State of Madhya Pradesh

Vs

Abdeali

Civil Appeal No. 373 of 1961.

(M. Hidayatullah, Raghuvar Dayal, J. L. Kapur, A. K. Sarkar, S. K. Das JJ)

24.08.1962

JUDGMENT

S. K. Das, J. -

This is an appeal by special leave from the judgment and order of the High Court of Madhya Pradesh dated December 14, 1959, by which the said High Court quashed an assessment of sales tax made against the respondent for the assessment year 1956-57. The appellant before us are the State of the Madhya Pradesh, the Commissioner of Sales Tax, Madhya Pradesh and the Sales Tax Officer, Circle No. 2, Indore.

We may first state the circumstances under which the respondent was assessed to sales tax and the reasons for which the High Court quashed the said assessment. The respondent carried on the business of importing and selling different types of footwear in the State of Madhya Pradesh under the name and style of Munwar Shoe Company, Indore. During the assessment year 1956-57 the taxable turnover of the goods sold by the respondent was determined to be a little over Rs. 60,000/-, and he was assessed to sales tax on his taxable turnover in accordance with item 32 Sch. 3 of the notification dated October 24, 1953 issued under s. 5 of the Madhya Bharat Sales Tax Act, 1950 (Act 30 of 1950) (hereinafter referred to as the Act). Section 3 of the Act is the charging section which imposes the tax. Section 4(3) empowers the Government to grant exemption by means of a notification in respect of the sale of any goods or class of goods. Section 5 of the Act fixes the rate of tax and states that the tax payable by a dealer under the Act shall be a single point. It permits the State Government to notify the goods and the point of their sale at which the tax is payable. Item 32 of Sch. 3 of the notification referred to above was in these terms.

#----------S. No. Name of goods Point of sale in Madhya Bharat at which tax is payable32 All leather goods and all shoes, chappals (footwear) etc. Sale by importer or manufacturer.----------##

Though the item in question made all leather goods and all shoes, chappal etc. liable to sales tax at the point of sale by the importer or manufacturer, an exemption was granted in respect of certain sales of footwear by means of notification issued under s. 4(3) of the Act. We may now refer to these notifications. The first notification was dated May 27, 1955 and was in these terms :

> "In exercise of the powers conferred by section 4(3) of Madhya Bharat Sales Tax Act, Samvat 2007 the Rajpramukh has passed order exempting from the payment of sales tax, all such shoes, the selling price of which does not exceed rupees ten per

> pair and such country shoes which are prepared by the manufacturer himself and for the production of which power is not used in any stage if the same are sold by the manufacturer himself or any member of his family."

This notification was later superseded by another notification dated January 28, 1956, which read as follows :

> "In exercise of the powers conferred by section 4, sub-section (3) of the Madhya Bharat Sales Tax Act, Samvat 2007 the Rajpramukh in supersession of the notification No. 59(c)(t) P.R. 412-54, dated 27-5-1955 of this department has exempted from the payment of sales tax, in case of sale by the manufacturer or any member of his family, the sale of all such shoes, chappals, country shoes and footwears which are hand-made and which are not manufactured on power machine and whose sale price does not exceed Rs. 12/8/-."

The respondent contended before the Sale Tax Officer that he was not liable to pay any sales tax on the sale of hand-made shoes, chappal and other type of footwear whose sale price did not exceed Rs. 12/8/- per pair on the ground that such footwear was exempt from tax by reason of the notification dated January 28, 1956. The Sales Tax Officer negatived this contention. He pointed out in his order dated March 25, 1958 that the condition laid down in the notification to the effect that the sale must be by the manufacturer or any member of his family was not fulfilled, and as the respondent was an importer and dealer of footwear and not the manufacturer or a member of the family of the manufacturer, he was not entitled to claim any exemption under the notification. Consequently the Sales Tax Officer passed an order assessing sales tax on the total turnover of the respondent.

The respondent then moved the High Court of Madhya Pradesh by means of a petition under Art. 226 of the Constitution and in that petition the respondent said that the notification dated January 28, 1956, exempted from tax all sales of footwear which fulfilled the following to conditions, viz., (a) such footwear was hand-made and not manufactured on power machine, and (b) the sale price whereof did not exceed Rs. 12/8/- per pair. The respondent further averred that if the exemption were held to be in favour of sales by a manufacturer or a member of his family and not sales by an importer, then the notification would be discriminatory in nature and would contravene the provisions of Art. 304(a) of the Constitution. On these grounds the respondent prayed that the assessment order dated March 25, 1958, be quashed and the Sales Tax Officer be directed to exempt from tax such sales by the respondent as were covered by the exemption granted by the notification dated January 28, 1956. In their reply to the writ petition the appellants pointed out that the notification dated January 28, 1956 did not in any way discriminate between footwear manufactured or produced in the State of Madhya Pradesh and footwear imported from outside, because the conditions laid down in the notification were equally applicable to both types of goods and one of these conditions was that the sale which was to be exempted from tax must be by the manufacturer or a member of his family.

