

PUNJAB AND HARYANA HIGH COURT

Khushi Ram Behari Lal and Co

Vs

The Assessing Authority

(Falshaw, C.J. Harbans Singh, JJ.)

31.12.1963

JUDGMENT

Harbans Singh, J.

1. Facts giving rise to this writ petition which were admitted to a Division Bench in view of the importance of the point involved are briefly as follows : The firm Messrs Khushi Ram Behari Lal carried on a business of commission agents in cotton and foodgrains with its head office at Dhuri and branches at Amritsar and Nabha but did not submit any returns under the Punjab General Sales Tax Act (hereinafter referred to as the Act), inter alia, for the year 1959-60. A notice under Section 11(5) of the Act was issued and the case was first fixed for 1st July, 1960. A writ having been filed by the firm challenging the imposition of purchase tax on cotton, the proceedings had been stayed by the High Court and consequently the case was adjourned by the Assessing Authority sine die. For the decision of the writ petition, the case was fixed for hearing on 30th November, 1961, and a number of adjournments were thereafter sought by the assessee and granted till the case was fixed on 17th February, 1962, on which date the Assessing Authority was informed that the firm stood dissolved as from 8th August, 1961, and that in view of the Full Bench decision of this Court in Jullundur Vegetable Syndicate v. The Punjab State 64 P.L.R. 351, the firm which had been dissolved could not be assessed to any tax. The Assessing Authority distinguished the Full Bench decision, inter alia, on the following grounds:-

1. that because in the Full Bench case the firm had been dissolved "before proceedings of the assessment were initiated", while in the present case even according to the case of the assessee, the firm was dissolved long after the proceedings had been initiated ;
 2. that no intimation under Section 16 of the Act with regard to the dissolution of the firm was given to the appropriate authorities before the proceedings had been started.
2. The Assessing Authority then went into the question of the outturn liable for assessment and

assessed the firm to a tax of Rs. 19,236-32 nP. under the Punjab General Sales Tax Act: (referred to as the Act in this judgment) with regard to the sales within the State and to Rs. 62,277-96 nP. under the Central Sales Tax Act. The present writ petition is directed against this order.

3. The main contention of the learned counsel for the petitioner is that though in the case before the Full Bench, the proceedings were stated to be initiated after the dissolution of the firm, yet the ratio of the decision was that there was no machinery provided in the Act for the assessment of tax on a firm after it had actually been dissolved. He contended that no distinction was made as to whether proceedings had been initiated before or after the dissolution, the crucial matter being lack of any provision in the Act for assessment of a tax on any dealer not in actual existence on the date of assessment.

4. On the other hand, the contention of the learned counsel for the Assessing Authority was that the Full Bench decision referred to above is a binding authority only with regard to the question actually referred to it and he further contended that at places in the judgment, the Full Bench has drawn a distinction between a case where proceedings were initiated before the dissolution of the firm. In paragraph 15 of the judgment, at page 360 of the report, while referring to a decision of the Madras High Court in Deputy Commissioner of Commercial Taxes, Guntur Division, Guntur v. K. Bakthavatsalam Naidu [1955] 6 S.T.C. 657, which had taken the view that a firm even after dissolution could be assessed, observed as follows:-

It does not appear from the report of the case that the assessment proceedings had not commenced before the dissolution of the firm, and no argument was addressed to the learned Judges as to the firm not being liable to assessment on account of its having been dissolved before the assessment was commenced or made.

5. Again while similarly distinguishing the case of Bankatlal Badruka v. State of Bombay [1961] 12 S.T.C. 405 it was stated :-

It appears that the assessment proceedings were started long before the dissolution and the learned Judges before whom the matter came by way of a writ petition observed that in those circumstances it could not be said that the officers acted wrongly or without jurisdiction in continuing the assessment proceedings and passing final orders thereon. Both these cases, therefore, do not favour the extreme position taken up by Mr. Doabia, viz., that proceedings for assessment of a partnership firm to sales tax can be commenced after its dissolution, and despite notice of dissolution having been served on the Department even before the issue of a notice as a preliminary to assessment.

