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**(1957) 11 AP CK 0002**

**Andhra Pradesh High Court**

**Case No:** Tribunal Appeal No. 7 of 1956, Appeal No. 95/55-56 (A.T.P.) ,

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| M.V. Bhadraiah Setti | | APPELLANT |
| | Vs | |
| State of Andhra (Now Andhra Pradesh) | | RESPONDENT |

**Date of Decision:** Nov. 22, 1957

**Citation:** (1958) 1 AnWR 339 : (1959) 10 STC 222

**Hon'ble Judges:** K. Subba Rao, C.J; Ranganadham Chetty, J

**Bench:** Division Bench

**Advocate:** T. S. Narasinga Rao and D. Venkatappayya Sastry, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

Subba Rao, C.J.

1. This revision is filed against the order of the Sales Tax Appellate Tribunal, Guntur, confirming that of the Deputy Commissioner of Commercial Taxes, Anantapur, dismissing the appeal preferred to him against the order of the Commercial Tax Officer, Anantapur, assessing the petitioners to sales tax.

2. The petitioners are a firm by name M. V. Bhadriah-Bundappa carrying on business in mandi goods, cloth and tamarind seeds at Hindupur situated in the State of Andhra Pradesh. During the year 1953-54, they sold goods to the Mysore Starch Manufacturing Company carrying on business in the Mysore State. The turnover in respect of those transactions was Rs. 1, 20, 532. The assessees made return of monthly turnover of their business during the year 1953-54. On 10th March, 1955, the Commercial Tax Officer, Anantapur, issued a notice to them asking them to produce their accounts for his scrutiny. After making the prescribed enquiry on 6th September, 1955, the finally assessed the petitioners under a single order. He rejected the claim of the petitioners to the aforesaid turnover as not being liable to tax and included it in the petitioners'' turnover and assessed it. On appeal, the Tribunal confirmed the order of the Commercial Tax Officer and dismissed the

appeal.

3. Learned counsel for the petitioners raised before us four contentions, which we shall proceed to consider seriatim.

4. The first argument of the learned counsel is that the Commercial Tax Officer had no jurisdiction to make the assessment on 6th September, 1955, for the year 1953-54. In other words, he says that, under the Act and the rules framed thereunder, the assessment for one year should be made only during the succeeding year. As this argument turns upon the provisions of the Act and the Rules made thereunder, it will be convenient at this stage to read the relevant provisions."THE MADRAS GENERAL SALES TAX ACT.

5. Section 3. - (1) Subject to the provisions of this Act -

(a) every dealer shall pay for each year a tax on his total turnover for such year.

Section 9. - (1) Every dealer whose turnover is ten thousand rupees or more in a year shall submit such return or returns relating to his turnover in such manner, and within such periods as may be prescribed,

(2)(a) If the assessing authority is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the dealer on the basis thereof.

(b) If no return is submitted by the dealer under sub-section (1) before the date prescribed or specified in that behalf or if the return submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of his judgment :

Provided that before taking action under this clause, the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

THE MADRAS GENERAL SALES TAX (TURNOVER AND ASSESSMENT) RULES.

13. (1) In lieu of the method of assessment described in rules 7 to 12 the method described in sub-rules (2) to (6) of this rule may, at the option of the dealer, be adopted in the case of dealers whose net turnover exceeds Rs. 20, 000. If the dealer desires that this method of assessment should be applied to him from the beginning of any year, he shall intimate his desire to the assessing authority at the time of submitting the return prescribed in rule 6 or thereafter before 1st April in any year. The change over to this method shall not permitted in the course of a year.

(2) The dealer shall submit, so as to reach the assessing authority on or before the 25th day of every month, a return in Form A-3 showing the gross and net turnover for the preceding month and the amount or amounts actually collected by way of tax or taxes during that month. Along with the return, he shall also submit a receipt

from a Government treasury or a crossed cheque in favour of the assessing authority for the full amount of the tax or taxes payable for the months to which the return relates, under any of the sections 3, 5, or 8-B(2) or under any notification issued u/s 6(1).(3) The return so filed shall, subject to the provisions of sub-rule (4) be provisionally accepted.

