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*The Commissioner  
of Income-tax,  
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v.

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Turf Club*

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supply of jockeys of efficiency and skill failed the business of the respondent would no longer be possible. Thus the money was spent for the preservation of the respondent's business.

As to the third point there is no substance in the submission that the expenditure was in the nature of a capital expense because no asset of enduring nature was being created by this expense.

In our opinion the High Court has rightly held that the expenditure claimed was one which was wholly and exclusively laid out for the purpose of the respondent's business. It was to prevent the threatened extinction of the business of the respondent. In the result this appeal is dismissed with costs.

*Appeal dismissed.*

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*November 29.*

K. R. C. S. BALAKRISHNA CHETTY  
& SONS & CO.

v.

THE STATE OF MADRAS

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

*Sales Tax — Claim of exemption by licensee—If conditional upon observance of conditions and restrictions—Madras General Sales Tax Act, 1939 (Mad. IX of 1939), s. 5.*

The appellants, who were dealers in Cotton yarn, obtained a license under the Madras General Sales Tax Act, 1939 (IX of 1939). Section 5 of that Act exempted such dealers from payment of sales tax under s. 3 of the Act subject to such restrictions and conditions as might be prescribed, including the conditions as to licenses and license fees. Section 13 required a licensee to keep and maintain true and correct accounts of the value of the goods sold and paid by him. Rule 5 of the General Sales Tax Rules provided that any person seeking exemption under s. 5 of the Act must apply for license in Form 1 which made the license subject to the provisions of the Act and the rules made thereunder. The appellants on surprise inspection were found to maintain two separate sets of accounts, on the basis of one of which they submitted their returns and the other

showed black-market activities. The question for determination in the appeal was whether the appellants who had been refused exemption and were assessed to tax, could claim exemption under the Act.

*Held*, that the question must be answered in the negative.

Section 5 of the Madras General Sales Tax Act, 1939, properly construed, leaves no manner of doubt that an exemption from assessment thereunder is clearly conditional upon the observance by the assessee of the conditions and restrictions imposed by the Act, either in the rules or in the license itself, and the words 'subject to' used by the section means "conditional upon".

It was not correct to say that licensee was exempt from assessment so long as he held the license notwithstanding any breach of the provision of the law and that the only penalty he could be subjected to was the cancellation of his license or criminal prosecution.

**CIVIL APPELLATE JURISDICTION:** Civil Appeals Nos. 490 and 491 of 1958.

Appeals from the judgment and decree dated February 18, 1955, of the Madras High Court in Second Appeals Nos. 2038 and 2039 of 1950.

*N. R. Raghavachariar, M. R. Krishnaswami and T. V. R. Tatachari*, for the appellant.

*R. Ganapathi Iyer and D. Gupta*, for the respondent.

1960. November 29. The Judgment of the Court was delivered by

**KAPUR, J.**—Two suits were brought by the appellants for a declaration against the levy of sales tax by the State of Madras and an injunction was also prayed for. Both the suits were decreed by the Subordinate Judge of Salem and the decrees were confirmed on appeal by the District Judge of Salem. Two appeals were taken to the High Court by the State of Madras against those decrees and by a judgment dated February 18, 1955, the decrees were set aside by a common judgment. Against these decrees the appellants have brought these appeals by a certificate of that Court.

The appellants are merchants dealing in cotton yarn. They obtained a license under s. 5 of the Madras General Sales Tax Act (Act IX of 1939), hereinafter referred to as the 'Act'. This license exempted

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them from assessment to sales tax under s. 3 of the Act on the sale of cotton yarn and on handloom cloth "subject to such restrictions and conditions as may be prescribed including conditions as to license and license fees". The license was issued on March 31, 1941, and was renewed for the following years. On September 20, 1944, the Commercial Tax Authorities made a surprise inspection of the premises of the appellants and discovered that they were maintaining two separate sets of account on the basis of one of which the appellants submitted their returns to the Department. Because the other set of account books showed black-market activities of the firm Balakrishna Chetty was prosecuted and sentenced to six months' imprisonment for an offence connected with the breach of Cotton Yarn Control Order. During the pendency of those proceedings the Deputy Commercial Tax Officer made assessments for the years 1943-44 and 1944-45, the tax for the former was Rs. 37,039 and for the latter Rs. 3,140. The appellants unsuccessfully appealed against these assessments and their revisions also failed. On August 24, 1945, the appellants brought a suit for a declaration and injunction in regard to the first assessment alleging that the assessment was against the Act. On September 2, 1946, a similar suit was brought in regard to the second assessment. It is out of these suits that the present appeal has arisen.

