M/S. Karam Chand Thapar & Bros. (Coal Sales) Limited

Vs

State of Uttar Pradesh and Another

Civil Appeal Nos. 928 and 929 of 1975

(A.C. Gupta, Jaswant Singh JJ)

21.07.1976

JUDGMENT

GUPTA, J. -

1. The appellant in Civil Appeal 928 of 1975, M/s. Karam Chand Thapar and Brothers, is a limited company incorporated under the Companies Act, (referred to hereinafter as the Company), and the six branches of the company at Allahabad, Moradabad, Kanpur, Varanasi, Gorakhpur and Lucknow are the appellants in Civil Appeal 929 of 1975. The company carries on business as coal agent and is registered under the Uttar Pradesh Sales Tax Act, 1948 and the Central Sales Tax Act, 1956 with the Sales Tax Officer at Moradabad in Uttar Pradesh. We shall refer to these two statutes as the U.P. Act and the Central Act for the sake of brevity. The company used to arrange supply of coal from collieries situate in West Bengal and Bihar to consumers in Uttar Pradesh. The collieries used to send the coal by rail and the railway receipts were prepared either in the name of the company or in the name of the consumer in Uttar Pradesh on whose behalf the order for supply of coal was placed. The collieries sent the bills and invoices in respect of the coal dispatched to Uttar Pradesh to the company's head office in Calcutta; the company forwarded the railway receipts to the consumers in cases where the receipts were in the names of the consumers and endorsed the receipts that were in the company's name in favour of the consumers for whom the coal had been despatched. These two appeals, brought on certificates of fitness granted by the Allahabad High Court, arise out of two writ petitions filed in the High Court respectively by the company and its aforesaid branches. The petition filed by the company, leading to Civil Appeal 928, is directed against an order made under Section 22 of the U.P. Act giving rise to the question whether Section 9(1) of the Central Act was applicable to the case enabling the State of Uttar Pradesh to levy and collect Central sales tax in respect of subsequent sales of coal effected by the company to consumers in Uttar Pradesh by endorsement of the documents of title; in the other writ petition, filed by the company's six branches, the applicability of Section 9(1) of the Central Act was one of the points raised in the High Court, but this was the only point urged before us in Civil Appeal 929. The assessment year in question in Civil Appeal 928 is 1966-67, and that in Civil appeal 929 is 1969-70. As the company's appeal covers the question involved in the other case and raises two additional questions, we shall state only the facts of Civil Appeal 928 to indicate how these questions arise.

2. In the assessment year 1966-67, the company filed quarterly returns showing its turnover of coal in two categories :

> (a) turnover in cases where the railway receipts had been prepared in the names of the consumers amounting to Rs. 30,07,439.02 p.; and

(b) turnover in cases where the railway receipts had been prepared in the name of the company but subsequently endorsed in favour of the consumers in Uttar Pradesh amounting to Rs. 5,59,172.32 p.

The dispute in the case relates to the amount of Rs. 5,59,172.32p. which according to the company could not be taxed in the State of Uttar Pradesh. Before we proceed further, it would be convenient to set out the relevant provisions of the two Acts. Taking the Central Act first, Section 2(c) defines "declared goods" as the goods declared under Section 14 to be of special importance in inter-State trade or commerce. Section 14 which declares certain goods to be of special importance in inter-State trade or commerce mentions coal as one of them. Under Section 3 a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce if the sale or purchase, (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. The sales we are concerned with in this case were of this second type. Sub-section (1) of Section 6 provides that subject to the other provisions of the Act, every dealer shall be liable to pay tax under this Act on sales of goods effected by him in the course of inter-State trade or commerce. Sub-section (2) of Section 6 states that not-withstanding what is provided in sub-section (1), any subsequent sale of goods effected by a transfer of documents of title to the goods, (A) to the Government, or (B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act. There are two provisos to this sub-section, but it is not necessary to refer to them. Section 7(1) requires every dealer liable to pay tax under this Act to apply for registration. Sub-section (3) of Section 7 provides that if the application is in order, the prescribed authority shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purpose of sub-section (1) of Section 8. Rule 3 of the Central Sales Tax (Registration and Turnover) Rules, 1957, states that an application for registration under Section 7 shall be made in Form A, and Form A requires the purpose or purposes for which the goods or classes of goods are purchased by the dealer in the course of inter-State trade or commerce to be specified; as would appear from the form, 'resale' is one such purpose. Rule 5(1) of the Rules provides that the certificate of registration must be in Form B. Section 8(1) provides that every dealer who in the course of inter-State trade or commerce, (a) sells to the Government any goods; or (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) of this section, shall be liable to pay tax under this Act at the rate of three per cent of his turnover. Sub-section (2) of Section 8 state that the tax payable by any dealer on his turnover relating to the sale of goods in the course of inter-State trade or commerce which does not fall within sub-section (1) shall be - (a) in the case of declared goods, at the rate applicable to the sale or purchase of such goods inside the appropriate State, and (b) in the case of goods other than declared goods, at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher. The goods referred to in clause (b) of sub-section (1) are specified in sub-section (3) of this section as 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. Sub-section (4) of Section 8 says that the

