

State of U.P.

Vs

Dy.Dir. Meakin Breweries Ltd.

Civil Appeals Nos. 1655 and 1656 of 1970

(K.S. Hegde, P. Jagmohan Reddy, H.R. Khanna JJ)

08.03.1973

JUDGEMENT

HEDGE, J. -

1. These are appeals by special leave. They are related to penalty proceeding. The assessee. M/s. Dyer Meakin Breweries Ltd. is carrying on business of manufacture and sale of wines, beer and fruit juices, etc., at Ghaziabad. The assessee was registered as a dealer under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act") at Ghaziabad. During the assessment years 1958-59 and 1959-60, the assessee submitted its sales tax returns to the Sales Tax Officer at Ghaziabad and it was assessed by that officer. Subsequently, the Sales Tax Officer, Ghaziabad, came to know that the assessee had misused some of the 'C' forms, issued to it. According to his information, the assessee, by misusing the 'C' forms, had purchased goods worth Rs. 11,754.62 in the assessment year 1958-59 and goods worth Rs. 2,68,242.38 in the assessment year 1959-60. Hence, the Sales Tax Officer, Ghaziabad, issued to the assessee a notice on January 8, 1960, calling upon it to show cause why he should not impose penalty on it under section 10A of the Act. The assessee did not give any explanation. Sometime thereafter, the assessee made an application praying for condonation of its default alleging that the defaults were committed due to ignorance of law. The Sales Tax Officer did not accept that explanation. The Sales Tax Officer, Ghaziabad, again issued a notice to the assessee on October 31, 1960 requiring it to show cause why it should not be prosecuted under section 10(b) of the Act. Thereupon, the assessee submitted an application offering to compound the offence for a sum of Rs. 7,000. That offer was not accepted. Subsequently, on January 23, 1961, the Sales Tax Officer again called upon the assessee to show cause why penalty should not be imposed on it under section 10A. After examination the representation made by the assessee, the Sales Tax Officer imposed on the assessee a penalty of Rs. 1,000 in respect of the unlawful purchases made by it during the assessment year 1958-59, and a sum of Rs. 23,000 in respect of the unlawful purchases made by it during the assessment year 1959-60. On appeal, the Assistant Commissioner (Judicial) reduced the penalty in respect of the assessment year 1958-59, to Rs. 750 and in respect of the assessment year 1959-60 to Rs. 17,000. Thereafter, the assessee took up the matter in revision. The revisional authority dismissed the assessee's appeal in respect of the assessment year 1958-59, but reduced the penalty from Rs. 17,000 to Rs. 15,000 in respect of the assessment year 1959-60. Thereafter, at the instance of the assessee, the revisional authority submitted the following questions to the High Court under section 11(1) of the U.P. Sales Tax Act :

"(1) Whether on the facts and circumstances of the case, the Sales Tax Officer Ghaziabad, being not seized of the matter at the time of making the penalty order, the jurisdiction having been transferred to Lucknow Circle, was right and just in law in initiating the penalty proceedings and imposing the fine ?

(2) Whether on the facts and circumstances of the case, the Additional Revising Authority, Sales Tax, Meerut Range, was justified in holding that the applicants made the representation with a guilty mind fraudulently and falsely, with the full knowledge that the objected goods purchased were not covered by the registration certificate ?

(3) If the answer to question No. (2) is in the negative, whether the imposition of penalty under section 10(b) of the Central Sales Tax Act was justified and right in law ?"

2. The High Court answer the first question is favour of the assessee. It came to the conclusion that the Sales Tax Officer, Ghaziabad, had no jurisdiction to initiate penalty proceedings against the assessee, as by the time he made his order, the jurisdiction over the assessee had been transferred to the Sales Tax Officer, Lucknow. Having answered the first question in favour of the assessee, the High Court thought it unnecessary to answer the remaining two questions.

