

# The Federal Court Reports.

THE GOVERNOR-GENERAL IN COUNCIL

1943.  
—  
March 1.

v.

THE PROVINCE OF MADRAS.

[SIR MAURICE GWYER C. J., SIR SRINIVASA VARADACHARIAR  
and SIR TORICK AMEER ALI JJ.]

*Government of India Act, 1935, Sch. VII, List I, entry No. 45; List II, entry No. 48—Madras General Sales Tax Act (IX of 1939) declared intra vires by Federal Court on appeal from High Court—Suit by Governor-General in Council for declaration that Act is ultra vires—Maintainability—Validity of Act.*

The Legislature of the Province of Madras passed an enactment entitled the Madras General Sales Tax Act, 1939, which imposed a tax on the sale of goods within that Province. The validity of the Act was impugned before the High Court of Madras, and in an appeal from the judgment of that High Court, *The Province of Madras v. Boddu Paidanna and Sons* ([1942] F.C.R. 90), the Federal Court decided that the Act was within the competence of the Madras Legislature. The Governor-General in Council thereupon instituted a suit in the Federal Court against the Province of Madras for a declaration that the said Act was *ultra vires* the Madras Legislature in so far as it purported to levy a tax on first sales:

*Held*, that the decision in *The Province of Madras v. Boddu Paidanna and Sons* governed the present suit and there was no reason to modify that decision.

ORIGINAL JURISDICTION. Case No. XV of 1942.

The plaintiff, the Government of India, instituted a suit against the Province of Madras on the following allegations: (i) that the Madras General Sales Tax Act, 1939, was an Act to provide for the levy of a general tax on the sale of goods in the Province of Madras; (ii) that under the said Act every dealer is liable to pay in each year a tax in accordance with the scale therein specified on his turn-over, that the term "dealer" is defined in the said Act as a person who carries on the business of buying and selling goods; and the term "turn-over" is defined to mean (subject to certain exceptions) the aggregate amount for which goods are either bought by or sold by a dealer; (iii) that the defendant claimed that by virtue of the said Act it was entitled to levy a tax on the manufacturer or producer of all goods on the first sale thereof and has been taxing manufacturers and pro-

1943  
 Governor-  
 General  
 in Council  
 v.  
 Province  
 of Madras.

ducers in the Province of Madras accordingly; (iv) that such a tax on the first sale, in so far as it related to goods other than those mentioned in entry No. 40 of List II, of the Seventh Schedule of the Government of India Act, 1935, was a Federal duty of excise and beyond the legislative competence of Provincial Legislatures; and (v) that the taxing by the defendant of manufacturers and producers on first sales by the latter was an encroachment on the plaintiff's rights, but the defendant denied the same. The plaintiff therefore prayed (a) for a declaration that the said Madras Act, IX of 1939, in so far as it purported to levy a tax on first sales as aforesaid was *ultra vires*; and (b) for costs and further reliefs.

The defendant, the Province of Madras, in a written statement, submitted under Order XXII of the Federal Court Rules, 1942, denied that a tax on a first sale is a "duty of excise" within the meaning of entry No. 45 in the Federal List and was beyond the competence of the Provincial Legislature, and stated (i) that the distinction sought to be drawn by the plaintiff between first and subsequent sales was unsustainable in the face of the unambiguous language of entry No. 48 of the Provincial List; (ii) that under the scheme of distribution of taxing power in the Government of India Act, a tax on the sale of goods falls within a head of power absolutely different and distinct from a "duty of excise" as contemplated in entry No. 45 of the Federal Legislative List; (iii) that the tax levied by the impugned enactment, being a tax on the turn-over of the business of a dealer, was within the power of this Province and was not hit at by any entry in the Federal Legislative List; (iv) that in the Reference *In re The Central Provinces and Berar Act, XIV of 1938* (1) the Advocate-General of India conceded the position that a turn-over tax would be included in entry No. 48 of the Provincial List; (v) that in regard to the taxing power exercised in the present case, no question of any encroachment on or clash with any Federal power arises as the sales tax imposed by this defendant may validly co-exist side by side with a Federal duty of excise, and the tax levie

by the defendant is not of the same species as the tax open to the plaintiff; (vi) that the plaintiff could not go behind the considered Judgment of this Court in *The Province of Madras v. Boddu Paidanna and Sons* <sup>(1)</sup> (Case No. III of 1942), pronounced after hearing not merely the appellant therein (The Province of Madras) and the Advocates-General of Bengal and the United Provinces, who were permitted to intervene, but also the Advocate-General of India to whom notice was given; (vii) that in pursuance of the notice given by this Court, the Advocate-General of India took part at the hearing, and, when asked by the Court as to his attitude, submitted that the Government of India was taking up a neutral attitude in the matter and that he himself took part in the arguments as *amicus curiæ*; (viii) that in these circumstances the Government of India must in effect and in substance be deemed to have been a party to the proceedings in Case No. III of 1942 and was bound by the decision of this Court, both on grounds of *res judicata* and of estoppel; and (ix) that the law as declared by this Court in Case No. III of 1942 was binding on the plaintiff. The defendant further submitted that the subject-matter of the suit did not relate to the existence of a legal right within the meaning of s. 204 of the Government of India Act, 1935, and that the suit was therefore incompetent and should be dismissed with costs.

1943, March 1. *Sir Brojendra Mitter, Advocate-General of India*, (*H. R. Kazimi*, with him) for the plaintiff.—The Government of India contend that this tax, so far as the manufacturer or producer is concerned, is a duty of excise and therefore beyond the competence of the Provincial Legislature. The contention of the Government of Madras is that this is a tax coming within the competence of the Provincial Legislature by virtue of entry No. 48 of List II. The two relevant entries are entry No. 45 of List I (duties of excise on tobacco and other goods manufactured or produced in India) and entry No. 48 in List II (taxes on the sale of goods and on turnover). The matter was argued at length before this Court during May last and

1943

Governor-  
General  
in Council  
v.  
Province  
of Madras.