The High Court accepted the petition of the respondent and held that the respondent's contention that hand-made shoes, chappals and footwear purchased by him directly from the manufacturer outside the State and imported by him for sale were entitled to exemption under the notification dated January 28, 1956, must prevail. The High Court said :

> "What that notification does is to exempt from sales tax the sale of hand-made chappals shoes, footwear and country shoes if the price of the article sold does not

> exceed Rs. 12-8/- and if it is sold by the manufacturer or any member of his family. It makes no difference whether the sale is by the manufacturer within the State directly to the purchaser or whether it is by the manufacturer outside the State to the importer who then sells it to the purchaser. The notification is, no doubt, not clearly worded. x x x x x x The notification has to be read in consonance with the provisions of Article 304 of the Constitution. So read, it must be held that the exemption applies to hand-made shoes, chappals etc., whether made within or outside the State if the other conditions mentioned in the notification are satisfied."

Accordingly, the High Court quashed the assessment dated March 25, 1958, and directed the Sales Tax Officer to make a fresh assessment in the light of the decision of the High Court.

On behalf of the appellants it has been contended before us that the interpretation which the High Court put on the notification dated January 28, 1956, is not correct. We think that this contention is right and must be accepted. The notification clearly lays down three conditions for the grant of exemption : one of the conditions is that the sale must be of such shoes, chappals, country shoes and footwear as are hand-made and not manufactured on power machine; the second condition is that the sale price must not exceed Rs. 12/8/-; and the third condition is that the sale must be by the manufacturer or any member of his family. The notification when it uses the expression "in case of sale" must refer to the sale which is being exempted from tax in the State; in other words, it has reference to the taxable event in the State as per Sch. 3 of the notification dated October 24, 1953. That notification makes it clear that the tax is a single point tax, and the taxable event is the sale by the importer or manufacturer in the State. Therefore, the expression "in case of sale" in the exemption notification can have no reference to a sale outside the State. The High Court was in error when it said that it made no difference whether the sale was by the manufacturer within the State directly to the purchaser or whether the sale was by the manufacturer outside the State to the importer who then sold the shoes to the purchaser in the State. When a manufacturer sells shoes outside the State to an importer and the importer again sells shoes in the State, there are really two sales, one outside the State and one inside it. The sales outside the State are not taxable under the Act and the notification of January 28, 1956, has no reference to such sales. When the notification uses the expression "in case of sale by the manufacturer or a member of his family", it has reference to such sales as would come but for the exemption within item 32 of Sch. 3 of the notification dated October 24, 1953. If the interpretation put by the High Court is correct, then the practical effect will be to obliterate one of the conditions laid down in the notification, namely, that the sale, which is the taxable event, must be by the manufacturer or any member of his family. We do not think that the notification is capable of such an interpretation. All the three conditions laid down in the notification must be fulfilled before the exemption referred to therein can be claimed and we cannot, by interpretation, delete one of the conditions.

On the question whether the notification contravenes Art. 304(a) of the Constitution learned counsel for the appellants has canvassed before us the larger question that Art. 304(a) has no reference to sales tax legislation. He has contended that Art. 304(a) refers to a tax on goods meaning thereby a tax on the goods themselves, e.g. excise duty or countervailing duty on goods, and it has no reference to a tax on transactions of sale.

In view of the alternative submissions which learned counsel for the appellants has made and to which we shall presently refer, it is unnessary for us to deal with the aforesaid larger question in this appeal. The alternative submissions made by learned counsel for the appellants are these. Firstly, learned counsel for the appellants had argued that on the assumption that sales tax legislation is

contemplated by Art. 304(a), the notification in question does not in any way contravene that provisions of the said Article. He has submitted that the three conditions laid down by the notification apply equally to both types of footwear, footwear manufactured or produced in the State and footwear imported from other States. Secondly, he has submitted that if the notification in question is bad on the ground that it contravenes the provisions of Art. 304(a) of the Constitution, then the result will be that the notification dated January 28, 1956, will be void. This will not, however, affect the validity of the notification of October 24, 1953, made under s. 5 of the Act, by which all, leather goods and all footwear are made liable to a tax at the point of sale in the State by an importer or manufacturer. Learned counsel has submitted that the respondent is an importer who sells footwear in the State, and he will be liable to tax on all footwear sold by him and will not be entitled to claim any exemption if the exemption notification is bad; in other words, the assessment will be the same as has been found by the Sales Tax Officer by his order dated March 25, 1958, and in that view also, the order of the High Court quashing the assessment will be erroneous.