3. The only question that we have to decide is whether the High Court was justified in coming to the conclusion that the Sales Tax Officer, Ghaziabad, had no jurisdiction to impose penalty on the assessee. As mentioned earlier, the assessee was registered as a dealer before the Sales Tax Officer, Ghaziabad. The assessee had submitted his sales tax returns for the assessment years 1958-59 and 1959-60 to Sales Tax Officer, Ghaziabad. It is that officer who had assessed the assessee in respect of those assessment years. The validity of those assessments have not been questioned at any stage. The registration of the assessee was transferred from Ghaziabad to Lucknow only on March 28, 1960. Till that date, the assessee continued to be registered as a dealer in the officer of the Sales Tax Officer, Ghaziabad. The penalty proceedings had been initiated on January 8, 1960, i.e. long before the assessee's registration was transferred from the Sales Tax Officer, Ghaziabad, to the Sales Tax Officer, Lucknow. The High Court came to the conclusion that when the penalty was actually imposed on the assessee, the Sales Tax Officer, Ghaziabad, had no jurisdiction over the assessee, and hence the levy made was invalid. We shall presently examine the correctness of that conclusion. But, before doing so, it would be convenient to dispose of a new contention advanced by Mr. Singh the learned counsel for the assessee. Mr. Singh contended that the registration of the assessee as a dealer before the Sales Tax Officer, Ghaziabad, was an invalid registration as the U.P. Sales Tax Act as well as the Central Sales Tax Act did not permit double registration of the same assessee. According to him, the assessee's head office was at all times at Lucknow. This is an entirely a new contention. No such contention appears to have been taken either before the authorities under the Act or before the High Court. On the basis of the material on record it is not possible to come to a firm conclusion that the same assessee had been registered at two places. Further, there is no material before us to show that during the relevant assessment years the assessee's head office was at Lucknow. There are essentially questions of fact. We cannot go into those questions at this stage. Hence, we do not propose to go into the contention that the assessee's registration at Ghaziabad was invalid. We have to proceed on the basis that the assessee was properly registered as a dealer at Ghaziabad. If that was not so, the assessee would not have applied to the Sales Tax Officer, Ghaziabad, for registration; nor would it have submitted its sales tax returns to that officer. As mentioned earlier, the sales tax assessments for the years 1958-60 were not challenged as being unauthorised.

"10. If any person -

# (a) ..... (b) being a registered dealer, falsely represents when purchasing

any class of goods that goods of such class are covered by his certificate of registration; or (c) ..... (d) ..... (e) ..... (f) .....##

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues."

Section 10-A (1) says;

"If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10. The authority who granted to him or, as the case may be, is competent to grant him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose, upon him by way of penalty a sum not exceeding one-and-a-half times the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed :

Provided that no prosecution for an offence under section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

5. There is no dispute that authority who granted the certificate of registration was the Sales Tax Officer, Ghaziabad. Therefore, prima facie, he was competent to levy penalty on the assessee. But it was contended on behalf of the assessee that on March 28, 1960, the registration before the Sales Tax Officer, Ghaziabad, stood cancelled and thereafter the assess was registered before the Sales Tax Officer, Lucknow. That being so, the Sales Tax Officer, Ghaziabad, had no jurisdiction to levy penalty on the assessee. This contention overlooks the language of section 10-A. That section definitely says that the authority who granted the certificate of registration to an assessee is one of the authorities competent to levy penalty. Undoubtedly, the Sales Tax Officer Ghaziabad, was the authority who granted the certificate of registration to the assessee and that certificate was in force during the assessment years 1958-59 and 1959- 60. Even though after March 28, 1960, he ceased to be the authority competent to grant certificate of registration to the assessee, he still had the competence to levy penalty on the assessee in view of the fact that it was he who had granted the certificate of registration to the assessee. In this case, we are dealing with the penalty relating to offences committed during the assessment years 1958-59 and 1959-60. In fact the levy of penalty is one form of levying tax. If the Sales Tax Officer was competent to levy sales tax on the assessee in respect of those assessment years, he was equally competent to levy penalty on the assessee in respect of the offences committed during those years. In our opinion, the High Court did not properly appreciate the legal position in this case. The High Court was wrong in thinking that the proceedings initiated on January 8, 1960, stood terminated as a result of the subsequent notices issued by the Sales Tax Officer. The notices issued by him are not statutory notices. Under section 10-A of the Act, the Sales Tax Officer was only required to give reasonable opportunity to the assessee to show cause why penalty should not be imposed on him.

6. In the result, we allow these appeals, set aside the order of the High Court and remand the case to the High Court for answering the remaining questions cost of these appeals will be costs in the cause.

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