

## State Of Madras vs Madurai Mills Co., Ltd on 4 October, 1966

**Equivalent citations: 1967 AIR 681, 1967 SCR (1) 732, AIR 1967 SUPREME COURT 681**

**Author: V. Ramaswami**

**Bench: V. Ramaswami, J.C. Shah, Vishishtha Bhargava**

PETITIONER:  
STATE OF MADRAS

Vs.

RESPONDENT:  
MADURAI MILLS CO., LTD.

DATE OF JUDGMENT:  
04/10/1966

BENCH:  
RAMASWAMI, V.  
BENCH:  
RAMASWAMI, V.  
SHAH, J.C.  
BHARGAVA, VISHISHTHA

CITATION:  
1967 AIR 681                      1967 SCR (1) 732  
CITATOR INFO :  
RF                      1974 SC1380 (31)

ACT:  
Madras General- Sales-tax Act (9 of 1939), s. 12(4)  
(b)--Order of Assessing authority-When merges in that of  
appellate or revisional authority-Period of limitation-  
Starting point.

HEADNOTE:  
For the assessment year 1950-51 the respondent submitted a  
return of its net turnover to the Deputy Commercial Tax  
Officer who was the assessing authority. As he determined  
the net turnover at a higher amount the respondent appealed  
to the Commercial Tax Officer, who allowed the appeal with  
respect to one item. On 28th November 1952, the assessing  
authority issued a revised assessment order as per the order  
of the Commercial Tax Officer. On 27th December 1952, the

respondent presented a revision petition before the Deputy Commissioner of Commercial Taxes raising the only objection, as a new contention, that it should not have been assessed to tax on amounts collected by it by way of tax. On 21st August 1954, the Deputy Commissioner dismissed the petition on the ground that the respondent was not entitled to raise a new Contention for the first time. On 4th August 1958. the Board of Revenue issued a notice to the respondent stating that it proposed to revise the assessment by including in the net turnover a sum representing the value of cotton purchased by the respondent from outside the State and which was excluded by the assessing authority. After considering the respondent's objections the Board fixed the net taxable turnover by including that amount. The respondent's appeal to the High Court was allowed.

In appeal by the State,

HELD : The order of the Board of Revenue was invalid, because, under s. 12(4) (b) of the Madras General Sales-tax Act, 1939, the Board of Revenue could invoke its revisional jurisdiction only within four years from the date on which the order of the assessing authority was communicated to the assessee. [734 G; 736 B-C]

(i) The subject-matter of the revision proceedings before the Board of Revenue was only the revised assessment order of the assessing authority dated 28th November 1952, and not the Deputy Commissioner's order dated 21st August 1954. [736 C]

The objection taken by the Board was with regard to the question of exemption allowed by the assessing authority on the value of cotton purchased from outside, and that question was not raised in revision before the Deputy Commissioner of Commercial Taxes. [736 C-D]

(ii) It cannot be said that the order of the Deputy Commissioner of Commercial Taxes, in revision, is the only operative decision in law on the basis that the order of the inferior Tribunal (the order of the assessing authority dated 28th November 1952) merged in that of the superior Tribunal (order of the Deputy Commissioner of Commercial Taxes, dated 21st August 1954). [736 F]

The application of the doctrine of merger depends on the nature of the appellate or revisional order in each case and the scope of the statu-

733

tory provisions conferring the appellate or revisional jurisdiction. In the circumstances of the present case it could not be said that there was a merger of the order of assessment dated November 28, 1952 with the order in revision dated 21st August 1954, because, the question of exclusion of the value of yarn purchased from outside the State was not the subject-matter of revision before the Deputy Commissioner of Commercial Taxes. [737 A-B, F-H]

Commissioner of Income-tax, Bombay v. Amritlal Bhogilal & Co. [1959] S.C.R. 713 and State of Uttar Pradesh v. Mohammed



Section 12 of the Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939) (hereinafter called the Act) provides --

(ii) in cases in which an appeal does not lie to him under section 11, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit.

(ii) in respect of any order passed or proceeding recorded by the Commercial Tax Officer under sub-section (1) or any other provision of this Act and against which no appeal has been preferred to the Appellate Tribunal under section 12-A, on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit.

(ii) in respect of any order passed or proceeding recorded by the Deputy Commissioner under sub-section (2) or any other provision of this Act and against

which no appeal has been preferred to the Appellate Tribunal under s. 12-A. on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to it, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as it thinks fit., (4) In relation to an order of assessment passed under this Act-

(a) The power of the Commercial Tax Officer under clause

(i) of sub-section (1) shall be exercisable only within a period of three years from the date on which the order was communicated to the assessee;

(b) The power of the Deputy Commissioner under clause (i) of sub-section (2) and that of the Board of Revenue under clause (i) of sub-section (3) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee".