We now proceed to consider these alternative submissions of learned counsel for the appellants. We do not think that the notification dated January 28, 1956 makes any such discrimination between footwear manufactured or produced in the State of Madhya Pradesh and footwear imported from other States as is prohibited by Art. 304(a) of the Constitution. We have already pointed out that the exemption granted by the notification in question depends on the fulfilment of three conditions and all the three conditions are equally applicable to footwear manufactured or produced in the State and footwear imported from other States. It is obvious that the exemption is for the protection and benefit of small manufacturers who make hand-made shoes of small value and who may be unable to compete with large-scale manufacturers of footwear made on machines. Such a classification in the interests of small manufacturers has often been made and upheld by this Court. (See Orient Weaving Mills (P) Ltd. v. The Union of India ((1962) Supp. 3 S.C.R. 481.) : and The British India Corporation Ltd. v. The Collector of Central Excise, Allahabad ((1963) 3 S.C.R. 642.).

In the course of his arguments learned counsel for respondent has first supported the interpretation put on the notification by the High Court. That question we have already dealt with earlier in this judgment. Learned counsel for the respondent has then submitted that the discrimination arises in the following way. He points out that a small manufacturer outside the State has to travel into the State and sell hand-made shoes there in order to get the benefit of the exemption whereas a small manufacturer in the State has not to travel anywhere in order to get the benefit of the exemption. This, learned counsel has submitted, results in such discrimination as is forbidden by Art. 304(a) of the Constitution. We do not agree. The argument of learned counsel for the respondent is really an argument of inconvenience. The exemption by itself creates no discrimination between footwear manufactured or produced in the State and imported from outside. Even a small manufacturer in the State must fulfil the conditions laid down by the notification in question before he can claim exemption from tax; in other words, he or a member of his family must also sell the hand-made shoes before he can claim the exemption. So must a small manufacturer outside the State if he wants to claim the benefit of the exemption. Unless he has travelled and brought the goods into another State, Art. 304(a) does not apply; hence he cannot complain under that Article that he has to travel. It is worthy of note that the exemption relates to sales in the State and that is why a small manufacturer outside the State can claim no benefit of the exemption with regard to sales out side the State which are not taxable under the Act. It is necessary here to refer to one other point which has been urged by learned counsel for the respondent. Learned counsel has pointed out that the word 'himself' used in the earlier notification of May 27, 1955, in connection with the word 'manufacturer' has been omitted from the later notification January 28, 1956, and he has contented that by reason of the omission of the word 'himself' the benefit of the later notification may be available to a

servant or an agent of the manufacturer. We do not think that this question falls for decision in the present appeal. The respondent in the present case is neither a servant nor an agent of the manufacturer. It is admitted that he is merely an importer and in his case nothing turns upon the omission of the word 'himself' from the later notification.

We also agree with the alternative submission of learned counsel for the appellants that if the notification dated January 28, 1956 is bad, then the respondent stands to gain nothing. If the exemption notification is struck down as invalid, that will not affect the validity of the notification of October 24, 1953, particularly of item 32 of Sch. 3 thereof. Learned counsel for the respondent has submitted that the two notifications must be read together and if the exemption goes, the notification of October 24, 1953, issued under s. 5 of the Act must also go. We are unable to agree. The notification of October 24, 1953. Fixes the point of sale at which the tax is to be imposed. The rate of tax is fixed by s. 5 of the Act. There is no reason why the notification dated October 24, 1953, should fall with the notification dated January 28, 1956 which was issued under s. 4(3) of the Act. The principle laid down by this Court in M/s. Ram Narain Sons of Ltd. v. Assistant Commissioner of Sales Tax ([1955] 2 S.C.R. 488.) that where an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation, renders the assessment invalid in toto, will not apply in the present case for the simple reason that there is no wrongful inclusion of any item in the assessment order. If the exemption goes, then the respondent has been rightly assessed on his total turnover. It is only when the respondent is entitled to the exemption claimed that he can say that the assessment is bad and must be quashed. The respondent can claim the exemption only if the interpretation put by the High Court on the notification dated January 28, 1956, is accepted as correct. If that interpretation is not correct, then this appeal must be allowed even if the notification is bad by reason of the provisions of Art. 304(a) of the Constitution.

For the reasons given above, we would allow the appeal, set aside the judgment and order of the High Court dated December 14, 1949 and dismiss the writ petition. The appellants will be entitled to their costs throughout.

Appeal allowed.

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