Government Medical Store Depot, Karnal vs State Of Haryana And Another on 5 August, 1986

Equivalent citations: 1986 AIR 1902, 1986 SCR (3) 450, AIR 1986 SUPREME COURT 1902, 1986 TAX. L. R. 1985, 1986 SCC (TAX) 711, (1986) JT 62 (SC), 1986 (18) STL 131, 1986 UPTC 1383, 1986 2 UJ (SC) 672, 1986 STI 92, 1986 90 PUN LR 604, (1986) 2 PUN LR 604, (1986) 63 STC 198, 1986 (3) SCC 669

Author: R.S. Pathak

Bench: R.S. Pathak, Sabyasachi Mukharji

PETITIONER:
GOVERNMENT MEDICAL STORE DEPOT, KARNAL

Vs.

RESPONDENT:
STATE OF HARYANA AND ANOTHER

DATE OF JUDGMENT05/08/1986

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
MUKHARJI, SABYASACHI (J)

CITATION:
1986 AIR 1902 1986 SCR (3) 450
1986 SCC (3) 669 JT 1986 62
1986 SCALE (2)155
CITATOR INFO :
F 1991 SC1059 (4)

ACT:
Punjab General Sales Tax Act, 1948, s. 2(d)-Dealer-Who is-Existence of profit motive-Whether an immaterial factor-Government Medical Store Depot-Whether a 'dealer'.

HEADNOTE:
Pursuant to s. 88 of the Punjab Reorganisation Act, 1966, the Punjab General Sales Tax Act, 1948 continued as the law in force on and from Nov. 1, 1966 even in those territories which now comprise the State of Haryana. The Punjab Act was repealed by the enactment of the Haryana

General Sales Tax Act 1973 which came into effect from May 5, 1973. Some Provisions of the Haryana Act came into force from an earlier date, among being them the definition of 'dealer' set-forth in s. 2(c) of that Act which operated retrospectively with effect from Sept. 7, 1955.

The appellant, Government Medical Store Depot, Karnal, set up by the Central Government, used to purchase medical stores and hospital equipment and supplied them only to Government hospitals, Government institutions, health centres, dispensaries and primary health clinics located in northern India on a 'no profit no loss' basis.

On August 21, 1968, the Excise and Taxation officer Karnal, after giving an opportunity to the appellant, held that the appellant was a dealer under the Punjab Act and proceeded to make assessment orders for the years 1364-65 and 1365-66, and also passed penalty orders for each year. He also initiated assessment proceedings for the years 1966-67 to 1968-69. The appellant's writ petitions in the High Court challenging the aforesaid assessment proceedings were dismissed.

Allowing the appeals by the appellant,

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HELD: l.(i) The existence or absence of a profit motive is irrelevant when identifying a 'dealer' under the Haryana Act. No such

451

statement of immateriality is contained in the definition of the word 'dealer' under the Punjab Act as applied to the State of Haryana. The definition of the word 'dealer' in the Haryana Act has been framed only for the purpose of the provisions of that Act. The opening words of the definition under s. 2 make it clear that the expressions defined by that section are the expressions as used in the Haryana Act. Wherever the word 'dealer' is used in the Haryana Act, one must turn to the definition contained in s. 2(c) of that Act. Now, except for a few specified provisions, the Haryana General Sales Tax Act came into force on May 5, 1973. Section 6, its charging provisions, commenced to operate from that date. Section 6(1) of the Haryana Act declares that the first year of which the turnover is liable to tax under that Act is the year "Immediately preceding the commencement of this Act." It is obvious that s. 6 does not govern the assessment years which are the subject of these appeals. Therefore, it is immaterial as to whether the definition of the word 'dealer' under the Haryana Act has to be read retrospectively with effect from Sept. 7, 1955. Section 2(c) relates to the word 'dealer' contained in the provisions of the Haryana Act, and the charging provision of the Haryana Act did not operate during the assessment years with which these appeals are concerned. These appeals will be governed by the Punjab General Sales Tax Act, and it is s. 2(d) of that Act which must be looked to for ascertaining the definition of the word 'dealer' in that Act. [455H;

456A-D]