(4) If no return is submitted in respect of any month before the 25th day of the succeeding month or if the return is submitted without a receipt or crossed cheque for the full amount of the tax payable or if the return submitted appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, and after giving the dealer an opportunity as prescribed in rule 9 of proving the correctness and completeness of his return, where one has been submitted; determine the turnover to the best of his judgment and provisionally assess the tax and taxes payable for the month and shall serve upon the dealer a notice in Form B-1 and the dealer shall pay the sum demanded at the time and in the manner specified in the notice.

(5) After the close of the year in which the provisional assessment as laid down in sub-rule (3) has been made, the assessing authority shall, after such scrutiny of the accounts and after such enquiry as he considers necessary, satisfy himself that the return filed are correct and complete, and finally assessee under a single order on the basis of the returns, the tax or taxes payable under any of the sections 3, 5 or 8-B(2) or under any notification issued u/s 6(1) for the preceding year.

(6) If the final assessment made under sub-rule (5) is greater than the provisional assessment made under sub-rule (3) the assessing authority shall serve upon the dealer a notice in Form B and the dealer shall pay the sum demanded at the time and in the manner specified in the notice. If the final assessment is lower than the provisional assessment he shall serve upon the dealer a notice in Form C."The aforesaid provisions may be summarised thus : u/s 3, which is the charging section, every dealer shall pay for each year a tax on his total turnover for such year. Section 9 provides for the submission of a return or returns by the dealer in the manner prescribed. Sub-section (2) prescribes two modes of making the assessment : (i) where the return is accepted, the assessment will be made on that basis; and (ii) if no return is made or the return made is not accepted, the assessing authority assesses the dealer to the best of his judgment. The provisions of the Act do not lay down any period within which such an assessment should be made. The Madras General Sales Tax (Turnover and Assessment) Rules provides for two alternative modes of assessment, one on the yearly basis and the other on monthly basis. Where a dealer exercises his option to be assessed on monthly basis, he had to make his monthly returns on or before the 25th day of every month. The Commercial Tax Officer makes monthly assessments provisionally either on the basis of the returns or, if no return is submitted in the manner prescribed, or, if the return submitted appears to be incorrect or incomplete, to the best of his judgment.

After the close of the year in which provisional assessment has been made, he scrutinises the accounts, makes the necessary enquiry and finally assesses the dealer under a single order. Under the rules, no separate consolidated return need be made by the dealer and the final assessment under a single order is made only on the basis of the monthly returns. The gist of the provisions is that, on the basis of the monthly returns, if the officer accepts the returns, or if he does not, to the best of his judgment, final assessment is made. No specific period is expressly fixed under the rules within which the final assessment has to be made.Strong reliance is placed upon the words "for the preceding year" in rule 13(5) and it is contended that the said words indicate by necessary implication that the assessment for a particular year could be made only in the succeeding year. Under that rule, the assessing authority finally assesses under a single order on the basis of the returns for the preceding year. The rule no doubt contemplates and indeed expects that the assessment for the proceeding year should ordinarily be made in the succeeding year. But, we cannot imply therefrom an immunity period of limitation excluding the jurisdiction of the assessing authority to finalise the assessment after the close of the succeeding year. Neither section 3, the charging section, nor section 9, which prescribes the procedure to be followed by the assessing authority, expressly or by necessary implication lays down a period of limitation or excludes the jurisdiction of the assessing authority to finalise the assessment after the succeeding year. Though the rule is ill-drafted and lends scope for the argument advanced before us, we could not read that rule in the manner suggested. It prescribed only a procedure for finally assessing under a single order, and it cannot be read as delimiting the period within which proceedings duly initiated under the rules should be terminated.

This view is to some extent supported by the decision of a Division Bench of the Madras High Court in State of Madras v. Ibrahim Kunhi (1956 7 S.T.C. 617). There, the assessee did not file any return of his turnover for 1950-51 within the time prescribed. But, on 20th February, 1954, he voluntarily submitted a return of his turnover for that period. The assessing authorities accepted the return and assessed him to tax on 11th March, 1954. It was argued that the assessment fell within the scope of rule 17(1) of the Madras General Sales Tax Rules, 1939, and was barred by the period of limitation prescribed under that rule. The learned Judges rejected the plea and held that as the assessee had submitted a return voluntarily, rule 17(1) did not apply and the assessment was, therefore, proper. At page 621, the learned Judges observed :"If the assessee had filed this return within the period prescribed by rule 6(2) or rule 11, the assessment in question would have been one u/s 9(2)(a) and as no limitation of time is set within which the assessment should be completed, the assessment, whenever made would be valid."

