

Commr. Of Sales Tax, M.P. vs Minerva Minerals, Nagpur on 5 February, 1969

Equivalent citations: [1970]25STC64(SC), 1969(1)UJ190(SC), AIR ONLINE 1969 SC 34

Author: V. Ramaswami

Bench: V. Ramaswami

JUDGMENT

v. Ramaswami, J.

1. The respondent is a dealer in manganese ore having its head office at Nagpur. Before the formation of the new State of Madhya Pradesh on 1st November, 1956, the respondent was carrying on business at Nagpur (styled as head office and main place of business) and at Gondia (styled as additional place of business). Prior to 1st November, 1956, both Nagpur and Gondia were within the then State of Madhya Pradesh. Apart from Nagpur and Gondia, prior to 1st November, 1956, the respondent was also working the manganese mines in Wara Seoni and Chhindwara within the then State of Madhya Pradesh and was carrying on business at the said two places. The respondent held a registration certificate under the C. P. and Berar Sales Tax Act, 1947 (C. P. and Berar Act No. 21 of 1947) (hereinafter called "the Act"). In the registration certificate Nagpur was shown as the main place of business and Gondia as an additional place of business. But in the registration certificate Wara Seoni and Chhindwara were not shown as additional places of business of the respondent. As a result of the reorganisation of States on 1st November, 1956, Nagpur was incorporated within the State of Bombay, The respondent became a registered dealer in the new State of Madhya Pradesh on 8th March, 1956. The Sales Tax Officer, Chhindwara, assessed the respondent for the period 1st November, 1956. to 3rd July, 1958, under Section 19(4) and Section 17(3) of the Act read with Section 11(4) and Section 10(3) of the Central Provinces and Berar Sales Tax Act, 1947. The tax was assessed at Rs. 27,697.28 and a penalty of Rs. 3,000 was imposed on the respondent under Section 17(3) of the Act. The Sales Tax Officer took the view that as a result of the reorganisation of the States, the respondent became liable to pay tax for the above assessment period as he was doing business in the new State of Madhya Pradesh and continued to be a registered dealer. On appeal, the Appellate Assistant Commissioner affirmed the view of the Sales Tax Officer and dismissed the appeal. The respondent took the matter in further appeal to the Board of Revenue, Madhya Pradesh, at Gwalior which by its order dated 15th April, 1964, held that the respondent could not be treated as a registered dealer in two States by virtue of the same registration certificate and if he had not obtained a certificate in the new State of Madhya Pradesh he should have been treated as a mere dealer and not as a registered dealer. Consequently, the Board of Revenue remanded the case to the

Sales Tax Officer, Chhindwara, for a fresh assessment. Thereafter, at the instance of the appellant the Board of Revenue referred the following question of law to the High Court of Madhya Pradesh:

Whether a registered dealer, who had his head office at Nagpur, under the C.P. and Berar Sales Tax Act, 1947, continued to be a registered dealer in Madhya Pradesh, formed on November 1, 1956, after the reorganisation of the States if his business was partly carried on in the area which went to Maharashtra State and partly in the area which formed part of the new Madhya Pradesh ?

2. By its judgment dated 27th April, 1966, the High Court answered the question in favour of the respondent holding that if the registered dealer carried on business in places not disclosed in its registration certificate, he would have to be treated as an unregistered dealer vis-a-vis those places, and, therefore, the respondent could not be treated as a registered dealer with respect to the area comprised in the new State of Madhya Pradesh as no place of business from that area was specified in its certificate. The present appeal is brought by special leave from the judgment of the Madhya Pradesh High Court dated 27th April, 1966, in Miscellaneous Civil Case No. 288 of 1965.

3. It is necessary to reproduce the relevant statutory provisions at this stage. Section 119 of the States Reorganisation Act, 1956 (37 of 1956) states:

The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

4. Section 121 provides as follows:

Notwithstanding that no provision or insufficient provision has been made under Section 120 for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to any State formed or territorially altered by the provisions of Part II, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

5. Section 2(c) of the Central Provinces and Berar Sales Tax Act, 1947 (21 of 1947), defines a "dealer" as meaning "any person who, whether as principal or agent, carries on in Madhya Pradesh the business of selling or supplying goods, whether for commission, remuneration or otherwise..." Section 2(f) defines a "registered dealer" to mean a dealer registered under the Act. Section 4(1) states:

4. (1)(a) In Madhya Pradesh excluding the merged territories every dealer whose turnover during the year preceding the commencement of this Act exceeded the limits specified in Sub-section (5) shall be liable to pay tax in accordance with the provisions of this Act on all sales effected after the commencement of this Act.

(b) In the merged territories every dealer whose turnover during the year preceding the commencement of this Act exceeded the limits specified in Sub-section (5) shall be liable to pay tax in accordance with the provisions of this Act on all sales effected on or after the 1st April, 1949;....

6. Section 8 provides for registration of dealers and states:

8. (1) No dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate :...

(2) Every dealer required by Sub-section (1) to be registered shall make application in that behalf in the prescribed manner to the prescribed authority.

(3) If the said authority is satisfied that an application for registration is in order, it shall in accordance with such rules as may be made under this Act, register the applicant and grant him a certificate of registration in the prescribed form which, in the case of a registered dealer who manufactures any goods for purposes of sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State shall specify the raw materials which are intended to be used by him in the manufacture of such goods.

(4) The Commissioner may amend any certificate of registration in accordance with information received under Section 17 or otherwise...

