

Commissioner of Sales Tax, U.P., Lucknow

v.

Madan Lal Dayal Chand

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE S. M. SIKRI HON'BLE
JUSTICE VAIDYNATHIER RAMASWAMI

Civil Appeal No. 1198 of 1966 | 24-04-1967

SHAH, J.

1. The following question referred for opinion under section 11 of the U.P. Sales Tax Act, 1948, was answered by the High Court of Allahabad, in both its branches, in the affirmative :

"Whether section 18(4) takes away the right of election of the assessment year conferred on every dealer by the first proviso to section 7 read with rule 39(1) and whether tax is to be imposed on a new dealer on his turnover computed in accordance with section 18(4) in spite of his election of the assessment year by filing quarterly returns ?"

2. The Commissioner of Sales Tax has appealed to this Court with special leave.

3. The respondents commenced business in cotton textiles at Bulandshahr in U.P. during the assessment year 1949-50 and they were assessed to sales tax under section 18(3) of the U.P. Sales Tax Act, 15 of 1948, on their turnover of that year. During the assessment year 1950-51 the respondents filed quarterly returns. The Sales Tax Officer, Bulandshahr, rejected the contention of the respondents that they were liable to be assessed on the turnover computed in accordance with section 18(4) of the U.P. Sales Tax Act, 1948, and computed the taxable turnover of the respondents at Rs. 1, 15, 711-11-3, and assessed them to pay tax on that turnover. In appeal to the Judge (Appeals), Sales Tax,

the order was confirmed. But the Judge (Revisions) in exercise of power under section 10 of the Act set aside the order of the assessing authority and directed that taxable turnover of the respondents be calculated in accordance with the provisions of section 18(4) of the Act. The High Court of Allahabad agreed with the view of the Judge (Revisions).

4. The Commissioner of Sales Tax contended in this appeal that the taxable turnover of the respondents in respect of the year 1949-50 was liable to be computed under section 7(2) of the Act read with rule 41(5) of the Rules framed under the Act, and not under section 18(4). To appreciate the contention, the relevant statutory provisions may first be noticed. Section 7 of the U.P. Sales Tax Act, 15 of 1948, as amended by Act 25 of 1948, read as follows :

"(1) Subject to the provisions of section 18, every dealer whose turnover in the previous year is Rs. 12, 000 or more in a year shall submit such return or returns of his turnover of the previous year within sixty days of the commencement of the assessment year in such form and verified in such manner as may be prescribed :

Provided that the State Government may prescribe that any dealer or class of dealers may submit, in lieu of the return or returns specified in this section, a return or returns of his turnover of the assessment year at such intervals, in such form and verified in such manner as may be prescribed, and thereupon, all the provisions of this Act shall apply as if such return or returns had been duly submitted under this section."

Sub-sections (2) and (3) section 7 provided that the assessing authority may, after such enquiry as he considers necessary complete the assessment and assess the tax on that basis; if no return is submitted by the dealer or if the return submitted by him appears to be incorrect or incomplete, the assessing authority shall, after making such enquiry as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof. Sub-sections (3) and (4) of section 18 as they stood at the relevant time read as follows :

"(3)(a) Every dealer or a reconstituted firm commencing business during the course of an assessment year whose monthly turnover is estimated to be not less

than Rs. 1, 000 shall give notice of the fact to the assessing authority within fifteen days of such commencement and shall submit monthly statements of his turnover within seven days of the expiry of each month in such form and verified in such manner as may be prescribed in respect of the portion of such year during which the business is continued.(b) If the assessing authority, after making such enquiry as he considers necessary, is satisfied that such returns submitted under clause (a) are correct and complete and that the average monthly turnover is not less than Rs. 1, 000 he shall assess the dealer on the total turnover shown in the returns.

(c) If no returns are submitted by the dealer under clause (a) before the period specified, or if the returns submitted by him appear to the assessing authority to be incorrect or incomplete, the assessing authority shall, after such enquiry as he deems necessary, determine to the best of his judgment, the average monthly turnover and the total turnover for the period of the assessment year during which the business is carried on and, if the average monthly turnover is not less than Rs. 1, 000 he shall assess the tax on the basis of the total turnover so determined by him.

(4) The assessing authority shall fix the turnover of the dealer for the next succeeding assessment year at the amount of average monthly turnover determined by him in accordance with clause (b) or (c) of sub-section (3), as the case may be, multiplied by 12 and shall assess the tax thereon."

5. In exercise of the powers conferred by section 24 of the Act, the State Government framed rules to carry out the purposes of the Act. Rules 39, 40 and 41 are relevant :

"39. (1) Any dealer may elect to submit returns of his turnover of the assessment year in lieu of the returns of the turnover of the previous year, and shall signify such election in the return filed by him in Form IV :

Provided that a dealer who did not carry on business during the whole of the previous year shall elect to submit his returns of the assessment year.

(2)"40. Every dealer who elects to submit return of his previous year shall, within sixty days of the commencement of the assessment year, submit to the Sales Tax Officer a return in Form IV showing his turnover for the previous year :

Provided

"41. (1) Every dealer whose estimated turnover during the assessment year is not less than Rs. 15, 000 and who elects to submit returns of such year shall before the last day of July, October, January and April submit to the Sales Tax Officer, a return of his gross turnover for the quarters ending June 30, September 30, December 31 and March 31, respectively, in Form IV :

Provided (2) (3) (4)

(5) Upon the expiry of the assessment year the Sales Tax Officer shall, after such enquiry as he may deem necessary, determine the turnover of the assessment year and shall assess the tax thereon.