1(ii) The definition of the word 'dealer' under s. 2(d) of the Punjab Act does not treat the existence of the profit motive in the business as an immaterial factor and the burden is on the revenue to show that the transactions carried on by the appellant were carried on with a profit motive. The assessment proceedings which are the subject of these appeals are therefore quashed. Having regard to the lapse of time, it is not right to remand the cases for fresh assessment proceedings. [457D-E]

2. Section 65 of the Haryana General Sales Tax Act repealed the Punjab General Sales Tax Act. Section 65 contains a proviso that such repeal will not affect the previous operation of the repealed Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder. The liability incurred by a dealer in respect of the years under consideration in these appeals is a liability incurred under the charging provision, s. 4 of the Punjab General Sales Tax. To ascertain who such dealer is one must read the definition of the word 'dealer' in the Punjab General Sales Tax Act. No reference is permissible for that purpose to the definition in the Haryana General Sales Tax Act. No doubt the further language in the proviso to s. 65 of the Haryana

452

General Sales Tax Act provides that anything done or any action taken in respect of the liability incurred under the Punjab General Tax Act will be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions of the Haryana Act as if that Act was in force on the date on which such thing was done or action taken. This merely refers to the provisions enacted for the purpose of enforcing the liability and realising the tax, and does not affect the position that the charge is under s. 4 of the Punjab General Sales Tax Act, and that to appreciate who the 'dealer' mentioned therein is, one must turn to s. 2(d) of the Punjab Act. [456E-H; 457A]

Deputy Commercial Tax Officer, Saidapet, Madras v. Enfield India Ltd. Co-operative Canteen, [1968] 21 STC 317 and Government Medical Store Depot, Gauhati v. The Supdt. of Taxes. Gauhati & Ors., [1985] 2 Scale 600, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2815- 2819(NT) of 1977 From the Judgment and Order dated 18.10.1976 of the Punjab & Haryana High Court in Civil Writ Nos. 1183, 1184, 1795, 1796 and 1797 of 1970.

O.P. Sharma, L.K. Gupta and Miss A. Subhashini for the Appellant.

S.T. Desai, J.D. Jain and Ms. Kawaljit Kochar for the Respondents.

The Judgment of the Court was delivered by PATHAK, J. These appeals by special leave are directed against the judgment and order of the High Court of Punjab and Haryana dismissing the writ petitions filed by the appellant against proceedings for the assessment of sales tax.

The appellant, the Government Medical Store Depot, Karnal, is a Depot functioning under the Assistant Director General (Stores) who is in charge of the Medical Stores Organisation in the country under the Directorate General of Health Services, Ministry of Health, Government of India, New Delhi. It is a department of the Central Government and supplies medicines and hospital equipment manufactured in India or imported from abroad to Government hospitals, Government institutions, Health Centres, Dispensaries and Primary Health Units located in northern India, some of which are run by local bodies such as Panchayats, Panchayat Samitis, Zila Parishads and Municipalities. It does not deal with private hospitals and individuals. The organisation works as a public utility service on a 'no profit, no loss' basis. The medical stores and hospital equipment are purchased by the appellant and supplied to the hospitals and medical institutions, after adding a service charge of 10 per cent on the cost of the indented stores.

During the year 1956-57, a question arose whether the activities of the appellant brought it within the definition of the expression 'dealer' as defined in s. 2(d) of the Punjab General Sales Tax Act, 1948. The Excise and Taxation authorities took the view that the appellant was not a dealer because the transactions conducted by it did not include an element of profit. By a letter dated July 15, 1957, the appellant was informed by the Excise and Taxation Commissioner, Punjab, that it need not be registered under the Punjab General Sales Tax Act.

On August 21, 1968, the Excise and Taxation Officer, Karnal took note of a decision of this Court in Deputy Commercial Tax Officer, Saidapet, Madras v. Enfield India Ltd. Co-operative Canteen, [1968] 21 S.T.C. 317 and called upon the appellant to produce its account books for the years 1965-66, 1966-67 and 1967-68 for the purpose of assessment to sales tax on the Medical Stores and equipment supplied by it. The appellant was also directed to get itself registered as a dealer under the Act. The appellant replied on August 24, 1968 that it did not fall within the scope of the definition of 'dealer', and it seems that the Government of India in the Ministry of Health also intervened in the matter. The Excise and Taxation Officer, however, continued to maintain that the appellant was a dealer within the meaning of the Act.

