State of Madras

Vs

T. Narayanaswami Naidu and Anr.

Civil Appeals Nos. 633 & 634 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami-I JJ)

12.04.1967

JUDGMENT

SIKRI, J.

These appeals by special leave are directed against the judgment of the Madras High Court in Tax Cases Nos. 105 and 125 of 1963. The High Court by its common judgment dated August 1964, confirmed the orders of the sales Tax Appellate Tribunal.

A common point of law is involved in both the cases and it will suffice if we give facts in Tax Case No. 105 of 1963 (Civil Appeal Nos. 633 of 1966) in which the respondent was one T. Narayanaswami Naidu, hereinafter referred to as the assessee. The assessee is a dealer in cotton and cotton seeds. Before the Additional Commercial Tax Officer, Coimbatore, he claimed to deduct the sum of Rs. 12,32,756,45 as the value of purchases other than the last purchases of cotton worth Rs. 2,27,250,00 was in stock on March 31, 1961. He found that subsequent disposal in the next year had not been proved and, therefore, it was liable to be taxed as a last purchase. In holding this he followed the decision of the Kerala High Court in Abdulsalam Rowther v. State of Kerala (1) accepted the appeal of the assessee and demanded the case to the Appellate Assistant Commissioner for disposal afresh in the light of observations made by it. The Department filed a revision under s. 38 of the Madras General Sales Tax Act, hereinafter referred to as the Madras Act, and the High Court dismissed the revision. The State of Madras having obtained special leave, the appeal is now before us.

The learned counsel for the appellant, Mr. Ramanujam, urges that the decision of the Kerala High Court in Abdulsalam Rowther Hirjibhoy v. Commercial Tax Officer (2) laid down the law correctly, and the Madras High Court erred in dissenting from these decisions in the present case (now reported as State of Madras v. T. Narayansawami Naidu.

Section 4 of the Madras Act provides :

> "4. Notwithstanding anything contained in section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each int he Second Schedule on the turnover in such goods in each year, whatever be the quantum of turnover in that year."

In other words, this section lays down that in respect of declared goods we have to look at the second Schedule in order to find out the point at which the tax would be payable by the dealer. The

Second Schedule describes the declared goods in respect of which a single point tax only is leviable under s. 4. Item 2 of the Second Schedule is "|Cotton, that is to say, all kinds of cotton ginned or unginned, baled, pressed or otherwise, but excluding cotton waste". The point of levy is stated as "at the point of last purchase in the State".

The question that arises is : what is the exact meaning of the expression "at the point of last purchase in the State" ? In this connection it may be mentioned that s. 14 of the Central sales Tax Act, 1956, hereinafter referred to as the Central Act, declares certain goods as of special importance in inter-State trade and commerce, and cotton is one of the goods included in s. 14. Section 15 provides :

> "15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-
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> (a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent. of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;"

Section 4 of the Madras Act was intended to comply with s. 15 of the Central Act. The relevant portion of s. 3 of the Madras Act on which the learned counsel for the appellant relies, provides :

> "3(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than ten thousand rupees and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax for each year at the rate of two per cent of his taxable turnover :"

Section 2 (p) defines "taxable turnover" to mean "the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed" and "year" is defined to mean "financial year" "Turnover" is defined in s. 2(r) as follows :

> "'turnover' means the aggregate amount for which goods are bought or sold, or supplied or distributed, by a dealer, either or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, grown within the state by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded form his turnover;...."

The learned counsel for the appellant says that it is clear from ss. 3 and 4 that a tax under the Madras Act is a yearly tax. In other words, he says that just as under the Indian Income Tax Act each assessment year is a self-contained unit, so is the assessment year a self-contained unit under the Madras Act. If that is so, he argues, then what happens in subsequent years cannot be taken into consideration for determining the taxability of any purchase inside the State of declared goods. He says that the taxable event is the last purchase in the State during the assessment year and if stocks are held at the end of the assessment year it follows that the assessee holding the stocks is the last purchaser in the State.

In our opinion, this reasoning is fallacious. It is true that ss. 3 and 4 speak of "a year", i.e., the financial year, and it is only the turnover during that year that is liable to taxation in the hands of the

assessee, but s. 4 has to be read with the Second Schedule, and reading s. 4 has to be read with the Second Schedule, and reading s. 4 with the Second Schedule, it seems to us clear that a dealer is not liable to pay a tax on the purchases inside the State. In other words, when he files a return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase because he may still during the next assessment year, sell it or he may consume it himself or the goods may be destroyed, etc. He would be character of acquisition of the stock in hand was undetermined; in the light of subsequent events it may or may not be come the last purchase inside the State.

In our view this construction is in consonance with s. 15 of the Central Act. If the argument of the learned counsel for the State were to be accepted it would mean that the States could with impunity levy purchase tax on declared goods at more than one stage, i.e., on purchases in the hands of one dealer during one assessment year and purchases of the same goods in the hands of another dealer in a subsequent assessment year, and so on. Therefore, we agree with the Madras High Court that the assessee is right in contending that he was entitled to claim deduction in respect of the value of the stock of Rs. 2,27,250 as being the purchases other than last purchases of cotton.

The Kerala High Court in Abdulsalam Rowther v. State of Kerala (1) following certain cases decided under the Income Tax Act, was influenced by the consideration that an assessee could not rely on subsequent events in order to escape taxation. That may be so even under the Sales Tax act, but according to our views, the assessee is not liable till the purchase of declared goods acquires the character of a last purchase within the Second Schedule referred to above., On Hornusji Hirjibhoy v. Commercial Tax Officer(2) the Mysore High Court also seems to have been impressed by similar considerations.

The judgment under appeal draws a distinction between taxable event and a stage at which the levy of tax in the case of declared goods in subject to single point levy. This may cause confusion, and indeed, the High Court gives one illustration, which it found unnecessary to deal with. The illustration give is :

> "One can visualise a case for example where goods mentioned above purchased on the 30th of March, 1960 may be exported by the purchaser outside the State, on the 2nd of April, 1960. In that case the goods could not be assessed in 1960-61 in the hands of the exporting purchaser, because the taxable event did not occur in that year; it could not be assessed in the hands of the seller in 1959-60 because though the taxable event occurred that year, the single point stage was not reached in that year. One possible way of dealing with such a case is to assess it subsequently as escaped turnover."

In our opinion, in this illustration, the assessee would be liable in the financial year 1960-61 as the purchases became the last purchases in that year.

In the result the appeal fails and is dismissed with costs.

The facts in Tax Case No. 125 of 1963 (Civil Appeal No. 634 of 1966) are similar. That appeal is also dismissed with costs. The Appellate Assistant Commissioner (Commercial Taxes) will now dispose of the cases remanded to him by the sales Tax Appellate Tribunal in the light of the judgment.

Y. P. Appeal dismissed.

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