Ganesh Prasad Dixit vs Commissioner Of Sales Tax, Madhya ... on 3 February, 1969

Equivalent citations: 1969 AIR 1276, 1969 SCR (3) 490, AIR 1969 SUPREME COURT 1276

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, A.N. Grover

PETITIONER:
GANESH PRASAD DIXIT

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX, MADHYA PRADESH

DATE OF JUDGMENT:
03/02/1969

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1969 AIR 1276 1969 SCR (3) 490
1969 SCC (1) 492
CITATOR INFO :
R 1975 SC1871 (27,29)
R 1981 SC1206 (12)
D 1988 SC 997 (10,11)
D 1990 SC 781 (3,5,34)

ACT:
Madhya Pradesh General Sales Tax Act (2 of 1959), ss. 2(d) 7, 18(5) and Madhya Pradesh General Sales Tax Rules, 1959, r. 33-Notice for best judgment assessment-Time given to show cause less than 15 days-No prejudice to tax-payer-If proceedings liable to be set aside-Purchases of building material-Material not resold but used in construction-Building contractor if dealer-Purchase price of building material if liable to purchase-tax.

HEADNOTE:

The appellants were a firm of building contractors and were registered as dealers under the Madhya Pradesh General Sales Tax, 1959. They were purchasing building materials, which were taxable under the Art, and were using them in the course of their business. The Sales-tax Officer served notices upon them under s. 18(5) calling upon them to show cause why best judgment assessment should not be made. The appellants did not offer any explanation for their failure to submit returns of their turnover, and the Sales-tax Officer assessed their turnover in respect of sales as nil and assessed them to Purchase-tax under s. 7 in respect of goods purchased by them for use in their construction business. Rule 33 of the, Madhya Pradesh General Sales Tax Rules, 1959, provides that a notice of assessment under s. 18(5) shall not give, ordinarily, less than 15 days from the date of the service to show cause, but, the notices in the present case did not give the appellants a clear period of 15 days to show cause.

On the questions: (1) Whether the notices were invalid, and therefore, the assessment, on the basis of those notices was bad in law; (2) Whether the appellants were dealers; and (3) Whether the imposition of purchase-tax under s. 7 was in order,

HELD:(1) The terms of r. 33 are not mandatory. Therefore, unless prejudice has resulted to the tax-payer the proceedings are not liable to be set aside. In the instant case it was not the case of the appellants that because of the insufficiency of time they were unable to submit their explanation. Hence, the notice and valid. [492 E-F; 493 B]

M/s. Kajorimal Kalyanmal v. Commissioner of Income-tax, U.P. 3 I.T.C. 451 and Jamna Dhar Potdar v. C.I.T., Punjab, 3 I.T.R. 112, distinguished.

(2)Whether in a particular set of circumstances a person may be said to be a dealer carrying on business in a commodity must depend upon the 'facts of that case and no general test may be applied for determining the question. Merely because the turnover of the appellants in respect of sales was nil they did not cease to be dealers. A person, to be a dealer within the meaning of the Act, need not both purchase and sell goods because, a person who carries on the business of buying is, by the definition of the term in s. 2(d), a dealer. [403 H; 496 F]

State of A.P. v. H. Abdul Bakshi, 15 S.T.C. 644 (&C.) followed.

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L.M.S. Sadak Thamby & Co. v. State of Madras, 14 S.T.C. 753, approved.

(3)By using the expression 'either consumers such goods in the manufacture of the goods for sale or otherwise' in s. 7, the Legislature intended that consumption of goods Tenders

the price paid for their purchase, taxable, if the goods are used in the manufacture of the goods for sale, or if the goods are consumed otherwise. Therefore, under s. 7, purchase tax is Payable. where no sales-tax is payable under s. 6 on the sale price of the good, by a dealer who buys taxable goods in the course of hi% business, and, (a) either consumes such goods in the manufacturer of other goods for sale; or (b) consumes such goods otherwise; or (c) disposes of such goods in any manner other than by way of sale in the State; or (d) despatches them to a place outside the State except as a, direct result of sale or purchase in the course of inter-State trade or commerce. In the present case the assessees were registered as dealers, they had purchased taxable material in the course of their business and had, consumed the materials otherwise than in the manufacture of goods for sale and for a profit motive. Therefore, the purchase price paid by the appellant was taxable. [495 E-G; 496 A-B]
Y.K. S. V. Sangh v. State of Maharashtra, 22 S.T.C. 116, not applicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 940 and 941 of 1966.

Appeals by special leave from the judgments and orders, dated August 31, 1965 of the Madhya Pradesh High Court in Misc. Civil Cases Nos. 321 and 331 of 1964.