7. Section 17 enacts:

If any registered dealer or other dealer who is required to furnish returns under Sub-section (1) of Section 10,:

(a) sells or otherwise disposes of his business or any part of his business or any place of his business or effects or comes to know of any other change in the ownership of the business, or

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

(c) changes the name or nature of his business, he or if he dies, his legal representative shall, within the prescribed time, inform the prescribed authority accordingly.

8. It was contended on behalf of the appellant that the High Court erred in holding that the respondent could not be treated as a registered dealer in Madhya Pradesh between 1st November, 1956, and 7th March, 1958.

9. It was argued that having regard to the scheme of the Act, the High Court ought to have held that the registration certificate obtained by a dealer in Madhya Pradesh operated for his benefit in respect of all places of business throughout the territory of the State of Madhya Pradesh as it existed on 31st October, 1956, and this was the legal position notwithstanding the fact that some places of business like Chhindwara and Wara. Seoni were not shown in the registration certificate as places of business of the respondent. In support of this argument reference was made to Section 2(c) of the Act defining a "dealer" as "any person who whether as principal or agent carries on in Madhya Pradesh the business of the selling or supplying goods whether for commission, remuneration or otherwise." It was said that under Section 4 of the Act every dealer was liable to pay tax if his turnover, during the year preceding the commencement of the Act exceeded the limits specified in Sub-section (5). It was therefore argued that the liability of the dealer to pay tax was dependent on the totality of transactions in the entire area of Madhya Pradesh and not on the transactions carried on in any particular place or places of business noted in the registration certificate. In other words, the contention was that when a dealer got himself registered under the Act he was getting himself registered as a dealer who carries on the business of selling and supplying goods in Madhya Pradesh and not vis-a-vis any particular place or places noted in the registration certificate. We are unable to accept the argument of the appellant for we are satisfied that the provisions of the Act and rules do not support such an argument. Section 4(1) of the Act provides that no dealer shall, while being liable to pay tax under the Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate. Sub-section (2) of Section 8 requires the dealer to make an application for registration in the manner prescribed. Sub-section (3) provides that if the authority is satisfied that an application for registration is in order, it shall register the applicant and grant him a certificate of registration in the prescribed form. Under Rule 7 of the Rules framed under Section 28 of the Act, an application for registration is required to be made in Form I to the proper Sales Tax Officer. Rule 7 reads as follows: "7. (1) Application for registration under Section 8 or 8-A shall be made in Form I to the appropriate Sales Tax Officer. It shall be signed by the proprietor of the business or in the case of a firm or a partnership by a partner or director of the firm or in the case of a Hindu undivided family business by the manager or karta of the Hindu undivided family or in the case of a company incorporated under the Indian Companies Act, 1913, or any other law for the time being in force by the principal officer managing the business....

(1-a) The Commissioner may, on application made by the dealer in this behalf and on being satisfied about the genuineness of the grounds put forth in the application, grant permission, in writing, to a dealer having more than one place of business in the province to apply for registration separately for each place of business to the Sales Tax Officer of a circle in which each such place of business is situated.

Provided that for the purpose of determining the liability of such a dealer for payment of the tax under the Act, his turnover in respect of all places of business in the province shall be taken into consideration....

10. Rule 8 states:

8. (1) When the Sales Tax Officer, after making any enquiry that ho may think necessary, is satisfied that the applicant has correctly given all the requisite information and that the application is in order, he shall register, the dealer, and shall issue a certificate of registration in Form II together with the copies of the schedules to the Act.

(2) The registration certificate shall specify the following amongst other particulars:

(a) the location of the business and of any branch of the business ;

(b) the nature of the business;...

(3) As far as may be consistent with the Act and the rules thereunder, the particulars referred to in Clauses (b) and (c) of Sub-rule (2) shall be described in the registration certificate in the same terms, as arc used by the dealer in his application.

11. In Form I, the dealer is required to state the additional places of business and warehouses and addresses thereof apart from the main place of business. Under Rule 8, the Sales Tax Officer is required to grant a certificate in Form II. Clause (2) of Rule 8 further provides that the registration certificate shall specify the location of the business and of any branch of the business. Form II also contains column for stating particulars of additional places of business. Clause (1-a) of Rule 7 provides that the Commissioner may, on an application made by the dealer in that behalf and on being satisfied about the genuineness of the grounds put forth in the application, grant permission, in writing, to the dealer having more than One place of business in the province to apply for registration separately for each place of business to the Sales Tax Officer of tin circle in which each such place of business is situate. Under suction 17 of the Act a registered dealer is required to give within the prescribed period information to the proscribed authority in case he discontinues his business or if there is any change in his place of business or if he opens a new place of business. It is plain on an examination of the relevant sections and statutory rules that the certificate of registration is granted with reference to the place of business or places of business of the dealer and not with reference to the whole area of the State though for the purpose of determining the liability of the dealer, his turnover in respect of all places of business in the State including those not mentioned in the registration certificate is to be taken into consideration. It follows therefore that if a registered dealer carries on business in places not disclosed in the registration certificate he will have to be treated as an unregistered dealer vis-a-vis those places. Our conclusion in the present case is that the respondent cannot be treated as a registered dealer in the new State of Madhya Pradesh on the strength of the registration certificate issued to the respondent before coming into force of the States Reorganisation Act as no place of business in that area was specified in the registration certificate.

12. For these reasons we are of the opinion that the judgment of the High Court of Madhya Pradesh dated 27th April, 1966, is correct and this appeal must be dismissed with costs.