6. From the above observations (particularly those underlined by me) it is obvious that Mr.

Justice Capoor, who spoke for the Full Bench, was fully alive to the importance of proceedings having been initiated long before the dissolution and before an intimation of the dissolution is given to the department. I am, therefore, inclined to the view that notwithstanding certain remarks in the judgment which would seem even cover a case of assessment of a dissolved firm even where the proceedings had been initiated before the dissolution, the judgment was meant to lay down the law with regard to the point that was specifically referred to the Bench which was as follows:-

Whether a partnership firm, which is a registered firm under the provisions of the Punjab Sales Tax Act and which was in existence throughout the period for which assessment of sales tax has to be made ceases to be liable to the said assessment by the mere fact that it has dissolved before the proceedings for assessment are initiated.

7. Another point that was sought to be made on behalf of the respondents was that the Full Bench case had no application in view of the change in the definition of the word "dealer". The Full Bench was considering the definition of the word "dealer" as given in Clause (d) of Section 2 of the Act before the same was amended. Before the enactment of Act X of 1954 that definition stood as follows :-

'Dealer' means any person, firm, association or Hindu joint family engaged in the business of selling or supplying goods...in Punjab and includes the Government or its departments and where the main place of business of any such person, firm, association or Hindu joint family is not in the said State, 'dealer' means the manager or other agent of such person, firm, association or Hindu joint family in Punjab in respect of such business...

8. This definition was changed by Act X of 1954 and was substituted by the following : -

'Dealer' means any person including a Department of Government who in the normal course of trade sells any goods that are actually delivered for the purpose of consumption in the State of Punjab, irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, 'dealer' includes the local manager or agent of such person in Punjab in respect of such business.

9. Stress was laid on the omission of the words "firm", "association" or "Hindu joint family" in the opening words of the definition and it was contended that under the existing definition only a natural person or a legal person can be treated as a "dealer" and consequently a firm is not a dealer. The declared intention in making amendment in the definition can be gathered from the Statement of Objects and Reasons as published in the Punjab Gazette, Extraordinary, dated the 13th March, 1954, as follows:-

In accordance with the interpretation of Article 286(1)(a) of the Constitution of India made by the Supreme Court in their judgment dated the 30th March, 1953, in a case regarding the Bombay State v. The United Motors and Ors. [1953] 4 S.T.C. 133, sales tax is leviable on inter-State transactions. Therefore, the Punjab State Government are empowered to charge sales tax from non-resident dealers who deliver goods into the Punjab for consumption in this State. In order to bring the definition of dealer, as defined in Section 2(d) of the East Punjab General Sales Tax Act, 1948, in conformity with Article 286(1)(a) of the Constitution, the East Punjab General Sales Tax (Second Amendment) Bill, 1954, has been proposed to amend the Act accordingly.

10. Apart from this on a reference to the other provisions of the Act and the rules, it is obvious that a partnership firm can be a registered dealer and the omission of the words does not make any material difference from the previous position. For example Section 18 which was introduced as recently as 22nd March, 1963, talks of "undivided Hindu family, firm or other association of persons" : [See Sub-section (1) of Section 18]. Rule 4 of the East Punjab General Sales Tax Rules, 1949 (hereinafter called the rules), some clauses of which were amended as late as 28th June, 1955, provides that an application by a dealer shall, inter alia, specify "the names and addresses of the partners of the firm or the names and addresses of persons having any interest in the business together with the age....In case of a Hindu joint family business it would be enough to give the particulars of the karta or the manager." [See Clause (viii) of Rule 4]. Similarly Clause (3) of Rule 8 particularly refers to any change in the partnership. I am, therefore, of the view that mere omission of the words "firm" etc. from the opening portion of the definition of the word "dealer" brings about no change in the law.

11. According to the Full Bench decision as well as according to all other High Courts, while interpreting the provisions similar to those of the Punjab Sales Tax Act, a firm which is registered as a dealer is treated for the purpose of the assessment to sales tax as a separate entity. The following facts are admitted in the present case:-

1. that the firm was in existence and actually did business during the period 1959-60 for which assessment has been made;
2. that proceedings were initiated long before the alleged date of dissolution of the firm ; and
3. that no formal intimation as required under Section 16 of the Act relating to the dissolution of the firm was given to the prescribed authority and intimation of the dissolution was given only by the counsel during one of the hearings before the final assessment order was passed.

