State of Madhya Pradesh and Others

Vs

Shyama Charan Shukla

Civil Appeal No. 2272 of 1968

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

22.09.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Madhya Pradesh High Court in a writ petition filed by the respondent challenging certain orders relating to assessment of sales tax.

2. The respondent held mineral concessions for extracting manganese ore in respect of mining areas in the districts of Balaghat, Chhindwara, Bhandara and Nagpur in the erstwhile State of Madhya Pradesh i.e., before the reorganisation of the State. Under Section 4 of the Central Provinces & Berar Sales Tax Act, 1947, hereinafter called the "Act of 1947" which was then applicable a dealer was liable to pay tax on all the sales if the gross turnover exceeded the limit specified in Section 4(5) of the Act of 1947 and he was required under Section 8 to get himself registered as a dealer. The material period, in the present case, is from October 1, 1953 to December 26, 1958. This may be split up into two periods; (1) October 1, 1953 to October 31, 1956 (till that date Nagpur and Bhandara districts formed part of the State of Madhya Pradesh) and (2) November 1, 1956 to December 26, 1958 (from November 1, 1956 the aforesaid two districts came to be included in the new State of Maharashtra). According to the appellant the respondent effected sales of manganese ore from the mines during the aforesaid periods without registering himself as a dealer in spite of the act that the turnover exceeded the prescribed limit. A number of notices were issued by the Sales Tax Officer, Chhindwara calling upon the respondent to get himself registered and to show cause why he should not be assessed under Section 11(5) of the Act of 1947 which was subsequently repealed and was replaced by the Madhya Pradesh General Sales Tax Act, 1958, hereinafter called the "Act of 1958." Towards the end of the year 1958 the respondent applied for registration to the Sales Tax Officer, Chhindwara districts. On December 27, 1958 a registration certificate was granted to him. Thereafter the Sales Tax Officer issued a notice to the respondent under Sections 17, 18 and 19 of the Act of 1958. He proceeded to assess the respondent for the period October 1, 1953 to December 26, 1958. The amount assessed came to Rs. 31,580-42 and a penalty of Rs. 5,000/- was imposed. The respondent filed an appeal to the Appellate Assistant Commissioner of Sales Tax. As he did not deposit the past dues of the tax and the penalty demanded of him the appeal was not admitted in view of Section 38(3) of the Act of 1958 or Section 22 of the Act of 1947. On January 23, 1961 the respondent preferred an appeal to the Board of Revenue without depositing the amount of tax required to be deposited under the law. That appeal was also not admitted.

3. On March 28, 1966 the respondent filed a petition under Article 226 of the Constitution challenging the order of assessment dated April 23, 1960 passed by the Sales Tax Officer as also the orders of the appellate authorities. In the writ petition a number of points were raised by the

respondent some of which may be noticed. (1) The Sales Tax Officer Balaghat or Chhindwara had no jurisdiction to assess the writ petitioner to tax in respect of sales which took place from the districts of Bhandara and Nagpur which were part of the State of Maharashtra. As the order of assessment included sales of ore from those districts also it was void. (2) The Sales Tax Officer had no jurisdiction to include the sales in respect of manganese in the taxable turnover when those sales were for export outside India. (3) The Sales Tax Officer had no power to assess the writ petitioner under Section 18 (6) of the Act of 1958 when the liability arose for the period prior to April 1, 1959 when the provisions of the Act of 1947 were in force. (4) That the assessments were barred by time. (5) By virtue of Section 78 of the States Reorganisation Act, 1956, the State of Madhya Pradesh had no jurisdiction to recover the amount of tax in respect of sales prior to November 1, 1956 which had been completed at Nagpur which was included in the State of Maharashtra with effect from November 1, 1956; and (6) the Appellate Assistant Commissioner and the Board of Revenue were in error in not entertaining the appeals on the ground that the amount of tax assessed had not been deposited.

4. The State contested the writ petition and controverted the points raised therein by the writ petitioner. It also raised certain objections and contentions. The High Court held that the notices that were issued by the sales tax authorities were within limitation. But without deciding the other points which had been raised in the writ petition the High Court disposed of the whole matter by referring to Section 78 of the States Reorganisation Act, 1956. That section is in the following terms :

> "The right to recover arrears of any tax or duty on property, including arrears of land revenue shall belong to the successor State in which the property is situated and the right to recover arrears of any other tax or duty shall belong to the successor State in whose territories the place of assessment of that tax or duty is included."