6. The respondents commenced business during the course of the assessment year 1949-50; they had evidently no previous year in respect of which their return of turnover could be submitted. They submitted, as they were enjoined by the proviso to rule 39(1) read with section 18 of the Act, their turnover in respect of the broken period, and they were assessed to tax on that turnover. For the year 1950-51 the respondents filed quarterly returns and the assessing authority assessed the respondents under section 7(2) of the Act read with rule 41(5). The respondents contend that even though they had submitted their quarterly returns for the year 1950-51 and those returns disclosed a taxable turnover of Rs. 1, 15, 711-11-3 they were liable to be assessed to tax by the express terms of section 18(4) on the turnover computed at 12 times the monthly average determined in the assessment year 1949-50. Ordinarily a dealer is required by section 7(1) of the Act to submit his return of turnover for the previous year. But that rule is subject to two exceptions. The dealer may elect under rule 39(1) to return his turnover for the assessment year. Again a dealer

who commences business as a dealer in the course of an assessment year is enjoined to submit monthly statements of his turnover during that year. If the dealer elects to make a return of the turnover for the assessment year, instead of the previous year, he will be assessed to tax under section 7(2) and (3) read with rule 41(5). If the dealer has commenced a new business during an assessment year, he is liable to be assessed under section 18(3)(b) and (c). He cannot in the year in which he has commenced business seek to submit the return of his turnover of the previous year, for he has no previous year qua his business dealings. So far the legal position is clear. But sub-section (4) of section 18 provides that on the basis of the average monthly turnover of a dealer who has commenced business during the course of any year, the assessing authority shall fix the turnover of the dealer for the next succeeding year, and shall tax him accordingly. The provision is mandatory, both as to the method of computation of the turnover and as to the assessment of tax on the turnover; it is not subject to any exception expressly enacted.

7. Counsel for the State, however, contended that having regard to the scheme of the proviso to section 7(1) and rules 40 and 41, sub-section (4) of section 18 is subject to an implied exception or reservation. Counsel says that sub-section (1) of section 7 alone and not the proviso thereto is subject to the provisions of section 18, and therefore when under the rules framed by the Government it is prescribed that a dealer or class of dealers may submit a return or returns of his turnover of the assessment year, and if the dealer avails himself of that option, sub-section (4) of section 18 has no application. In other words, the argument is that a dealer commencing business during the course of an assessment year is liable to be assessed in that year on the monthly statements of his turnover under section 18(3)(b) and (c), and the right to claim that his turnover be determined in the next succeeding year, in the manner provided by section 18(4) can only be exercised where the dealer has not opted to submit his return of turnover for the year of assessment. This, counsel says, is implicit in the scheme of the Act which gives an option to the dealer to elect to submit a return of turnover either for the previous year or of the assessment year; to hold that section 18(4) is mandatory and is not subject to any implication is to make the option to submit returns of the turnover for the assessment year futile, when the dealer has commenced business during the course of the previous year. Counsel says that the State had given an option to the respondents in respect of the year 1950-51 and they had exercised that option and submitted their returns for that year quarterly as provided by rule 39 and once that option was exercised for the

year 1950-51 the tax had to be assessed under section 7(2) read with rule 4(5) on the turnover returned by the respondents. We are unable to agree with the contentions raised by counsel for the State. It appears that when the Act was originally enacted, it was intended that sales tax shall be levied on a dealer on his turnover of the previous year. Provision was also made in section 18 for determining the turnover of a dealer who commenced business during the course of an assessment year. Otherwise the dealer commencing his business during the course of an assessment year would have escaped liability to pay tax altogether, and even in respect of the next succeeding year he would have been liable to pay tax wholly unrelated to his true turnover of that year. In order to provide against these contingencies, section 18 was enacted. The scheme of the Act, as it stood originally enacted, was consistent and practical. But when the Legislature added the proviso to sub-section (1) of section 7 by Act 25 of 1948 giving an option to the dealer to submit in lieu of his return of the previous year the return of turnover of the current year, the significance of section 18(4) in the altered set up was apparently forgotten. Sub-section (4) of section 18 became inconsistent with the scheme of assessment of a dealer who exercised an option under rule 39(1) to submit his turnover of the assessment year. We may assume that it may not have been intended by the Legislature that a dealer who has exercised an option to submit his turnover for the year of assessment instead of the previous year, should still for the year immediately following the year in which he has commenced business be assessed to tax on a notional turnover. But if the Legislature has failed to make an adequate provision enabling assessment to be made in the light of the option, it cannot be assumed that section 18(4) became subject to such an implied limitation. The Court in construing a taxing statute must look at what is clearly expressed, and cannot make assumptions as to the intention of the Legislature. The Court will not introduce by interpretation in a taxing statute a provision which if the Legislature had appreciated the true position under the statute as enacted might have made, but has not made. The scheme of the Act as it stood at the relevant time was, that a person commencing business as a dealer in a particular year was liable to be assessed under section 18(3), clauses (b) and (c), and he was also liable to be assessed in the next year immediately following on the turnover equivalent to twelve times the monthly average of the turnover in the year in which he commenced business. If the Legislature chose to impose an obligation upon the assessing authority to compute the turnover in the manner prescribed and made no exception in the matter of determination of tax, it would be difficult to hold that when the assessee exercised an option under rule 39 his turnover and the assessment to tax were brought within the pale of rule 41(5).

8. Rule 41(5) cannot be read so as to modify an express provision of the Act. The statutory obligation imposed upon the authority to tax the dealer under subsection (4) of section 18 remains absolute for the year following immediately the year in which the business was commenced by the dealer, and the method prescribed for determination of the turnover must be applied.

9. The High Court was, therefore, right in answering both the branches of the question in the affirmative.

10. The appeal fails and is dismissed with costs.

11. Appeal dismissed.