provisions of sub-section (1) shall not apply to any sale in the course of inter State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner - (a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority;

Rule 12 (1) of the Rules state inter alia that the declaration referred to in sub-section (4) of Section 8 shall be in Form C. Clause (b) of sub-section (4) is not relevant to

the present purpose. Section 9(1) reads :

> 9. (1) Levy and collection of tax and penalties. - The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub-section (2), in the State from which the movement of the goods commenced :
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> Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to the first sale in respect of the same goods, the tax shall, where such sale does not fail within sub-section (2) of section 6, be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of Section 8 in connection with the purchase of such goods.

3. The dispute in this case turns on whether the proviso to Section 9(1) is applicable to the case. Reference may also be made to Section 15 which provides the restrictions and conditions in regard to the tax on sale or purchase of declared goods within a State. The tax on sale or purchase of such goods inside the State is not to exceed three per cent of the price thereof, and such tax is not to be levied at more than one stage.

4. The only provision of the U.P. Act which is relevant is Section 22 which is in these terms :

> 22. Rectification of Mistakes. - (1) The assessing, appellate, revising or additional revising authority may, at any time within three years from the date of any order passed by it, rectify any mistake apparent on the record:
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> Provided that no such rectification, which has the effect of enhancing the assessment shall be made unless the authority concerned has given notice to the dealer of his intention to do so and has allowed him a reasonable opportunity of being heard.
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> (2) Where such rectification has the effect of enhancing the assessment, the authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the rules framed thereunder shall apply as if such notice had been served in the first instance.

The Sales Tax Officer had accepted the contention that the turnover amounting to Rs. 5.59,172.32 p. was not taxable in Uttar Pradesh. In taking this view the Sales Tax Officer appears to have proceeded upon the observations in a judgment of the Allahabad High Court in the company's own assessment case for the year 1965-66. However, in several subsequent decisions, the High Court held that in a case where a registered dealer effected a second sale in the course of inter-State trade and commerce, sales tax on the turnover was to be realised in the State where the dealer effecting the sale was registered. In one of these cases, M/s. Singhal & Co. v. State (1973 UP Tax Cases 466), it was pointed out that the earlier decision of the High Court had completely over-looked the proviso to Section 9(1) of the Central Act. The company being admittedly a registered dealer under the Central Act and liable to pay tax under that Act, the Sales Tax Officer thought that there was an apparent error in the order of assessment made on March 27, 1971 exempting the turnover

amounting to Rs. 5,59,172.32 p. which in view of the proviso to Section 9(1) of the Central Act was taxable in Uttar Pradesh. Accordingly, he proposed to rectify the error under Section 22 of the U.P. Act, and on March 31, 1974 he issued a notice to the company requiring it to appear before him on March 25, 1974. In response to the notice a representative of the company appeared, contended against the proposed rectification, and also filed a written objection. The Sales Tax Officer recorded and order on March 26, 1974 overruling the objections and rectified the order of assessment dated March 27, 1971. A copy of the order passed on March 26, 1974 rectifying the mistake in the earlier assessment order was served on the company on March 31, 1974. The company challenged the order dated March 26, 1974 by a writ petition in the Allahabad High Court which was dismissed giving rise to this appeal.

5. Mr. Nariman appearing for the appellants in these appeals pressed the following grounds :

> (1) the proviso to Section 9(1) of the Central Act has no application to goods declared to be of special importance in inter-State sales or commerce under Section 14 of the Central Act;
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> (2) Section 22 of the U.P. Act was not applicable as there was no mistake apparent on the face of the record; and
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> (3) in any event, the order made under Section 22 of the U.P. Act was barred by limitation.