The Excise and Taxation Officer then issued formal notices to the appellant for the production of its account books for the years 1964-65 to 1968-69, and after giving an opportunity to the appellant to be heard, he proceeded to make assessment orders dated March 25, 1970 for the years 1964-65 and 1965-66, and also passed penalty orders for each year under the Punjab General Sales Tax Act as well as under

> the Central Sales Tax Act. He also initiated assessment proceedings for the years 1966-67, 1967-68 and 1968-69.

The appellant filed five writ petitions in the High Court of Punjab and Haryana, challenging the assessment proceedings pertaining to the assessment years 1964-65 to 1968-69 respectively taken under the Punjab General Sales Tax Act and the Central Sales Tax Act. The writ petitions were dismissed by the High Court by a common judgment and order dated October 18, 1976. The High Court held that the appellant was a dealer notwithstanding that it was not carrying on a business for earning profit.

Learned counsel for the appellant contends that the appellant is not a dealer because the activity carried on by it is pursued without any motive of earning profit and, therefore, it cannot be described as a business. It is pointed out that the definition of the word 'dealer' in s. 2(d) of the Punjab General Sales Tax Act is different from the definition of that word in s. 2(c) of the Haryana General Sales Tax Act. While the Haryana Act states that a person is a dealer whether or not he is inspired by a profit motive in carrying on his business, no such statement is contained in the definition under the Punjab Act. It is urged that these appeals are governed by the Punjab General Sales Tax Act and not by the Haryana General Sales Tax Act.

When the Punjab General Sales Tax Act, 1948, was enacted it applied to the territories of the State of Punjab as that State was constituted on the partition of India on August 15, 1947. The State of Punjab so constituted continued in existence until it was again partitioned under the Punjab Reorganisation Act, 1966 with effect from the appointed day, November 1, 1966. The Punjab General Sales Tax Act, which had operated in the territories constituting the original State of Punjab up to October 31, 1966 continued as the law in force on and from November 1, 1966 even in those territories which now comprised the State of Haryana. This was pursuant to s. 88, of the Punjab Reorganisation Act, 1966. Its continuance was subject to any change in the law effected by the Haryana Legislature. The Haryana Legislature could permit the Punjab General Sales Tax Act to continue in force subject to legislative modifications made by it in that law. Alternatively, it could supersede and repeal the Punjab Act by enacting an independent Haryana Act to replace it. The Haryana Legislature amended the Punjab Act from time to time. It did so, for instance, by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1969. Later, the entire Punjab Act was repealed by the enactment of the Haryana General Sales Tax Act, 1973, which came into effect from May 5, 1973. Some provisions of the Haryana Act came into force from an earlier date, among being them the definition of 'dealer' set forth in s. 2(c) of that Act which operated retrospectively with effect from September 7, 1955.

The present appeals are concerned with the assessment years 1964-65 to 1968-69, and the question is whether they are governed by the definition of the word 'dealer' in s. 2(d) of the Punjab Act or by s. 2(c) of the Haryana Act. During that period s. 2(d) of the Punjab Act, in its application to the State of Haryana, defined the word 'dealer' as follows:

S.2(d). "Dealer" means any person including a Department of Government who in the normal course of trade sells or purchases goods that are actually delivered for the purpose of consumption in the State of Haryana irrespective of the fact that the main place of business of such person is out side 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 Haryana in respect of such business."

Section 2(c) of the Haryana General Sales Tax Act, however, defines the word 'dealer' in the following terms: S. 2(c). "dealer" means any person including a department of Government who carries on, whether regularly or otherwise, trade whether with or without a profit motive, directly or otherwise, whether for cash, deferred payment, commission, remuneration or other valuable consideration, of purchasing, selling, supplying or distributing any goods in the State, or importing into, or exporting out of the State any goods, irrespective of the fact that the main place of business of such person is outside the State and where the main place of business of such person is not in the State, includes the local manager or agent of such person in the State in respect of such business."