It was urged on behalf of the assessee before the High Court that after the reorganisation of States, the Sales Tax Officer, Balaghat, had no jurisdiction to assess the sales tax in respect of the sales from the mines in the Nagpur and Bhandara districts which no longer formed part of the State of Madhya Pradesh and as no separate turnover was determined for the different areas the order of assessment in its entirety was liable to be quashed. On behalf of the State the argument raised was that the expression "right to recover arrears of any tax or duty" covered not only tax which had already been assessed but also all those taxes which became due but remained to be assessed. This argument was not accepted by the High Court and was disposed of in the following manner :

> "Before the assessment proceedings are completed and the final amount due is determined it cannot be said that any particular amount of tax is due against the assessee. So long as there is no such determination and no demand for payment of the tax is raised, it cannot be said that the assessee is in arrears of any taxes. This is so even where the assessee is required to pay the tax amount as per his own determination along with the returns submitted by him."

In the opinion of the High Court under Section 78 the place of assessment of the tax must be the place which was included in the territories of the successor State. So long as the assessee was not registered as a dealer with reference to any particular place of business it could not be said that Katangjhiri in Balaghat district was the place of business with respect to the ore extracted from the mines in Nagpur and Bhandara districts. Registration certificate granted to the assessee in 1958 after the reorganisation of the States in which the place of business was shown at Katangjhiri could not be made use of as that certificate could have no relation to Nagpur and Bhandara districts which were

no longer within the State of Madhya Pradesh on that date. Therefore the Sales Tax Officer, Balaghat, had no jurisdiction to assess the tax with respect to sales effected from the mines in Nagpur and Bhandara districts. As the assessment order was a composite order it was liable to be quashed as a whole.

5. Part VII of the States Reorganisation Act, 1956 relates to apportionment of assets and liabilities of certain Part A and Part B States, Section 76 deals with land and goods, Section 77 with treasury and bank balances and Section 78 with arrears of taxes. It is unnecessary to refer to other sections in the Chapter except Sections 83 and 91. Section 83 provides, inter alia, that the liability of an existing State to refund any tax or duty other than that on property ..... collected in excess shall be the liability of the successor State in whose territories the place of assessment of that tax or duty is included. Section 91 is the residuary provision. According to it the burden or benefit of assets and liabilities of an existing State not dealt with in the foregoing provisions of Part VII has to pass in the manner indicated in clauses (a) and (b). Thus so far as taxes are concerned Sections 78 and 83 indicate that when the question is of any tax or duty other than that on property the right has been conferred and the liability imposed, in case of refund, on the successor State in whose territories the place of assessment of that tax or duty is included. Part VII in the States Reorganisation Act was intended to effectuate apportionment of assets and liabilities between the existing State and the successor State. "Existing State" was defined by Section 2(g) to mean a State specified in the first schedule to the Constitution at the commencement of Act of 1956. A "successor State" was defined by Section 2(o) to mean in relation to an existing State that State to which the whole or any part of the territories of that existing State was transferred by the provisions of Part II. It is difficult to give a narrow meaning to the word "arrears" in Section 78 in the manner done by the High Court. If the view of the High Court is to be accepted arrears of tax can refer to only that amount of tax which has been quantified after a proper assessment. This would lead to the result that where there has been no quantification or assessment order the position would be wholly uncertain and it would not be possible to say which State would be entitled to realise those taxes or duties. In other words, in the present case since the tax liability had not been determined or quantified there would be no arrears of tax and Section 78 will be inapplicable. In our judgment arrears should be given their proper meaning as understood in the ordinary sense of that word. According to the Webster's New International Dictionary, "arrears" means among other things "that which is behind in payment or which remains unpaid though due." The example given is of arrears of rent, wages or taxes. In Stroud's Judicial Dictionary, third edition, it has been stated that the word "arrears" presupposes a time fixed for payment of a sum of money and the lapse of time thereafter without payment." It is a part of the general scheme of all sales tax laws that taxes become due the moment a dealer makes either purchases or sales which are subject to taxation and the obligation to pay the tax arises. Although the tax liability which comes into existence cannot be enforced till the quantification is effected by assessment proceedings the liability for payment of tax is independent of the assessment : (See Kedarnath Jute Mfg., Co., Ltd. v. Commissioner of Income Tax, Central Calcutta). ((1972) 3 SCC 252 : (1972) 1 SCR 277) We have no doubt that the word "arrears" in respect of tax has been used in the sense of dues or what has become due by way of tax and that does not depend on assessment proceedings or quantification of the amount. We do not consider that the amounts due by way of tax are covered by the residuary provisions i.e., Section 91 of the Act of 1956.

6. The High Court has disposed of the matter mainly of the interpretation of Section 78 of the Act of 1956 with which we are unable to agree. For these reasons the judgment of the High Court is set aside and the matter is remanded to it to redecide the same and while doing so all the material points that arise for determination will also have to be decided by it.

7. The appeal is allowed accordingly but there will be no order as to costs.

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