6. The argument that the proviso to sub-section (1) of Section 9 does not apply to declared goods proceeds as follows : sub-section (1)(b) and sub-section 2(a) of Section 8 of the Central Act deal with two different types of goods. Sub-section (1)(b) speaks of goods of the description referred to in sub-section (3), and sub-section (2) relates to declared goods. Sub-section (3) of Section 8 only mentions the goods referred to in sub-section (1)(b) which are goods of the class or classes specified in the certificate of registration of the dealer purchasing the goods as being intended for resale. Sub-section (4) requires a declaration for the purposes of sub-section (1)(b) and as sub-section (1)(b) does not speak of declared goods, the declaration referred to in sub-section (4) would not be necessary in the case of sale or purchase of declared goods.

7. We fail to see any valid distinction between declared goods and other goods for the purpose of the applicability of sub-section (1) of Section 8. The distinction was made by Mr. Nariman inferentially from the Central Sales Tax (Amendment) Act (8 of 1963) which omitted with effect from April 1, 1963, clause (a) from sub-section (b) of Section 8 as it stood prior to that date. Sub-section (3), it may be recalled, specifies the goods referred to in Section 8(1)(b). Prior to April 1, 1963, Section 8(3) listing such goods, stated in clause (a) :

> (a) in the case of declared goods, 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.
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> Clause (b) of Section 8(3) then began with the words : "in the case of goods other than declared goods, are ...". By the same Amendment Act (8 of 1963) the opening words of clause (b), "in the case of goods other than declared goods", were consequentially omitted, also with effect from April 1, 1963. The omission of clause (a) is the basis of the argument that declared goods are altogether outside the purview

of sub-section (3) and, therefore, of sub-section (1) of Section 8, and, as the declaration referred to in sub-section (4) of Section 8 was required where sub-section (1) of the section was applicable, it was not possible for the company to obtain such a declaration.

8. The contention seems to us untenable. Section 9(1) of the Central Act contains a general rule that the tax payable by any dealer under this Act shall be levied and collected in the State from which the movement of the goods commenced. The proviso to Section 9(1) qualifies this rules in the case of a subsequent sale which is not exempt from tax under Section 6(2), and states that the tax on such subsequent sale would be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or could have obtained the form prescribed for the purposes of section 8(4)(a). No exemption under Section 6(2) is claimed in this case. The declaration referred to in Section 8(4)(a) is necessary for the dealer to avail of the benefit of the rate of tax mentioned in Section 8(1). Under Section 7(3) the certificate of registration granted to a dealer has to specify the class or classes of goods for the purposes of Section 8(1). Rule 3 of the Central Sales Tax (Registration and Turnover) Rules, 1957 requires an application for registration under Section 7 to be made in Form A and Form A requires the purpose for which the goods or class of goods are purchased by the dealer to be specified; resale is one of the purposes mentioned in Form A. Thus Section 7(3) makes no distinction between declared goods and other goods; it is impossible to argue therefore that declared goods purchased by a dealer for resale need not be specified in his certificate of registration. Reading sub-section (1) and Sub-section (3) of Section 8 together, it is clear that all sales to a registered dealer other than the Government, whether of declared goods or to other goods, are covered by sub-section (1) of Section 8. Clause (a) was omitted from sub-section (3) of Section 8 by the Amendment Act (8 of 1963) presumably because it was considered unnecessary to retain clause (a) to deal with declared goods when clause (b) apparently covered all goods, both declared and other than declared. The Act and the rules and the prescribed forms make no distinction between declared goods and other goods except for the purpose of the rate of tax. There is no valid reason why the company could not have obtained a declaration in Form C as required by the proviso to Section 9(1). It follows therefore that the order of assessment dated March 27, 1971 was wrong as it held, contrary to the proviso to Section 9(1), that the sales in question were not taxable in the State of Uttar Pradesh where the company was registered as dealer under this Act.