6. After noticing the fact that the return was made beyond the period prescribed, the learned Judges proceeded to state :

"That was certainly a valid return in the sense that there was no legal bar to its acceptance by the assessing authority in the exercise of his discretion, though it was filed beyond the period prescribed by rules u/s 9(1); and as we have stated before, as no period of limitation is prescribed by the Act for completing an assessment on a return validly filed, the only question that could arise is, whether it was a case of an escaped turnover which attracted the rule of limitation prescribed by rule 17(1) of the Madras General Sales Tax Rules."

7. Though in that case the question arose under the rules providing a yearly return and in a case where the said return was made beyond the time prescribed, the aforesaid observations indicate that there was no period of limitation for making the assessment on returns made by an assessee. With respect, we share the opinion expressed in the above observations. We, therefore, hold that, in the present case, the final assessment was duly made.

8. The next contention is that a Full Bench of this High Court held that rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules was invalid and, therefore, the assessment made under the rule is bad. This argument was not raised before the Tribunal. But, as it involves only a question of law, we have allowed the learned counsel to raise the same. In T.R.C. No. 36 of 1956 (Since reported as Batchu Sreeramulu Chetty v. State of Andhra 1958 9 S.T.C. 215), a Full Bench of this Court held that, as Government has not complied with the condition of pre-publication of the Rules, rule 13 as amended in 1947, 1951 and 1953 is invalid. But the fact that the amendment is invalid does not help the petitioner as the assessment must be deemed to have been made under rule 13 in its original form. Under rule 13 of the Madras General Sales Tax (Turnover and Assessment) Rules as unamended, there was no provisional monthly assessment but the monthly assessments are the final assessments. If so, the turnover representing the goods sold by the petitioners to the Mysore Starch Manufacturing Company escaped assessment. Rule 17 of the Madras General Sales Tax Rules provides for escaped assessment. It reads :"(1) If for any reason the whole or any part of the turnover of business of a dealer or licensee has escaped assessment to the tax in any year or if the licence fee has escaped levy in any year, the assessing authority or licensing authority, as the case may be, subject to the provisions in sub-rule (1)(a) may at any time within three years next succeeding that to which the tax or the licence fee relates determine to the best of his judgment the turnover which has escaped assessment and assess the the payable on such turnover or levy the licence fee, after issuing a notice to the dealer or licensee and after making such enquiry as he considers necessary."

9. A Full Bench of the Madras High Court in State of Madras v. Louis Dreyfus & Company Ltd. (1955 6 S.T.C. 318) defined the words "escaped turnover" thus :

"Turnover escapes when it is not noticed by the officer either because it is not before him by reason of an inadvertence, omission or deliberate concealment on

the part of the assessee or because of want of care on the part of the officer the turnover though in the books has not been taken notice of."

10. It cannot be disputed that, in the present case, the turnover in question falls within the four corners of the said definition. If so, it follows that the disputed turnover escaped assessment during the year 1953-54 and, therefore, the assessing authority was entitled to determine the said turnover within three years next succeeding that to which the tax related. The assessing authority determined the escaped turnover on 6th September, 1955, which is clearly within three years succeeding that to which the tax related, i.e., 1953-54. In this view also, the assessment is valid.

11. The next contention of the learned counsel is that the sales were effected in the course of inter-State trade and, therefore, were exempted under Article 286 of the Constitution. There are no merits in this contention. The sales between the petitioners and the Mysore Starch Manufacturing Company were effected at Hindupur. The goods were booked by rail to stations outside the State by the Mysore Starch Manufacturing Company figuring both as the consignor and the consignee, and the sales were completed at Hindupur itself. The transactions are, therefore, not hit at by Article 286 of the Constitution.Lastly, it is argued that the petitioners'' firm and the purchasing firm, the Mysore Starch Manufacturing Company, are one and the same concern and, therefore, the same firm cannot sell to itself. The petitioners'' firm has three partners whereas the Mysore firm has four partners and each firm has separate accounts and was independently assessed to Income Tax. The petitioners have not placed before the Tribunal any documents regarding the constitution of the two firms or the accounts of either firm in support of their contention. On the material placed before the Tribunal, it has no option but to come to the conclusion that the two firms are separate and distinct. The finding is one of fact and we accept it.

12. In the result the revision is dismissed with costs. Advocate''s fee Rs. 150.