The controversy between the parties centres round the interpretation of the words "subject to" in s. 5 of the Act. The High Court has held that on a true interpretation of the provisions of the Act and the rules made thereunder, the observance of conditions of the license was necessary for the availability of exemption under s. 5; that as the appellants had contravened those conditions they were liable to pay tax for both the years notwithstanding the license which had been issued to them under s. 5 of the Act.

It will be convenient at this stage to refer to the provisions of the Act which are relevant for the purpose of this appeal.

S. 2(b) "dealer" means any person who carries on the business of buying or selling goods;"

S. 2(f) ““prescribed” means prescribed by rules made under this Act;”.

S. 3(1) “Subject to the provisions of this Act, every dealer shall pay in each year a tax in accordance with the scale specified below:—

- (a) .....
- (b) if his turnover exceeds twenty thousand rupees. One half of 1 per cent of such turnover”.

S. 5 “Subject to such restrictions and conditions as may be prescribed, including the conditions as to licenses and license fees, the sale of bullion and specie, of cotton, of cotton yarn and of any cloth woven on handlooms and sold by persons dealing exclusively in such cloth shall be exempt from taxation under Section 3”.

S. 13 “Every dealer and every person licensed under section 8 shall keep and maintain a true and correct account showing the value of the goods sold and paid by them; and in case the accounts maintained in the ordinary course, do not show the same in an intelligible form, he shall maintain a true and correct account in such form as may be prescribed in this behalf.”

The following rules are relevant for the purpose of this appeal and we quote the relevant portions:

- R. 5 “(1) Every person who—
- (a) .....
  - (b) deals with cotton and/or cotton yarn,
  - (c) .....
  - (d) .....
  - (e) .....,shall if he desires to avail

himself of the exemption provided in sections 5 and 8 or of the concession of single point taxation provided in section 6, submit an application in Form-I for a licence.....”

and the relevant portion of Form III is as follows:

“Form III

Licence to a dealer in { Cotton  
Cotton yarn  
cloth woven on handlooms

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See rule 6(5).

Licence No.                      dated  
having paid a licence fee of Rs.  
(in words)  
hereby licensed as a dealer in Cotton/Cotton yarn  
Cotton woven on handlooms for the year ending  
at            (place of business) subject to the provi-  
sions of the Madras General Sales Tax Act, 1939,  
and the rules made thereunder and to the follow-  
ing conditions:".

R. 8 "Every licence granted or renewed under these rules shall be liable to cancellation by the Deputy Commercial Tax Officer in the event of a breach of any of the provisions of the Act, or of the Rules made thereunder or of the conditions of the licence."

The contention raised on behalf of the appellants was that as long as they held the licence it was immaterial if they were guilty of any infraction of the law and that they were not liable to any assessment of sales-tax under the provisions of the Act and the only penalty they incurred was to have their licence cancelled and/or be liable to the penalty which under the criminal law they had already suffered. The contention comes to this that in spite of the breaches of the terms and conditions of the licence, having a licence was sufficient for the purpose of exemption under the Act. This contention, in our opinion, is wholly untenable. Section 3 is the charging section and s. 5 gives exemption from taxation but that section clearly makes the holding of a licence subject to restrictions and conditions prescribed under the provisions of the Act and the rules made thereunder because the opening words of that section are "subject to such restrictions and conditions as may be prescribed."

Under s. 13 an important condition imposed under the Act is the keeping by the dealer and every person licensed of true and correct accounts showing the value of the goods sold and paid by him. Next there is r. 5 of the General Sales Tax Rules which provided

that if any person desired to avail himself of the exemption provided in s. 5, he had to submit an application in Form I for a licence and the Form of the licence shows that the licence was subject to the provisions of the Act and the rules made thereunder which required the licensee to submit returns as required and also to keep true accounts under s. 13. This shows that the giving of the licence was subject to certain conditions being observed by the licensee and the licence itself was issued subject to the Act and the rules. But it was contended that the words "subject to" do not mean "conditional upon" but "liable to the rules and the provisions" of the Act. So construed s. 5 will become not only inelegant but wholly meaningless. On a proper interpretation of the section it only means that the exemption under the licence is conditional upon the observance of the conditions prescribed and upon the restrictions which are imposed by and under the Act whether in the rules or in the licence itself; that is, a licensee is exempt from assessment as long as he conforms to the conditions of the licence and not that he is entitled to exemption whether the conditions upon which the licence is given are fulfilled or not. The use of the words "subject to" has reference to effectuating the intention of the law and the correct meaning, in our opinion, is "conditional upon".

The appellants have been found to have contravened the provisions of the Act as well as the rules and therefore it cannot be said that they have observed the conditions upon which the exemption under the licence is available. In that view of the matter, it was rightly held that they were not exempt from assessment under the Act. The appeals are therefore dismissed with costs.

*Appeals dismissed.*

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