

Shri Gopal Industries Ltd.

Vs

The State of Rajasthan and Another

Civil Appeals Nos. 1909 to 1911 of 1970

(K.S. Hegde, A.N. Grover JJ)

27.07.1971

JUDGMENT

HEGDE, J. -

1. A common question of law arises for decision in these appeals by special leave and that question is whether the High Court acted illegally in declining to call upon the Rajasthan Board of Revenue to state a case and refer the same to it under Section 15 of the Rajasthan Sales Tax Act, 1954 (Act XXIX of 1954) (to be hereinafter referred to as the Act). The appellants, the assessee required the Board of Revenue to refer to the High Court under Section 15(1) of the Act as many as four questions but the Board declined to refer those questions to the High Court. Thereupon the assessee moved the High Court to call upon the Board to state a case and refer to the High Court the questions of law formulated by it. The High Court rejected that reference summarily observing :

"Heard learned counsel for the parties. We agree with the view taken by the Board of Revenue. The decisions in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* (19 STC 1 : (1967) 1 SCR 618 : AIR 1967 SC 1066) and *State of Madras v. K. C. P. Ltd.* (23 STC 173 : (1969) 1 SCR 778 : AIR 1969 SC 348) are not applicable as the expression 'business' has been defined retrospectively in the Rajasthan Sales Tax Act so as to include any transaction in connection with or incidental or ancillary to the ordinary business of the dealer. The business of the assessee is manufacturing of cotton yarn with the aid of machinery and the sale of old and discarded machinery is incidental to the business carried on by the trader and is taxable. Rejected summarily."

2. These appeals are directed against the said order.

3. The appellant is a registered dealer under the Act. The Commercial Tax Officer, Kota, passed separate assessment orders on November 13, 1964, for the period July 1, 1960 to June 30, 1961. In that order in computing the assessee's turnover he took into consideration the price received by the assessee in respect of the sales effected by it of iron and steel defectives, machinery and spare parts, etc. The assessee is a dealer in cotton yarn and cotton goods. It is not dealer in iron and steel defective or machinery or spare parts. Some of the machinery used by it had become antiquated, and some of the parts of its machinery had worn out. In order to modernise his mills, it sold its old machinery and spare parts during the period in question. The question for consideration was whether the sale price of those articles is liable to be included in the 'turnover' of the assessee.

4. The authorities under the Act as well as the High Court have come to the conclusion that the

disputed turnover is also liable to be taken into consideration in computing the total assessable turnover of the assessee. The question of law that arose for decision is whether that part of the turnover is liable to be taken into consideration in computing the turnover of the assessee. Prima facie this question is a question of law as contemplated by Section 15(1) of the Act. The Board of Revenue refused to submit that question on the ground is covered by a decision of the Division Bench. The High Court as mentioned earlier rejected it on the ground that the turnover in question comes within the definition of "business" in clause (c) of Section 2 of the Act.

The expression "turnover" is defined in Section 2(t). It say :

"'Turnover' means the aggregate of the amount of the sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract."

(Proviso to the clause is not relevant for our present purpose.)

"Sale Price" is defined thus in Section 2(p) :

"Sale Price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in case where such cost is separately charged and the expression 'purchase price' shall be construed accordingly."

5. The charging section is Section 3. But before going to that section, it is necessary to refer to two other definitions in the Act. 'Dealer' is defined in Section 2(f) as meaning :

"any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and includes"

6. The expression business is defined in Section 2(cc) as follows :

"'business' includes -

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce, manufacture, adventure or concern is carried on with motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or incident or ancillary to, such trade, commerce, manufacture adventure or concern"

Now we may turn to Section 3. That section says :

"(1) Subject to the provisions of the Act, every dealer whose turnover in the previous year in respect of sales or supplies of goods exceeds -

(a) in the case of a dealer who imports goods or manufactures any goods other than cooked food or deals in cereals and pulses in any of their forms Rs. 5,000/-

(b) in the case of a dealer being a co-operative society registered under any law of the time being in force relating to co-operative societies dealing exclusively in goods produced or manufactured by such society without the aid of hired labour Rs. 25,000/-

(c) in the case of a dealer not falling in clause (a) or clause (b) Rs. 20,000/-

shall be liable to pay tax under this Act on this taxable turnover"

(the remaining portion of the Section is not relevant for our present purpose).

7. Now the question is whether the sale of machinery or iron and steel defective or the spare parts was a part of the "business" of the assessee who undoubtedly was a dealer under the Act. The authorities under the Act as well as the High Court have come to the conclusion that it was a part of his business because of Section 2(cc)(ii). The correctness of this conclusion is in issue.

8. The corresponding provisions of the Madras General Sales Tax Act, 1959 (Act 1 of 1959) as amended by Act 15 of 1964 are similar to the provisions in the Act referred to earlier. Interpreting a provision identical on Section 2(cc)(ii) of the Act, the Madras High Court in Deputy Commissioner of Commercial Taxes, Coimbatore Division, Coimbatore v. Sri Thirumagal Mills Ltd. (20 STC 287) came to the conclusion that unless a transaction is connected with the trade, that is to say, it has something to do with trade or has the incidence or elements of trade, it will not be within definition of "business." Therein the assessee, a limited liability company manufacturing cotton yarn, in order to provide amenity to its workmen, had opened a fair price shop so that commodities might be made available to the workmen at fair prices. The question that arose for decision was whether that activity of the assessee could be said to be in connection with or incidental or ancillary to the business of the assessee. The High Court answered that question in the negative. We are mentioning this fact to show that in interpreting the words "any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern", the Madras High Court has accepted the contention of the assessee. Therefore in our view the High Court of Rajasthan was in error in refusing to call upon the Board of Revenue to state a case on the question of law arising for consideration. The only thing the High Court had to see was whether a question of law did arise out of the order of the Board of Revenue. There can be no doubt that a fairly important question of law arises from out of that order. The Board of Revenue was not justified in refusing to refer that question to the High Court. Further the High Court erred in summarily dismissing the application made by the assessee. Without a reference from the Board of Revenue the High Court had no jurisdiction to decide that question of law.

9. The questions formulated by the assessee are not only imprecise but they are repetitive as well. The only question of law arising out of the order of the Board of Revenue is whether the sale of the machinery or iron or steel defective or spare parts can be considered as "business" within the meaning of Section 2(cc).

10. In the result these appeals are allowed and the cases remitted to the High Court with the direction that the High Court shall now direct the Board of Revenue to state a case and submit the question of law formulated above for the decision of the High Court. Respondents shall pay the

costs of the Appellant - Hearing fee one set.

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