<sup>(1)</sup> [1942] F.C.R. 90.

1943  
 Governor-  
 General  
 in Council  
 v.  
 Province  
 of Madras.

the Court considered the arguments adduced on both sides carefully and came to the conclusion that a tax upon a sale by the manufacturer or a producer cannot be distinguished from a tax on other sales and therefore it was within the competence of the Provincial Legislature. The only reason why this suit has been brought is that the Government of India consider that this is a matter of very great importance and that your Lordships' decision should be tested in another Court. The only method by which that can be done is by means of a suit in this Court. Hence this suit. I addressed your Lordships as *amicus curiæ* on the former occasion on this subject. The arguments adduced on either side on the last occasion will be found in the judgment reported in the *Federal Court Reports*.

*Sir Alladi Krishnaswami Aiyar, Advocate-General of Madras (N. Rajagopala Iyengar with him)* for the defendant.—The Advocate-General of India has lightened my task. I have raised one other point in the written statement and that is as to the effect of the notice given by your Lordships to the Advocate-General of India in the former proceedings. If your Lordships are in my favour on the main question, this question does not arise. But I have raised this additional point and I am not abandoning it, that is, it is not now open to the Government of India to challenge the decision to which they were a party.

*Sir Asoka Roy, Advocate-General of Bengal, (H. K. Bose with him)*, for the Province of Bengal, submitted that he had applied for leave to intervene in the suit and in the circumstances it would be enough for his purpose if their Lordships made a note of this fact.

*Raghubir Singh*, for *Boddu Seetharamaswami*, submitted that he had put in an application for being made a party inasmuch as his client was interested in the result of the case, and invited a ruling as regards the right of a person interested in the final result of a suit to come before their Lordships and be heard. He desired to come in only as an intervener.

The Judgment of the Court was delivered by  
 Gwyer C. J.—In this case the Governor-General

in Council brings an action against the Province of Madras for a declaration that the Madras General Sales Tax Act, 1939, is an encroachment upon the rights of the Central Legislature. Under that Act, a tax is levied on the sale of goods in the Province of Madras; and it is contended on behalf of the Government of India that, so far as sales by a producer or a manufacturer are concerned, the tax is a duty of excise and therefore within the exclusive competence of the Central Legislature to impose by virtue of entry No. 45 of List I in the Seventh Schedule to the Constitution Act. It is contended on behalf of the Government of Madras that the tax is a tax on the sale of goods within the competence of the Provincial Legislature by virtue of entry No. 48 of List II in the Seventh Schedule, and that there is no reason for distinguishing the first sale of goods produced or manufactured in the Province from the second or any subsequent sale. The validity of the Act, so far as concerns first sales, was challenged in the case *The Province of Madras v. Boddu Paidanna & Sons*<sup>(1)</sup> which came before this Court on appeal from the High Court of Madras last year, and the judgment of the Court, disagreeing with the judgment of the High Court, was in favour of the Province. The Advocate-General of India, who appeared on behalf of the plaintiff in the present case, stated that he was unable to contend that the decision of the Court in *The Province of Madras v. Boddu Paidanna & Sons*<sup>(1)</sup> did not govern the present suit, and that he did not think that he should be able to persuade this Court that their earlier decision was incorrect. In these circumstances he informed us that he would submit, though he could not consent, to judgment being entered against him. He frankly stated that, the Court having refused the application by the respondents in *Boddu Paidanna & Sons v. The Province of Madras* for leave to appeal to His Majesty in Council, he desired to test elsewhere the decision of the Court, as under s. 208 (a) of the Constitution Act he has the right to do without asking for leave.

We agree that substantially the same issue is raised in the present suit as in the appeal last year and

1943  
 Governor-  
 General  
 in Council  
 v.  
 Province  
 of Madras.  
 Gwyer C. J.

we see no reason to modify the decision which we then gave.

The Advocate-General of Madras, who appeared on behalf of the defendant, in asking for judgment, stated that he must not be taken as abandoning the contention which he had raised in his pleading that notice of the proceedings in the earlier case having been given to the Advocate-General of India under Order XXXVI, r. 1, of the Federal Court Rules, and the Advocate-General having appeared and argued against the validity of the tax in that case, it was no longer open to the Governor-General in Council to challenge in these proceedings the earlier decision of the court. He drew attention in this connection to certain observations made by the Court in the case of *The United Provinces v. Atiqa Begum*(<sup>1</sup>).

An application was also made by the Advocate-General of Bengal under Order XXXVI, r. 2, of the Federal Court Rules, for leave to be heard; but, in view of the course which the proceedings in the case have taken, it has not been necessary to hear him.

Mr. Raghbir Singh, on behalf of Boddu Setharamaswami, senior partner and agent of the firm who were respondents in the case *The Province of Madras v. Boddu Paidanna & Sons*(<sup>2</sup>), applied to be made a party to the proceedings under Order XIX, r. 3, of the Federal Court Rules, as a person interested in the final result of the case. He invited us to give a ruling as to the circumstances in which a person alleging an interest in litigation between one Province and another or between the Central Government and a Province might be added as a party to a litigation. We reject Mr. Raghbir Singh's application to have his client added as a party, and we do not think it necessary to give any ruling on the general question of the interpretation of Order XIX, r. 3, of the Federal Court Rules, as he invited us to do.

There will be Judgment for the defendant with costs.

*Judgment for the defendant.*

(1) [1940] F.C.R. 110.

(2) [1942] F.C.R. 90.