover"" simply means ""find out"", and the power to make an additional assessment is

applicable even though there has been a complete disclosure of all relevant facts upon which a correct assessment might have been based in the

first instance, and whether it is an error of fact or error of law that has been discovered : Inland Revenue Commissioners v. Machinlay''s Trustees

[1938] A.C. 765, Commercial Structures Ltd. v. Briggs [1948] 2 All E.R. 1041. See also Vestey (1946) 25 A.T.C. 385. The mere discovery of

his own oversight enables the Inspector to make an additional assessment: Steel Barrel & Co., Ltd. v. Osborne (1947) 26 A.T.C. 437. The fact

that there has been an appeal against the original assessment does not prevent an additional assessment: Anderton and Halstead Ltd. v. Birrell

[1932] 1 K.B. 271. (For similar comments see Simon''s Income Tax Act, 2nd Edn., Vol. I, page 263).

21. In the result, looked at from the point of view of Clause (1) or (2) of Rule 17 of the Sales Tax Rules, the assessment of 1945-46 cannot be

disturbed beyond the period of one year prescribed under the Sales Tax Rules of 1939.

22. Turning to the assessment for 1946-47, the legality or propriety of that order cannot be impeached. The Madras General Sales Tax Act as

amended by Act XXV of 1947, confers revisional powers of jurisdiction under Rule 14 and Rule 17 enables the reopening of the closed

assessment within a period of three years. In this case the revised assessment had been levied within a period of three years. Therefore, in regard

to the assessment of 1946-47 there can be no interference.

23. Point 3: In regard to deductions in the light of the recent decisions in State of Madras v. Hajee M.S.A. Meeran Sahib Co. [1954] 5 S.T.C 71,

State of Madras v. Ralli Bros. Ltd., Madras [1954] 5 S.T.C. 199, State of Madras v. N.R. Kuppuswami Goundar [1954] 5 S.T.C. 159, and

State of Madras v. Ramakrishna Rice and Oil Mills [1954] 5 S.T.C. 397, it has to be held that the right to deduction in favour of the registered

manufacturer of groundnut oil is an absolute right under Rule 18(2) of the Turnover Rules and hence these deductions have to be allowed. But the

actual figures cannot be worked out by us and therefore in regard to deductions, this is remitted to the Commercial Tax Officer for making the

computation and allowing the deductions and giving the refund to the assessee.

24. In regard to the rebate, the plaintiff is certainly not entitled to the same by reason of the language of Section 7. It is quite true that groundnut oil

is a finished article and industrial manufacturers of vegetable oils have been notified by the Provincial Government to be entitled to rebate. But this

rebate can be allowed only on sales of such articles for delivery outside the Province and if such articles are actually so delivered. In this case I

have already discussed and shown how, so far as plaintiffs are concerned, the sales were made inside the Province and ex-mill, via, delivery at the

factory. The fact that the various purchasers of this groundnut oil purchased them for delivery outside the Province and then actually so delivered

them is neither here nor there. It is not those purchasers who are claiming the rebate but the plaintiffs who sold the articles inside Madras State and

delivered them inside Madras State and thereby completed their transactions and became only the bailees and sellers with a lien for unpaid

purchase price in regard to all that transpired thereafter.

25. In the result I find in C.S. No. 111 of 1951 under issue 1 that the Commercial Tax Officer is entitled to reopen and revise the assessment of

the sales tax on the turnover of Rs. 14,10,234-1-0 for the year 1946-47 ; under issue 2 that the plaintiff is entitled to deduction but not rebate ;

under issue 3 that the sale of groundnut oil was not outside the Province as alleged by the plaintiff; under issue 4 that the Commercial Tax Officer

had jurisdiction to exercise the powers u/s 12 of the Act and Rule 14 of the General Sales Tax Rules and he has conformed to Rule 1.7(1) in

treating the assessment as escaped assessment; and tinder issue 5 that the relief to which the plaintiff is entitled is a decree regarding deduction only

and dismissal regarding the rest of the claim. The parties will take and give costs in the measure in which they have succeeded and failed. I certify

for two counsel.

26. In C.S. No. 112 of 1951 I find under issue I that the Commercial Tax Officer is not entitled to reopen and revise the assessment of the sales

tax on the turnover of Rs. 18,29,578-4-1 of the plaintiff for the year 1945-46; under issue 2 that it does not arise; under issue 3 that the sale of

groundnut oil was not outside the Province as alleged by the plaintiff; under issue 4 that the Commercial Tax Officer had jurisdiction to exercise

revisional powers u/s 12 of the Act and Rule 14 of the General Sales Tax Rules and has not conformed to Rule 17 (1) in treating the assessment as

escaped assessment and under issue 5 that the plaintiff is entitled to the decree as asked for with costs. I certify for two counsel.