9. Another point sought to be made against the applicability of the proviso to Section 9(1) was this. The proviso refers to the form prescribed for the purpose of Section 8(4)(a) which should contain a declaration duly filled and signed by the registered dealer to whom the goods were sold. It was argued that as the declaration was required only where the sale was to a registered dealer, and as there was no finding in this case that the sales were to registered dealers, the proviso was not attracted. It appears, however, that the company never claimed before the Sale Tax Officer that the sales were not to registered dealers; in the written objection filed before the Sales Tax Officer pursuant to the notice under Section 22 of the U.P. Act, the only ground taken was that no declaration was required to be filed in the case of declared goods. The point was taken for the first time in the writ petitions. We do not think we should allow this question, which is one of fact, to be raised at this stage.

10. The next question is whether this error in the original order of assessment can be called an apparent error within the meaning of Section 22 of the U.P. Act. There is no dispute that an apparent error means a patent mistake; an error which one could point out without any elaborate argument. The order of assessment relating to the assessment year in question, 1966-67, was made on March 27, 1971 by the Sales Tax Officer relying on a judgment of the Allahabad High Court on a writ

petition made by the company questioning the validity of the assessment in respect of the assessment year 1965-66. In the judgment the High Court held, referring to the provisions of Section 9(1) of the Act, that the sales tax authorities in the State of U.P. had no jurisdiction to make any assessment even if there was any inter-State sale which could be liable to tax in the hands of the petitioner company. The only State which could levy tax could be either Bihar or West Bengal. The impugned assessment order passed by the Sales Tax Officer, Moradabad, is therefore clearly without jurisdiction and is liable to be quashed.

In this judgment there is no reference to the proviso to Section 9(1). It appears form the judgment under appeal that the High Court in a number of later decisions held that in view of the tax on a subsequent sale by a registered dealer in the course of inter-State trade or commerce was to be levied and collected in the State where the dealer effecting the subsequent sale was registered. We are of the view that the order of assessment dated March 27, 1971 was apparently erroneous in that it failed to take into consideration the proviso to Section 9(1). It is not that the order dated March 27, 1971 was in accordance with law when it was made but the subsequent decisions of the High Court took a different view of the law. For the reasons we have given above, it was patently erroneous when it was make, but in view of the observation of the High Court in the case relating to the assessment of and earlier year, the Sales Tax Officer felt that he had to dispose of the assessment case for the 1966-67 in the manner he did. The judgment of the High Court which the Sales Tax Officer followed in making the assessment for the year in question did not concern itself with the proviso to Section 9(1).

11. The next, and the last, question is whether the order dated March 22, 1974 rectifying the assessment order made on March 27, 1971 was barred by limitation. Under Section 22(1) of the U.P. Act any mistake apparent on the record may be rectified at any time within three years form the date of the order. It is not disputed that the other requirements of Section 22 have been complied with. The company's representative appeared before the Sales Tax Officer pursuant to the notice served on them on March 25, 1974, and the objections to the proposed rectification were heard. There is no dispute that the order rectifying the mistake was recorded by the Sales Tax Officer on March 26, 1974, and this order was communicated to the appellant on March 31, 1974. According to Mr. Nariman, the order of rectification must be held to have been made on March 31, 1974 when it was communicated to the assessee which was beyond three years from the date of the order of assessment. Mr. Nariman relied on the well-known rule of fairplay that the rights of a party cannot be affected by an order until he has notice of it. In Raja Harish Chandra Rai Singh v. Deputy Land Acquisition Officer ((1962) 1 SCR 676 : AIR 1961 SC 1500), this court considering the meaning of the words "the date of the award"occurring in Section 18 of the Land Acquisition Act, 1894 observed :

> The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way.
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> . . . where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the order must mean either actual or constructive

communication of the said order to the party concerned.

Following this decision, this Court held in a subsequent case under the Indian Forest Act, 1927, Madan Lal v. State of U.P. (1975) 2 SCC 779), that the right of appeal given by section 17 of the Forest Act should be deemed to be the date when the party aggrieved by an order came to know of that order from which an appeal was sought to be preferred. But how have the company's rights been affected in this case ? Section 9 of the U.P. Act gives a right of appeal to "any dealer objecting to any order made by the assessing authority, other than an order mentioned in Section 10-A", within thirty days from the date of service of the copy of the order. In this case the company was not affected by the order under Section 22 being communicated to it after the expiry of three years from the date of the order because the limitation for an appeal from that order did not begin to run before the communication of the order. The provisions of Section 9 of the U.P. Act make that clear.

12. The appeals therefore fail and are dismissed. Considering the circumstances, we direct the parties to bear their own costs here own costs here and in the High Court.

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