Ganesh Prasad Dixit

Vs

Commissioner of Sales Tax, Madhya Pradesh

Civil Appeal Nos. 940-941/66

(J.C. Shah, V. Ramaswami - I, A.N. Grover JJ)

03.02.1969

JUDGMENT

SHAH, J. -

1. In respect of assessment to sales-tax for two accounting periods, April 1, 1961, to June 30, 1961 and July 1, 1961, to September 30, 1961, the Board of Revenue, Madhya Pradesh, referred the following questions to the High Court of Madhya Pradesh for opinion :

> "(1) Whether in the facts and circumstances of the case the notice in Form XVI that was served on the applicant was invalid and therefore the assessment of the applicant on the basis of that notice was bad in law ?
>
> (2) Whether in the facts and circumstances of the case the applicant was a dealer during the assessment period under the Act and the imposition of purchase tax on him under Section 7 of the Act was in order ?"

The High Court answered the first question in the negative, and the second in the affirmative. These appeals are preferred with special leave granted by this Court.

2. The appellants are a firm of building contractors and are registered as dealers under the Madhya Pradesh General Sales Tax Act 2 of 1959. The appellants purchased building materials in the two account periods and used the materials in the course of their business. The Sales Tax Officer, Jabalpur Circle, served notices under Section 18(5) of the Act calling upon the appellants to show cause why "best judgment" assessments should not be made, and by order, dated November 30, 1961, he assessed the appellants to tax in respect of goods purchased by the appellants for use in their construction business and imposed a penalty of Rs. 200/- in each case. Appeals against the orders imposing tax and penalty were dismissed by the Assistant Commissioners of Sales Tax and the Board of Revenue.

3. Rule 33 of the Madhya Pradesh General Sales Tax Rules, 1959, provides that a notice of assessment under Section 18(5) shall be in Form XVI, and ordinarily it shall give not less than 15 days from the date of the service to the assessee to show cause why he "should not be assessed or re-assessed to tax and/or to pay penalty". The notices served upon the appellants did not give them a clear period of 15 days to show cause. As we are unable to hold on that account that the notices and the assessments were invalid, we agree with the High Court that the rule is not intended to be "either invariable or rigid", and "unless prejudice has resulted to the tax-payer the proceedings are not liable to be set aside". It is not even suggested that because of the insufficiency of time the appellants were

unable to submit their explanation for failure to make their returns of turnover. Two cases on which reliance was placed by counsel for the appellants in support of the plea that the notices were invalid have, in our judgment, no bearing. In Messrs. Kajorimal Kalyanmal v. The Commissioner of Income-tax, U.P., (3 ITC 451) it was held that a notice under Section 22(2) of the Income-tax Act, 1922, giving the assessee 29 days for filing the return was "entirely illegal". In Jamna Dhar Potdar and Co., Lyallpur v. Commissioner of Income-tax, Punjab (3 ITR 112), it was held, following the judgment in Kajorimal Kalyanmal's case (3 ITC 451) that a notice which does not give to a tax-payer under Section 22(2) of the Income-tax Act, 1922, clear notice for furnishing a return of thirty days from the date of service is illegal. But these cases were decided under Section 22(2) of the Income-tax Act, 1922, before it was amended by the Income-tax (Amendment) Act 7 of 1939. Under the section as it then stood, it was enacted that the Income-tax Officer shall serve a notice upon any person whose total income is in the opinion of the Income-tax Officer of such an amount as to render that person liable to pay income-tax. The section was held to be mandatory. But the terms of Rule 33 of the Madhya Pradesh General Sales Tax Rules are plainly not mandatory. The answer given by the High Court on the first question must be accepted.

To appreciate the scope of the enquiry under the second question, the relevant provisions of the Act may be summarised. By Section 2(d) of the Act, in so far as it is relevant, the expression "dealer" is defined as meaning, amongst others, "any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise". By Section 4(2) every dealer is liable to tax in respect of sales or supplies of goods effect in Madhya Pradesh with effect from the date on which his turnover calculated during a period of twelve months immediately proceeding such date first exceeds the limits specified in sub-section (5). Section 6 provides that the tax payable by a dealer under the Act shall be levied on his taxable turnover relating to the goods specified in Sch. II. Section 7 provides :