12. The question that arises for determination is whether in the above circumstances the Assessing Authority had jurisdiction to assess the firm. It may be mentioned here that the

questions as to who is liable for the payment of the tax so assessed, and whether the assets of the firm are liable for the payment in the first instance are not before us.

13. I would like to refer to some of the relevant provisions in the Act and the rules before dealing with this question. Section 4 explains in what circumstances a dealer would be liable to pay tax under the Act. Section 5 is the charging section according to which "there shall be levied on the taxable turnover every year of a dealer a tax at such rate...." Section 7 provides for the registration of certain dealers. According to this section a dealer who is liable to pay tax has to get himself registered and possess a registration certificate for which he is to make an application in the prescribed manner to the "prescribed authority" which authority on being satisfied will "register the applicant and grant him a certificate of registration in the prescribed form." Sub-section (4) provides as follows:-

The Commissioner may from time to time amend or cancel any certificate of registration in accordance with information furnished under Section 16 or otherwise received.

14. Under Sub-section (3) of Section 10 every registered dealer has to furnish returns of the sales etc. by the dates prescribed by the authority. Section 16 runs as under :-

16. If any dealer to whom the provisions of Sub-section (3) of Section 10 apply -

(a) sells or otherwise disposes of his business or any place of business, or

(b) discontinues or transfers his business or changes his place of business or opens a new place of business, or

(c) changes the name, constitution or nature of his business, or

(d) wants to make any change in the class or classes of goods specified in his certificate of registration for use in the manufacture of any goods for sale or in the execution of any contract, he shall within the prescribed time, inform the prescribed authority accordingly ; and if any such dealer dies, his legal representative shall, in like manner, inform the said authority.

15. The rules which have any bearing on the question of intimation of changes to be given under Section 4 are Rules 8(3), 10(1), 12(1), 13(1) and 56 which are, as follows :-

Rule 8. (1) * * * *

(2) * * * *

(3) Any change in the partnership shall be notified within 30 days of such a change to the appropriate Assessing Authority by the dealer registered and the registration certificate shall be got amended accordingly.

10. (1) When any registered dealer makes any report as required by Section 16, he shall within 30 days of the contingency arising send his registration certificate to the appropriate Assessing Authority, together with the requisite information. On receipt of this information the Commissioner may amend, replace or cancel the registration certificate.

12. (1) When the appropriate Assessing Authority is satisfied that ...for any other reason the certificate of registration requires cancellation, he shall forward to the Commissioner...the registration certificate of the dealer and the cancellation shall come into effect from such date as may be specified in the order made under Sub-rule (1) of Rule 13 and the liability of the dealer to pay tax under Sub-section (3) of Section 4 shall cease with effect from the said date.

13. (1) On receipt of the list forwarded under Sub-rule (2) of Rule 12 the Commissioner shall, in the case where the list is forwarded by the last day of June, make an order that the registration of all dealers mentioned in such list shall be deemed to have been cancelled with effect from the last day of September next following, and in the case where the list is forwarded by the last day of December, make an order that the registration of every dealer made in such list shall be deemed to have been cancelled with effect from the last day of March next following.

56. (1) If the information referred to in Section 16 relates to a branch of any business located outside the jurisdiction of any Assessing Authority, a copy of the information and of any orders passed thereon shall be forwarded to the appropriate Assessing Authority within whose jurisdiction the business is situated.

(2) When any registered dealer dies, his legal representative shall inform the appropriate Assessing Authority within sixty days from the death of the dealer.

16. From the above it is clear that the liabilities of a firm which is a registered dealer continued till such time as its registration is cancelled in pursuance of the information of discontinuance or dissolution etc. given by the firm. Till such time as the information aforesaid is given in accordance with Section 16, the dissolution of the firm cannot affect its liability to be so assessed. It was, therefore, argued that if proceedings are initiated before such an intimation of

the dissolution of the firm is given, the proceedings can be continued and assessment can be made notwithstanding the fact that the firm had actually dissolved. In any case, where the firm was in fact in existence when the proceedings were initiated the proceedings cannot come to an abrupt end simply because of a subsequent, act of the partners of the firm, agreeing to dissolve the same. Support for this was sought to be taken from a number of authorities which have been noticed by the Full Bench case of Vegetable Syndicate 64 P.L.R. 351 referred to above but were distinguished as stated above.