M.C. Chagla, B. L. Neema, Anjali K. Varma and J. B. Dadachanji, for the appellant (in both the appeals). I. N. Shroff, for the respondent (in both the appeals). The Judgment of the Court was delivered by Shah, J. In respect of assessment to sales-tax for two accounting periods April 1, 1961 to June 30, 1961 and July 1, 1961 10 September 30, 1961, the Board of Revenue, Madhya Pradesh, referred the following questions to the High Court of Madhya,,. Pradesh for opinion :

> "(1) Whether in the facts and circumstances of the case the notice in Form XVI that was served on the applicant was invalid and therefore the assessment of the applicant on the basis of that notice was bad in law ? (2) Whether in the facts and circumstances of the case the applicant was a dealer during the assessment period under the Act and the imposition of purchase tax on him under s. 7 of the Act was in order The High Court answered the first question in the negative, and the second in the affirmative. These appeals are preferred with special leave granted by this Court.

The appellants are a firm of building contractors and are registered as dealers under the Madhya Pradesh General Sale Tax Act 2 of 1959. The appellants purchased building mate- rials in the two account periods and used the materials in the, ,course of their business. The Sales Tax Officer, Jabalpur Circle, served notices under s. 18(5) of the Act calling upon the appellants to show cause

why "best judgment" assessments should not be made, and by order dated November 30, 1961, he assessed the appellants to tax in respect of goods purchased by the appellants for use in their construction business and imposed a penalty of Rs. 200/'- in each case. Appeals against the ;orders imposing tax and penalty were dismissed by the Assistant Commissioner of Sales Tax and the Board of Revenue.

Rule 33 of the Madhya Pradesh General Sales Tax Rules, 1959, provides that a notice of assessment under s. 18(5) shall be in Form XVI, and ordinarily it shall give not less than 15 days from the date of the service to the assessee to show cause why he "should not be assessed or reassessed to tax and/or to pay penalty". The notices served upon the appellants did not give them a clear period of 15 days to show cause. But we are unable to hold on that account that the notices and the assessments were invalid. We agree with the High Court that the rule is not intended to be "either invariable or rigid", and "unless prejudice has resulted to the tax-payer the proceedings are not liable to be set aside". It is not even suggested that because of the insufficiency of time the appellants were unable to submit their explanation for failure to make their returns of turnover. Two cases on which reliance was placed by counsel for the appellants in support of the plea that the notices were invalid have, in our judgment, no bearing. In Messrs. Kajorimal Kalyanmal v. The Commissioner of Income-tax, U.P.,(1) it was held that a notice under s. 22(2) of the Income-tax Act, 1922, giving the assessee 20 days for filing the return was "entirely illegal". In Jamna Dhar Potdar and Co. Lyallpur v. Commissioner of Income-tax, Punjab(2) it was held, following the judgment in Kajorimal Kalyanmal's case(1) that a notice which does not give to a tax-payer under s. 22(2) of the Income-tax Act, 1922, clear notice for furnishing a return, of thirty days from the date of service is illegal. But these cases were decided under s. 22(2) of the Income-tax Act, 1922, before it was amended by the Income-tax (Amendment) Act 7 of 1939. Under the section as it then stood, it was enacted that the (1) 3 I.T.C. 451.

(2) 3 I.T.R. 112.

Income-tax Officer shall serve a notice upon any person whose total income is in the opinion of the Income-tax Officer of such an amount as to render that person liable to pay income-tax. The section was held to be mandatory. But the terms of r. 33 of the Madhya Pradesh General Sales Tax Rules are plainly not mandatory. The answer given by the High Court on the first question must be accepted. TO appreciate the scope of the enquiry under the, second question, the relevant provisions of the Act may be summarised. By s. 2 (d) of the Act, insofar as it is relevant, the expression "dealer" is defined as meaning, amongst others, "any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise". By s. 4 (2) every dealer is liable to tax in respect of sales or supplies of goods effected in Madhya Pradesh with effect from the date on which his turnover calculated during a period of twelve months immediately preceding such date first exceeds the Emits specified in sub-s. (5). Section 6 provides that the tax payable by a dealer under the Act shall be levied on his taxable turnover relating to the goods specified in Sch. H. Section 7 provides :

> "Every dealer who in the course of his business purchases any taxable goods, in circumstances in which no tax under section 6 is payable on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the

State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under section 6 :

Provided Counsel for the appellants submitted that the appellants were not "dealers" within the meaning of the Act because they did not carry on the business of buying goods, and that in any event, the goods purchased by them for use in their construction business were not liable to tax under s. 7. The appellants are registered dealers under the Madhya Pradesh General Sales Tax Act, 1958 (Act 2 of 1959). It is true that in respect of the periods their, turnover in respect of sales was assessed as "nil". But on that account they did not cease to be registered dealers within the meaning of the Act. A person to be a dealer within the meaning of the Act need not Sup. CI-69-13 both, purchase and. sell goods a person who carries on the business of buying is, by the express, definition of the term in s. 2(d) a "dealer". This Court held in. The State of Andhra Pradesh v. M. Abdul Bakshi and Bros, (1) that it is, not predicted of a dealer that he must carry on the business of buying and selling the same goods. A person who buys goods for consumption in the, process of manufacture of articles to be sold by him is a dealer within the meaning of the Hyderabad General Sales Tax Act 14 of 1950. In H. Abdul Bakshi and Bros's case(1) the assessees sold skins, after tanning hides and skins purchased by them. In the process of tanning, they had to use tanning bark purchased. by them. This Court held that the turnover arising out of the tanning bark purchased by the assessees for consumption in the pro- ces of tanning was liable to tax on the footing that the assessees were carrying on the business of buying goods, even though the goods bought were consumed in the process of tanning. In dealing with the question whether an activity of purchase of goods required for consumption in a manufacturing process may be regarded as a business, the Court observed (at p. 647) :

