

George Oakes (Private) Ltd., Addison ... vs State Of Madras on 27 November, 1961

Equivalent citations: AIR1962SC1352, [1962]13STC98(SC), AIR 1962 SUPREME COURT 1352

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Bench: B.P. Sinha, J.L. Kapur, M. Hidayatullah, J.C. Shah, J.R. Mudholkar

JUDGMENT

M. Hidayatullah, J.

1. These five appeals on certificates granted by the High Court of Madras were consolidated and heard together. They arise out of proceedings against the appellants under the Madras General Sales Tax Act, 1939. The appellants are three Companies-carrying on business of sale of motor cars, motor car spare parts, and other goods. Messrs. George Oakes (Private) Ltd., have-filed Civil Appeals Nos. 1 to 3 of 1961 questioning a part of the sales tax imposed on them for the years, 1950-51, 1951-52 and 1952-53. Civil Appeals Nos. 4 and 5 of 1961 have been filed respectively by Messrs. Addison & Co. (Private) Ltd., and Messrs. Rane (Madras) Ltd., questioning similarly a part of the tax imposed on them for the-year ending March 31, 1952. The common question which has been raised by the-appellants arises in the following circumstances.

2. Under the Madras General Sales Tax Act, 1939, "turnover" is defined inter alia as-

"the aggregate amount for which goods-are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration.....". Sales tax is levied on the dealers on their total turnover for each year of account at the rate of 3 pies for every rupee of turnover. This is laid down by Section 3(1)(a) and (b) of the Act. Under the second sub-section of Section 3, an additional tax of 6 pies for every rupee is leviable on the turnover relating to certain classes of goods. The section (omitting unnecessary portion) may be quoted here for further reference:

"3. Levy of taxes on sales of goods.-

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, and

(b)the tax shall be calculated at the-rate of three pies for every rupee in such turnover.

2. Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed; and the tax shall be paid by the dealer concerned on his turnover in each year relating to such goods and shall be in addition to the tax to which he is liable under Sub-section (1) on his total turnover for the year:--

Description of the goods	Rate of tax for every rupee in the turnover relating to such goods.
(1) Motor Vehicles including motor cars, motor taxi-cabs, motor cycles and cycle combinations, motor scooters, motorettes, motor chassis of motor vehicles.	Six pies"

3. In Deputy Commissioner of Commercial Taxes v. M. Krishnaswami Mudaliar & Sons, , the Madras High Court held that amounts collected by a registered dealer from consumers by way of sales tax and paid over to the Government could not be included in the turnover of the registered dealer in part of the sale price of goods sold by him, and were not liable to be taxed again. The Madras Legislature then passed the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1954 (Act 17 of 1954). Section 2 of that Act provided that:

"In the case of sales made by a dealer before the 1st April, 1954, amounts collected by him by way of tax under the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) (hereinafter referred to as the principal Act), shall be deemed to have formed part of his turnover."

4. The business of the three appellants included sales of goods described in the second sub-section of Section 3 of the Madras General Sales Tax Act as well as sales covered by the first sub-section. The Deputy Commercial Tax Officer included in the total turnover the tax chargeable, and then levied the tax on the turnover relating to goods liable to the additional tax, at the rate of 9 pies, and on the remaining turnover, at 3 pies for every rupee. The inclusion of the tax in the total turnover was objected to by these tradesmen. They appealed to the Special Commercial Tax Officer, but were unsuccessful. The Sales Tax Appellate Tribunal, on further appeal, held that though the tax could be included in the total turnover, tax on the tax so included could be levied only at 3 pies for every rupee, but the additional tax at 6 pies for every rupee could not be levied. It is not necessary to refer to all the orders that were passed in the several cases, but the following extract from one of them may be read:--

"that when sales tax collected is included in the turnover, it will be proper to tax that amount only at the minimum rate of 3 pies in the rupee under Section 3(1) of the Act."

5. The State of Madras then filed in the High Court applications for revision under Section 12(B)(1) of the Madras General Sales Tax Act, and the High Court held that the tax could be levied on the consolidated amount not only at 3 pies for every rupee of turnover but also at 6 pies in respect of the turnover relating to goods liable to the additional tax. In doing so, the High Court merely followed its earlier decision reported in *State of Madras v. Bangalore Automobiles*, . The High Court, however, granted certificates of fitness, and these appeals have been filed. Earlier, the High Court had decided in *Sundarajan and Co. Ltd. v. State of Madras*, that the Madras General Sales Tax (Definition of Turnover and Validation of Assessments) Act, 1954 was validly enacted and was constitutional. The decision in (sic), was approved by this Court recently in *George Oakes (Private) Ltd. v. State of Madras*, and though the point was raised in these appeals, it was not pressed at the hearing.

6. The question that is now raised and which alone survives, is whether the additional tax can be included in the turnover relating to the special goods and the resultant sum taxed at 6 pies for every rupee. In the earlier appeals ending with the decision of this Court in *Messrs. George Oakes* case, above mentioned, it was contended that the inclusion of the tax in the turnover would amount to the levy of a tax on tax, & that the power to levy the tax extended only to the levy of the tax on the price paid for the goods by the purchaser, which price did not include the tax paid separately. It was pointed out by this Court that the word "price" in so far as the purchaser is concerned, includes the tax also, and that in laws dealing with sales tax, turnover has, in England and America also, been held to include the tax. The reason for such inclusion is stated to be that the dealer who realises the tax does not hand it over forthwith to Government but keeps it with him, and turns it over in his business before he parts with it. Thus, the tax becomes, for the time being, a part of the circulating capital of the tradesman, and is turned over in his business. Again, it was said that the price paid by the purchaser was not so much money for the article plus tax but a composite sum. Therefore, in calculating the total turnover, there is nothing wrong in treating the tax as part of the turnover, because "turnover" means the amount of money which is turned over in the business. In the case to which we have referred, the Validating Act was declared valid and constitutional. In the present appeals, we are required to work out, the result of the Validating Act in respect of the additional tax, because in so far as the collection of tax at 3 pies for every rupee of turnover is concerned, no difficulty presents itself.

7. The scheme of the Act shows that there is to be a tax of 3 pies on every rupee of turnover for all classes of goods except those which might be exempted. Then, there is a further additional tax of 6 pies on every rupee of the turnover in respect of certain classes of goods. This additional tax is leviable not on the total turnover but on the turnover in each year "relating to such goods." The words "relating to such goods" show that the turnover for purposes of the additional tax is the total of all sale prices including, of course, the tax at 3 pies relating to the special goods. The additional tax is then levied on that turnover. But then, in determining the taxable turnover in respect of the special goods, the tax chargeable at 6 pies for every rupee must be included. The necessary

consequence is that for those goods which bear a tax of 3 pies on every rupee, the tax would be calculated on total amounts received by the tradesman including the tax at 3 pies for every rupee, and for those goods which bear the additional tax, the tax would be calculated on the total amount received by the tradesman including the tax at 9 pies per rupee. In this way, the tradesman pays tax at the rate of 3 pies for every rupee on all the goods and an additional tax of 6 pies on every rupee of the turnover relating to certain classes of goods. But, though he pays tax on the tax charged by him in the price, the tax at different rates goes into different turnovers, and there is no additional tax at 6 pies on those goods on which such tax is not imposed by the Act.

8. In our opinion, this is what the Deputy Commercial Tax Officer has ordered, and the High Court was right in setting aside the order of the Sales Tax Appellate Tribunal, and restoring the order of the Deputy Commercial Tax Officer.

9. The appeals thus fail, and are dismissed; but in the circumstances of these cases, we make no order about costs.