It is apparent that the existence or absence of a profit motive is irrelevant when identifying a 'dealer' under the Haryana Act. No such statement of immateriality is contained in the definition of the word 'dealer' under the Punjab Act as applied to the State of Haryana.

What is important to note is that the definition of the word 'dealer' in the Haryana Act has been framed only for the purpose of the provisions of that Act. The opening words of the definition section, s. 2, make it clear that the expressions defined by that section are the expressions as used in the Haryana Act. Wherever, the word 'dealer' is used in the Haryana Act, one must turn to the definition contained in s. 2(c) of that Act. Now, except for a few specified provisions, the Haryana General Sales Tax Act came into force on May 5, 1973. Section 6, its charging provision, commenced to operate from that date. Section 6(1) of the Haryana Act declares that the first year of which the turnover is liable to tax under that Act is the year "immediately preceding the commencement of this Act." It is obvious that s. 6 does not govern the assessment years which are the subject of these appeals. Therefore, it is immaterial for our purposes that the definition of the word 'dealer' under the Haryana Act has to be read retrospectively with effect from September 7, 1955. Because, as we have pointed out, s. 2(c) relates to the word 'dealer' contained in the provisions of the Haryana Act and the charging provision of the Haryana Act did not operate during the assessment years with which these appeals are concerned. These appeals will be governed by the Punjab General Sales Tax Act, and it is s. 2(d) of that Act which must be looked to for ascertaining the definition of the word 'dealer' in that Act.

It may be mentioned that s. 65 of the Haryana General Sales Tax Act repealed the Punjab General Sales Tax Act. Section 65 contains a proviso that such repeal will not

affect the previous operation of the repealed Act or any right, title, obligation or liability already acquired, accrued or incurred thereunder. The liability incurred by a dealer in respect of the years under consideration in these appeals is a liability incurred under the charging provision, s. 4, of the Punjab General Sales Tax. To ascertain who such dealer is one must read the definition of the word 'dealer' in the Punjab General Sales Tax Act. No reference is permissible for that purpose to the definition in the Haryana General Sales Tax Act. No doubt the further language in the proviso to s. 65 of the Haryana General Sales Tax Act provides that anything done or any action taken in respect of the liability incurred under the Punjab General Sales Tax Act will be deemed to have been done or taken in the exercise of the powers conferred by or under the provisions of the Haryana Act as if that Act was in force on the date on which such thing was done or action taken. This merely refers to the provisions enacted for the purpose of enforcing the liability and realising the tax and does not affect the position that the charge is under s. 4 of the Punjab General Sales Tax Act, and to appreciate who the 'dealer' mentioned therein is, one must turn to s. 2(d) of the Punjab Act.

It will be noticed that the definition of the word 'dealer' in s. 2(d) of the Punjab Act does not treat the existence of a profit motive in the business as an immaterial factor. In Govt. Medical Store Depot, Gauhati v. The Supdt. of Taxes, Gauhati & Ors, [1985] 2 SCALE 600, the question was whether a Government Medical Store Depot set up at Gauhati by the Central Government in the Ministry of Health, Family Planning and Urban Development, for the purpose of procuring and supplying medical stores to Central and State Government institutions could be made liable to sales tax under the Assan Finance (Sales Tax) Act, 1956 and under the Central Sales Tax Act, 1956. The appellant, the Government Medical Store Depot, took the stand that the supply of medical stores to the Government institutions were without any profit motive, on the basis of "no loss, no profit", and unless it was found that the transactions had been carried on with a view to making a profit the appellant could not be held to be a 'dealer' liable to tax. This Court observed that in the definition of 'business' the profit motive had not been omitted, and therefore without anything more it could not be said that the person carrying on those transactions was a dealer. The Court rested the burden on the Revenue to show that the transactions carried on by the appellant were carried on with a profit motive. In the end, inasmuch as the appeals before it were concerned with the years 1965-66 to 1967-68 having regard to the lapse of time the Court, while allowing the appeals and quashing the assessments, did not think it fit to remand the cases for fresh assessment proceedings.

We think we should do likewise. Accordingly, the appeals are allowed, the judgment and order of the High Court are set aside and the assessment proceedings which are the subject of these appeals are quashed. In the circumstances of the case, there is no order as to costs.

M.L.A. Appeals allowed.