> "Every dealer who in the course of his business purchases any taxable goods, in circumstances in which no tax under Section 6 is payable on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been levied on the sale price of such goods under Section 6 :
>
> #Provided X X X X"##
>
> Counsel for the appellants submitted that the appellants were not "dealers" within the meaning of the Act because they did not carry on the business of buying goods; and that in any event, the goods purchased by them for use in their construction business were not liable to tax under Section 7.
>
> 4. The appellants are registered dealers under the Madhya Pradesh General Sales Tax Act, 1958 (Act 2 of 1959). It is true that in respect of the periods their turnover in respect of sales was assessed as "nil". But on that account they did not cease to be registered dealer within the meaning of the Act. A person to be a dealer within the meaning of the Act need not both purchase and sell goods : a person who carries on the business of buying is by the express definition of the term in Section 2(d) a "dealer". This Court held in The State of Andhra Pradesh v. H. Abdul Bakshi and Bros (15 STC 644) that it is not predicted of a dealer that he

must carry on the business of buying and selling the same goods. A person who buys goods for consumption in the process of manufacture of articles to be sold by him is a dealer within the meaning of the Hyderabad General Sales Tax Act 14 of 1950. In H. Abdul Bakshi and Bros's case (15 STC 644) the assessee sold skins, after tanning hides and skins purchased by them. In the process of tanning, they had to use tanning bark purchase by them. This Court held that the turnover arising out of the tanning bark purchased by the assessees for consumption in the process of tanning was liable to tax on the footing that the assessee were carrying on the business of buying goods, even though the goods bought were consumed in the process of tanning. In dealing with the question whether an activity of purchase of goods required for consumption in a manufacturing process may be regarded as a business, the Court observed (at p. 647)

"A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business' though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e., without a profit motive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity, for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer; the definition merely requires that the buying of the commodity mentioned in Rule 5(2) must be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity."

This Court agreed with the view expressed in L. M. S. Sadak Thamby Co. v. The State of Madras (14 STC 753) in which a similar question was decided by the High Court of Madras. In that case the assessee had purchased tanning bark and had consumed it in tanning raw hides. The Madras High Court held that the buying of goods was in the course of business since it was associated with the business of tanning of hides carried on with a profit-making motive. These decisions support the contention of the State that price paid for goods bought for consumption in manufacturing an article for sale is exigible to purchase-tax even if the goods purchased are either destroyed or transformed into another species of goods.

5. Counsel for the appellants urged that in the cases of H. Abdul Bakshi and Bros. (supra) and L. M. S. Sadak Thamby & Company (supra), the assessees were carrying on the business of selling goods manufactured by them and for the purpose of manufacturing these goods certain other goods were purchased and consumed in the process of manufacture, but here the goods are not consumed in producing another commodity for sale, and on that account the two cases are distinguishable. The answer to that argument must be sought in the terms of Section 7. The phraseology used in that section is somewhat involved, but the meaning of the section is fairly plain. Where no sales tax is payable under Section 6 on the sale price of the goods, purchase-tax is payable by a dealer who buys taxable goods in the course of his business and (1) either consumes such goods in the manufacture of other goods for sale; or (2) consumes such goods otherwise; or (3) disposes of such goods in any

manner other than by way of sale in the State; or (4) despatches them to a place outside the State except as a direct result of sale or purchased in the course of inter-State trade or commerce. The assessees are registered as dealers and they have purchased building materials in the course of their business; the building materials are taxable under the Act, and the appellants have consumed the materials otherwise than in the manufacture of goods for sale and for a profit-motive. On the plain words of Section 7 the purchase price is taxable.

6. Mr. Chagla for the appellant urged that the expression "or otherwise" is intended to denote a conjunctive introducing specific alternative to the words for sale immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by Section 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, along is taxable. We do not think that that is a reasonable interpretation of the expression "either consumes such goods in the manufacture of other goods for sale or otherwise". It is intended by the Legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise.

The decision in Versova Koli Sahakari Vahatuk Sangh Ltd. v. The State of Maharashtra (22 STc 116) on which reliance was placed by Mr. Chagla has, in our judgment, no application. In that case a society registered under the Bombay Co-operative Societies Act, 1925, carried on the business of transporting fish belonging to its members from fishing centres to the markets and vice versa. For preserving fish in the course of transport, the society used to purchase ice, and the members, whose fish was transported, were charged for the quantity of ice required in respect of their baskets of fish. The difference between the price paid by the society for ice purchased and the charged made by the society for ice supplied was brought to tax by the Sales Tax Officer under the Bombay Sales Tax Act, 1959. The High Court of Bombay held that the society was not supplying ice with the intention of carrying on business in ice, and on that account the society was not a "dealer" within the definition of that term in Section 2(11) of the Act in regard to the supply of ice by it to its members. In that case the taxing authority did not seek to impose purchase-tax; he sought to bring to tax the difference between the price paid by the society for purchasing ice and the charges which it made from its members for supplying ice, and the High Court held that in supplying ice the society was not carrying on business in ice, and on that account was not a "dealer". Whether in a particular set of circumstances a person may be said to be carrying on business in a commodity must depend upon the facts of that case and no general test may be applied for determining that question.

The appeals fail and are dismissed with costs. One hearing fee.

</html