It was contended on behalf of the appellant that the order revised by the Board of Revenue was the revisional order of the Deputy Commissioner of Commercial Taxes dated the 21st August, 1954 and not the order of the Deputy Commercial Tax Officer and therefore the power of revision by the Board of Revenue was not exercised beyond the period of limitation provided by s. 12 (4) (b) of the Act. We are unable to accept this argument as correct. The only subject-matter of the revision proceedings before the Board of Revenue was the revised assessment order of the Deputy Commercial Tax Officer, Madurai dated the 28th November, 1952. The objection taken by the Board of Revenue was with regard to the question of exemption allowed on the value of the cotton purchased from outside the State of Madras. The exemption was allowed by the Deputy Commercial Tax Officer in his order of assessment. The question was not raised before the Deputy Commissioner of Commercial Taxes and the only point raised before him was with regard to the inclusion of the amount of tax to the extent of Rs. 6,57,971-4-9 in the taxable turnover. It is manifest that the subject-matter of the revision proceedings before the Board of Revenue was the revised assessment order of the Deputy Commercial Tax Officer, Madurai dated the 28th November, 1952. It follows that the order of the Board of Revenue was made beyond the limit of four years prescribed by s. 12(4)(b) of the Act and it is, therefore, invalid. On behalf of the appellant, the argument was put forward that if a statutory appeal is provided against an order passed by a Tribunal, the decision of the appellate authority is the operative decision in law. It was said that if the appellate authority modifies or reverses the order of the Tribunal, there was a merger of the latter order with the appellate order and it was the appellate order alone that is effective and can be enforced. But if the appellate order affirms the order of the Tribunal, there is a merger of the original order in the appellate order and it is the appellate order alone which is operative and capable of enforcement. In support of this argument reliance was placed upon the observation of Gajendragadkar, J., as he then was in Commissioner of Income-tax, Bombay v. Amritlal Bhogilal & Co. (1) But the doctrine of merger is not a doctrine of rigid and universal application and it cannot be said that wherever there are two orders, one by the inferior Tribunal and the other by a superior Tribunal, passed in an appeal on revision, there is a fusion or merger of two orders irrespective of the subject-matter of the

appellate or revisional order and the (1) [1959] S.C.R. 713 : 34 I.T.R. 130 at 136.

scope of the appeal or revision contemplated by the particular statute. In our opinion, the application of the doctrine depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. For example in *Amritlal Bhogilal & Co's.*(1) case it was observed by this Court that the order of registration made by the Income-tax Officer did not merge in the appellate order of the Appellate Commissioner, because the order of registration was not the subject-matter of appeal before the appellate authority. It should be noticed that the order of assessment made by the Income-Tax Officer in that case was a composite order viz., an, order granting registration of the firm and making an assessment on the basis of the registration. The appeal was taken by the assessee to the Appellate Commissioner against the composite order of the Income-tax Officer. It was held by the High Court that the order of the Income-tax Officer granting registration to the respondent must be deemed to be merged in the appellate order and that the revisional power of the Commissioner of Income-tax cannot, therefore, be exercised in respect of it. The view taken by the High Court was over-ruled by this Court for the reason that the order of the Income-tax Officer granting registration cannot be deemed to have merged in the order of the Appellate Commissioner in an appeal taken against the composite order of assessment. Similarly, in *The State of Uttar Pradesh v. Mohammed Nooh*(2), it was held by this Court that the principle of merger cannot apply in the case of an order of dismissal of a public servant which was made by the departmental Tribunal on the 20th April, 1948 and against which the appeal was dismissed by the Appellate Authority on the 7th May, 1949, and the revisional application was rejected on the 22nd April, 1950. In the circumstances of the present case, it cannot be said that there was a merger of the order of assessment made by the Deputy Commercial Tax Officer dated the 28th November, 1952 with the order of the Deputy Commissioner of Commercial Taxes dated the 21st August, 1954 because the question of exemption on the value of yarn purchased from outside the State of Madras was not the subject-matter of revision before the Deputy Commissioner of Commercial Taxes. The only point that was urged before the Deputy Commissioner was that the sum of Rs. 6,57,971-4-9 collected by the respondent by way of tax should not be included in the taxable turnover. This was the only point raised before the Deputy Commissioner and was rejected by him in the revision proceedings. On the contrary, the question before the Board. of Revenue was whether the Deputy Commercial Tax Officer, Madurai was right in excluding from the net taxable turnover of the respondent the sum of Rs. 7,74,62,706-1-6 which was the value of cotton purchased by the respondent from outside the State of Madras. We are (1)[1959] S.C.R. 713:341.T.R. :130 at 136.

(2) [1958] S.C.R. 595.

'therefore, of opinion that the doctrine of merger cannot be invoked in the circumstances of the present case. For these reasons, we hold that the judgment of the High Court is right and this appeal must be dismissed with costs.

V.P.S.

Appeal dismissed.

