

M/S. McDowell and Co. Ltd.

Vs

The Sales Tax Officer, Sherthallay

Civil Appeal No. 1955 of 1969

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

22.09.1971

JUDGMENT

HEGDE, J. -

1. The appellant, a Limited Company was a registered dealer under the Central Sales Tax Act, 1956 (in brief the Act). It was a manufacturer as well as a dealer in liquor. It was selling liquor to dealers in Pondicherry, Karakkal and Goa. For the year 1962-63, its total turnover of sales to places outside the State of Kerala, the State in which the appellant's registered office is situate, was for Rs. 8,28,859/40 P. Out of this the value of the liquor sold to Goa after January 21, 1963 was Rs. 22,622/50 P. and the value of the liquor sold to Pondicherry became Union Territory with effect from August 16, 1962 as a result of the Constitution (Fourteenth Amendment) Act, 1962. and Goa became Union Territory with effect from January 20, 1961 as a result of Constitution (Twelfth Amendment) Act, 1962. The Act was brought into force in Goa with effect from January 21, 1963 and in Pondicherry from June 1, 1963.

2. Section 8 of the Act prescribes rates of tax on inter-State trade. The rate of tax on the sale of goods of the description mention in sub-section (3) of that section to a registered dealer was 1 per cent of the turnover during the relevant year. Sub-section (2) of that section as it stood during the relevant period provided that the rate of tax for sale of goods other than the declared goods and those which did not fall under sub-section (1) was seven per cent or the rate applicable to such sale of goods under the State's Sales Tax law whichever was higher. During the relevant year, the rate of tax under the State law on the sale of liquor was 40 per cent of the turnover. Sub-section 3(b) of that section provides :

"The goods referred to in clause (b) of sub-section (1)(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power."

Sub-section (4) provides that the provisions of sub-section (1) relating to lower rate shall not apply unless the dealer selling the goods furnishes a declaration in the prescribed form that is the 'C' form in the prescribed manner. Sub-section (5) says :

"Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the

Official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sale by him from any such place of business of any such goods in the course of inter-State trade or commerce or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification."

3. In the exercise of the powers conferred by Section 8(5) of the Act, the State Government of Kerala issued a notification on December 17, 1962 fixing the tax on sales from that State to dealers in Goa at 1 per cent of the turnover subject to the condition that the seller should produce before the assessing authority within three months from the end of the assessment year, a declaration duly signed by the purchaser in the form appended to the notification. A similar notification was issued on February 23, 1963 in respect of the sales to dealers in Pondicherry.

4. The appellant produced declarations before the respondent in respect of the sales to dealers in Goa but they were not produced within the time prescribed in the notification. It did not produce any declaration in respect of its sales to dealers in Pondicherry. Hence it did not comply with the conditions laid down in the notifications. The provisions of sub-sections (3) and (4) of Section 8 could not be satisfied in the case of sales to dealers in Pondicherry as the Act had not been extended to that territory during that assessment year and in the case of sales to dealers in Goa as the relevant statutory machinery had not been established. Hence the respondent assessed the appellant at 40 per cent on the turnover relating to sales mentioned earlier.

5. Aggrieved by the assessment orders made against it by the respondent, the appellant moved the High Court of Kerala under Article 226 of the Constitution to quash the assessment order. A learned single judge of the Kerala High Court quashed the assessment order on the sole ground that Goa and Pondicherry were not States. In coming to that conclusion, the learned Judge clearly overlooked the provisions of Article 367 of the Constitution read with Section 3(58) of the Kerala General Clauses Act. The learned single judge did not decide any of the other contentions raised in the writ petition.

6. Aggrieved by the order of the Single Judge, the respondent took up the matter in appeal to a Division Bench of the Kerala High Court. The Division Bench reversed the decision of the learned Single Judge. It repelled the contention of the appellant that Goa and Pondicherry were not States as contemplated by the Act. That contention was not pressed before us.

7. Before the Division Bench, it was contended on behalf of the appellant that the notifications issued under Section 8(5) were invalid as the State Government was not competent to fix a time limit for the production of the prescribed declarations. The High Court rejected that contention. The same contention was repeated before us. In support of that contention reliance was placed on the decision of this Court in *Sales Tax Officer, Ponkunnam v. K. I. Abraham*, (20 STC 367) wherein this Court held that the third proviso to Rule 6(1) of the Central Sales Tax (Kerala) Rules, 1957 which provided that all declaration forms pending submission by dealers on May 2, 1960 shall be submitted not later than February 16, 1961 is ultra vires Section 8(4) read with Section 13(3) and (4) of the Act. This Court held that it was the duty of the dealers to furnish the declarations in form 'C' within reasonable time. In our judgment the High Court rightly held that the said decision has no application to the facts of this case. Therein this Court was considering the declaration required to be produced under Section 8(4). In that case the impugned rule was found to have gone beyond the provisions in Section 8(4). The declarations that the appellant was required to produce were

declarations prescribed by the notifications issued under Section 8(5). Under that section the State Government was empowered to provide for hard cases which may not come within the scope of Section 8 (4). The notifications issued afforded certain concessions to the assesses. They did not restrict the rights of the assesseees. But for those notifications dealers in Kerala who had goods to dealers in Goa and Pondicherry would have had to pay sales tax as provided in the State laws as it was not possible for them to take the benefit of Section 8(4) for the reasons already mentioned. Section 8(5) specifically empowered the State Governments to grant any concession "subject to such conditions as it may think fit to impose." The appellant does not challenge the vires of Section 8(5). If the notifications in question are struck down, the appellant will get no benefit. He will have still to pay tax under the State law.

8. The contention that in view of the fact that the Act had not been extended to Pondicherry at the relevant time, compliance with the provisions of the Act in the case of sales to dealers in that place was impossible and consequently the dealers in Kerala cannot be penalised for sales admittedly in the course in inter-State trade has no basis in law. The rate of tax fixed under sub-section (1) of Section 8 applied only to sale of goods of the description referred to in sub-section (3) to a registered dealer. In the case of sales which did not fall under sub-section (1), tax was payable at the rates prescribed in sub-section (2). Quite clearly sales to dealers in Pondicherry did not fall under sub-section (2). It is true that difficulty had been created because of the fact that the Act was not extended to Pondicherry but such a difficulty confers no rights on the dealers. But then, the State of Kerala tried to get over that difficulty by issuing notifications under Section 8(5). The appellant did not take the benefit afforded by those notifications. Hence he has only to blame himself.

9. In the case of the sales to dealers in Goa, no doubt the appellant did produce the declarations in the prescribed form but those declarations were not produced within the time prescribed. The notifications issued prescribed that the declarations in question should be produced within the time prescribed therein. We have already held that those notifications were valid notifications. The appellant has suffered because of its own latches.

10. We see no merit in any of the contentions advanced on behalf of the appellant.

11. The appeal, therefore, fails and the same is dismissed with costs.

</html