"A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business' though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the. time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling. and supplying the same commodity. Mere buying for personal% consumption, i.e. without a profit motive, will not make a person I dealer within, the meaning of the Act, but a person who consumes, a com modify bought by him in the course of his trade, or- use in manufacturing another commodity for sale would be regarded as a dealer. The Legislature has not made sale the very article bought by a person a condition for treating in as a dealer; the definition merely requires that the.. buying, of the. commodity mentioned in rule 5 (2) must be in; the

course of business. i.e. must be for sale or, use with a view. to make profit, out of. the integrated activity of- buying and, disposal. The commodity may itself be converted into another (1)15 S.T.C. 644.

saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity."

This Court agreed with the view expressed in L. M. S. Sadak Thamby & Co. v. The State of Madras(1) in which a similar question was decided by the High Court of Madras. In that case the assessee had purchased tanning bark and had consumed it in tanning raw hides. The Madras High Court held that the buying of goods was in the course of business since it was associated with the business of tanning of hides carried on with a profit-making motive., These decisions support the contention of the State that price paid for goods bought for consumption in manufacturing an article for sale is exigible to purchase-tax even if the goods purchased are either destroyed or transformed into another species of goods.

Counsel for the appellants urged that in the cases of H. Abdul Bakshi and Bros.(1) and L. M. S. Sadak Thamby & Com- pany(2) the assessees were carrying on the business of selling goods manufactured by them and for the purpose of manufacturing those goods certain other goods were purchased and consumed in the process of manufacture, but here the goods are not consumed in producing another commodity for sale, and on that account the two cases are distinguishable. The answer to that argument must be sought in the terms of s. 7. The phraseology used in that section is somewhat involved, but the meaning of the on the sale price of the goods, purchase-tax is payable by a dealer who buys taxable goods in the course of his business, and (1) either consumes such goods in the manufacture of other goods for sale, or (2.) consumes such goods otherwise; or (3) disposes of such goods in any manner other, than by way of sale in the State; or (4) despatches them to a place outside the State except as a direct result of sale: or purchase in the course of interState trade or commerce. The assessees are registered as dealers and they have purchased building materials in the course of their business: the building materials are taxable under the Act, and the appellants have consumed the materials otherwise than in the manufacture of goods, for sale and for a profit-motive. On the plain words of s. 7 the purchase price is taxable.

Mr. Chagla for the appellants urged that the expression "or otherwise" is intended to denote a conjunctive introducing a specific alternative to the words for sale immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by s. 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, (1) 14 S.T.C. 753. (2)15 S.T.C.644.

alone is taxable. We do not think that that is a reasonable interpretation of the expression "either consumes such goods in the manufacture of other goods for sale or otherwise". It is intended by the Legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise.

The decision in Versova Koli Sahakari Vahatuk Sangh Ltd. v. The State of Maharashtra(1) on which reliance was placed by Mr. Chagla has, in our judgment, no application. In that case a society registered under the Bombay Co-operative Societies Act, 1925, carried on the business of transporting fish belonging to its members from fishing centres to the markets and vice versa. For preserving fish in the course of transport, the society used to purchase ice, and the members, whose fish was transported, were charged for the quantity of ice required in respect of their baskets of fish. The difference between the price paid by the society for ice purchased and the charge made by the society for ice supplied was brought to tax by the Sales Tax Officer under the Bombay Sales Tax Act, 1959. The High Court of Bombay held that the society was not supplying ice with the intention of carrying on business in ice, and on that account the society was not a "dealer" within the definition of that term in s. 2(11) of the Act in regard to the supply. of ice by it to its members. In that case the taxing authority did not seek to impose purchase-tax : he sought to bring to tax the difference between the price paid by the society for purchasing ice and the charges which it made from its members for supplying ice, and the High Court held that in supplying ice the society was not carrying on business in ice, and on that account was not a "dealer". Whether in a particular set of circumstances a person may be said to be carrying on business in a commodity must depend upon the facts of that case and.,to general test may be applied for determining that question.

The appeals fail and are dismissed with costs. One hearing fee.

V.P.S. Appeals dismissed

(1) 22 S.T.C. 116.