17. The Deputy Commissioner of Commercial Taxes v. Bakthavatsalam Naidu([1955] 6 S.T.C. 657) is a case decided by a Bench of the Andhra Pradesh High Court wherein it was observed as follows:-

Under the Madras General Sales Tax Act a firm is a 'dealer' and, therefore, the respect of a transaction done by a firm which was in existence during the assessment year but was dissolved subsequently, it is the firm that is to be assessed to tax and not any of its partners in their individual capacity.

18. In that case a partner of the dissolved firm was actually assessed and recovery of the amount was sought to be made from him. The Sales Tax Tribunal ultimately decided by a majority decision that it was the firm alone which could be assessed and not the individual partner and this decision was upheld. In Jagat Behari Tandon v. Sales Tax Officer [1957] 8 S.T.C. 459, a Bench of the Allahabad High Court, however, took a different view and came to the conclusion that:-

An assessment order cannot be made under the U.P. Sales Tax Act, 1948, on a firm after it is dissolved and has discontinued business on the ground that the firm as a unit of assessment has ceased to exist.

19. A Bench of the Madhya Pradesh High Court of which Chief Justice Hidayatullah (as he then was) was a member in Lalji v. Assistant Commissioner, Sales Tax [1958] 9 S.T.C. 571, noticed both these cases and preferred to follow the Andhra Pradesh case. There, a firm was dissolved on 13th September, 1952, for the years ending July, 1950, 1951 and 1952. The firm was assessed on various dates after 31st May, 1956, i.e., after the date of the dissolution of the firm. Notices of demand, however, were addressed to one of the partners. Holding that the assessment in fact was on the firm, it was held that the same was not open to challenge. With regard to the mode of recovery, however, it was observed that:-

Since the department could only assess the firm, the arrears of tax are, in the first instance, recoverable from its assets.

20. Before a learned single Judge of the Madras High Court in *R. Ponnuswami Gramani v. Collector of Chingleput District* [1960] 11 S.T.C. 80, a number of arguments were addressed including the following :-

1. that under the Madras General Sales Tax Act, 1939, a firm is a taxable entity;
2. that when a firm is dissolved, it ceases to exist as a taxable-entity and that in similar circumstances under the Income-tax Act it had been held that a firm cannot be an assessee after its dissolution and this was so till a provision was made by insertion of Section 44 in the Income-tax Act; and
3. that no such provision has been made in the General Sales Tax Act.

21. The decision of the Allahabad High Court in *Jagat Behari Tandon's case*¹ was also noticed and so was the cases from the Andhra Pradesh High Court noted above as well as an unreported decision, Writ Petition No. 397 of 1954 by Mr. Justice Rajagopalan of the Madras High Court, and the following observations of Mr. Justice Rajagopalan were quoted with approval :-

It is no doubt true that neither the Act nor the rules framed thereunder make any separate provision for assessing the turnover of the dissolved firm or for the recovery of the taxes due by a dissolved firm, which was a dealer as defined by Section 2(b) of the Act up to the date of its dissolution. To that extent it differs from the Income-tax Act. That, however, in my opinion, is not enough to sustain the contention of the learned counsel for the petitioner, that the partners of the dissolved firm are not in any way liable for the sales tax due by the dissolved firm....Though there is no specific provision in the Act or the rules thereunder for collection of arrears of tax due from a dissolved firm, the liability of the petitioner as a partner of the dissolved firm to pay whatever was lawfully due by the partnership of which he was a partner can be enforced, if it is established that there was default within the meaning of Section 10. The arrears could be recovered from him independent of his possession of any of the assets of the dissolved partnership, as if the arrears of tax constituted arrears of land revenue.

22. The learned Judge, differing from the Allahabad decision, followed these and held the assessment of a dissolved firm for the period during which it had been working as valid. *Jai Dayal v. Deputy Commercial Tax Officer* [1960] 11 S.T.C. 782 is another decision of the Andhra Pradesh High Court at Hyderabad. In that case, a notice was issued to a firm requiring the petitioner to appear in person and to produce accounts for the years 1954-55 and 1955-56 on 9th November, 1957. According to the petitioner, the firm had dissolved on 18th May, 1956, but no intimation of the dissolution had been given to the Assessing Authority within 30 days of the happening of the event as required by Rule 35 under that Act. After noticing the facts of the case

and the various provisions of the Act it was observed as follows :-

Further, if the dealer is a firm and is dissolved or discontinues its business, the department is entitled to proceed on the basis that it continues to exist and to do business unless and until it is informed about it. The contention urged on behalf of the petitioner that because the firm of which he was a member dissolved, although admittedly such dissolution was not brought to the notice of the authorities, no assessment on the basis of its business can be made even for the period during which it was in existence seems to me unsustainable. It cannot (1) escape the liability by failing to discharge the duty imposed on it by the statutory rules. The assessing authority can proceed on the basis that there was no dissolution....

23. As I have already noticed above, Section 16 imposes a duty on the dealer to give intimation of any change including the change brought about by the dissolution of the firm to the prescribed authority; and that on such intimation having been given the matter is to be referred to the Commissioner who then directs the cancellation of the registration to be effective from the date prescribed and the liability of the dealer comes to an end only from the date of the cancellation of the registration. Admittedly in the present case no intimation had been given in accordance with law even up to the date of assessment when the firm was still a registered dealer. It was held in Lalji's case [1958] 9 S.T.C. 571, that the mere fact that in reply to the notices of demand issued by the Sales Tax Officer, a partner disclosed that the firm was dissolved did not affect the power of the taxing authorities to assess the tax on the firm as a registered dealer in the absence of any action under Section 17 (corresponding to Section 16 of the Punjab Act). It follows therefore that such an intimation given by the counsel for the firm during the assessment proceeding can have no better effect. Admittedly under the Partnership Act a partnership firm is not a legal entity. However, as has been held by the Full Bench in Vegetable Syndicate's case 64 P.L.R. 351 and other cases referred to above, in view of the special provisions of the Act "firm" is treated as having a separate entity and is registered and dealt with as a "dealer" under the Act. The provisions in the rules indicating the date up to which such a "dealer" will continue to be liable to be assessed would also constitute special provisions which would be binding on such a firm.

24. Apart from this, it was contended by the learned counsel for the department that once the proceedings are initiated, there is nothing in the Act which provides that those must come to an abrupt end. It was urged that if the argument of the appellants be accepted as correct, then every firm would escape its liability by going into dissolution soon after the receipt of the notice asking it to produce books of accounts etc. Some time must of necessity elapse between the date of the notice and the final assessment and that can be utilised by the assessee-firm to defraud the department of the tax which is admittedly due. Reference in this connection was made to a recent judgment of the Supreme Court in Ghanshyamdas v. Regional Assistant Commissioner of Sales

Tax [1963] 14 S.T.C. 976, wherein it was observed as follows :-

Assessment proceedings must be held to be pending from the time the said proceedings are initiated until they are terminated by a final order of assessment. Proceedings duly initiated in time can be completed without time-limit.

25. That was a case dealing with the question of the period within which the department could proceed to assess the escaped turnover. The learned counsel tried to utilise the argument in support of his contention that once the proceedings are initiated, then no subsequent event can alter the liability of the dealer to be assessed or the authority of the department to make assessment.

26. In the circumstances of the present case and in view of the authorities on the point, I am inclined to take the view that: -

1. The Full Bench case of Jullundur Vegetable Syndicate 64 P.L.R. 351 has no application to the facts of the present case, and that

2. in view of the facts that no intimation was given about the dissolution of the firm as required under the Act and the rules the firm continued to be liable to be assessed and that in any case proceedings having been initiated long before the actual alleged dissolution, order of assessment could properly be made notwithstanding the subsequent dissolution of the firm.

27. For the foregoing reasons, therefore, I find no force in this petition, dismiss the same and discharge the rule. In the circumstances of the case, there would be no order as to costs.

Falshaw, C.J.

28. I agree.