State Of Madhya Pradesh & Ors vs Shyama Charan Shukla on 22 September, 1971

Equivalent citations: 1972 TAX. L. R. 2368, (1972) 1 S C R 861, 1972 JAB L J 1004, 29 S T C 215

PETITIONER:
STATE OF MADHYA PRADESH & ORS.

Vs.

RESPONDENT:
SHYAMA CHARAN SHUKLA

DATE OF JUDGMENT22/09/1971

BENCH:

ACT:
States Reorganisation Act,, 1956, ss. 78, 91-"Arrears", meaning- Amount due by way of tax need not be quantified.

HEADNOTE:
The respondent was, assessed to sales tax under the Madhya Pradesh General Sales Tax Act, 1958, for the period October 1, 1953 to December 26, 1958 in respect of sales of manganese ore including the sales from the mines in two districts in the erstwhile State of Madhya Pradesh which were transferred to the State of Maharashtra on 1st November 1956 under the States Reorganisation Act, 1956 . The respondent challenged the order of assessment on the ground, among others, that by virtue of s. 78 of the States Reorganisation Act, 1956, the State of M.P. had no jurisdiction to recover the amount of tax in respect of sales made in the two districts after November 1, 1956. The High Court, without deciding the other points, which bad been raised in the writ petition, quashed the assessment by referring to s. 78 of the States Reorganisation Act which, inter alia, provided : "The right to recover arrears of any tax or duty on property including arrears of land revenue shall belong to the successor State in which the property is situated and the right to recover any other tax or duty shall belong to the successor State, in whose territories the place of assessment for that tax or duty is included". The High Court held that before the assessment proceedings were completed and the final amount due was determined, it could not be said that any particular amount was due against the assessee and so long as there was. no determination and

no demand for payment of tax was raised the assessee could not be said to be in "arrears" of any tax within the meaning of s. 78.

Allowing the appeal and remanding the case to the High Court,

HELD : (1) The word "arrears" in section 78 must be held to have been used in the sense of dues or what has become due by way of tax and that does not depend upon proceedings for quantification of the amount. The word "arrears" cannot be given a narrow meaning in the manner done by the High Court. If the view of the High Court is accepted, arrears of tax can refer to only that amount of tax which has been quantified after proper assessment. This would lead to the result that where there has been no quantification or assessment order, the position would be wholly uncertain and it would not be possible to say which State would be entitled to realise those taxes or duty-, in other words, until the tax liability had been determined and quantified, there would be no arrears of tax and s. 78 would be inapplicable. The word "arrears" should be given its proper meaning as understood in the ordinary sense of the word. It is a part of the general scheme of sales tax laws that taxes become due the moment a dealer makes either purchases or sales which are subject to tax and the obligation to pay tax arises. Although the tax liability which comes into existence cannot be enforced till the quantification is effected by assessment proceedings, the liability for payment of tax is independent of the assessment. [865 F-866 D]

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(2)Section 78 deals with arrears and s. 83 deals with refund of taxes. Both the sections indicate that when the question is of any tax or duty other than that on property, the right has been conferred and the liability imposed on the successor State in whose territories the place of assessment of that tax or duty is included. Further the amounts due by way of tax are not covered by the residuary provisions as mentioned in s. 91 of the Act. [865 B-D]

Kedarnath Jute Mfg. co. Ltd. v. C.I.T., Central Calcutta, [1972] 1 S.C.R. 277 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2272 of 1968.

Appeal from the judgment and order dated September 12, 1967 of the Madhya Pradesh High Court in Misc. Petition No. 178 of 1966.

I. N. Shroff and R. P. Kapur, for the appellants. M. N. Phadke, U. N. Bachawat, K. L. Hathi and P. C. Kapur, for the respondent.

The Judgment of the Court was delivered by Grover, J. This is an appeal by certificate from a judgment of the Madhya Pradesh High Court in a writ petition filed by the respondent challenging certain orders relating to assessment of sales tax.

The respondent held mineral concessions for extracting man- ganese ore in respect of mining areas in the districts of Balaghat, Chhindwara, Bhandara and Nagpur in the erstwhile State of Madhya Pradesh i.e. before the reorganisation of the State. Under S. 4 of the Central Provinces & Berar Sales Tax Act 1947, hereinafter called the "Act of 1947"

> which was then applicable a dealer was liable to pay tax on all the sales if the gross turnover exceeded the limit specified in S. 4 (5) of the Act of 1947 and he was required under S. 8 to get himself registered as a dealer. The material period, in the present case, is from October 1, 1953 to December 26, 1958. This may be split up into two periods; (1) October 1, 1953 to October 31, 19S6 (till that date Nagpur and Bhandara districts formed part of the State of Madhya Pradesh) and (2) November 1, 1956 to December 26, 1958 (from November 1, 1956 the aforesaid two districts came to be included in the new, State of Maharashtra). According to the appellant the respondent effected sales of manganese ore from the mines during the aforesaid periods without registering himself as a dealer in spite of the fact that the turnover exceeded the prescribed limit. A number of notices were issued by the Sales Tax Officer, Chhindwara calling upon the respondent to get himself registered and to show cause why he should not be assessed under S. 1 1 (5) of the Act of 1947 which was subsequently 'repealed and was replaced by the Madhya Pradesh General Sales Tax, 1958, hereinafter called the- "Act of 1958". Towards the end at the- year 1958 the- respondent applied for registration to the Sales'Tax Officer, Chhindwara Circle exercising jurisdiction over the Balaghat and Chhindwara districts. On December 27, 1958 a registration certificate was granted to him. Thereafter the Sales Tax Officer issued a notice to the respondent under ss. 17, 18 & 19 of the Act of 1958. He proceeded to assess the respondent for the period October 1, 1953 to December 26, 1958. The amount assessed came to Rs. 31,580.42 and a penalty of Rs. 5,000 was imposed. The respondent filed an appeal to the Appellate Assistant Commissioner of Sales Tax. As he did not deposit the past dues of the tax and the penalty demanded of him the appeal was not admitted in view of s. 38(3) of the Act of 1958 or s. 22 of the Act of 1947. On January 23, 1961 the respondent 'preferred an appeal to the Board of Revenue without depositing the amount of tax required to be deposited under the law. That appeal was also not admitted. On March 28, 1966 the respondent filed a petition under Art. 226 of the Constitution challenging the order of assessment dated April 23, 1960 passed by the Sales tax Officer as also the orders of the appellate authorities. In the writ petition a number' of points were raised by the respondent some of which may be noticed. (1) The Sales tax Officer Balaghat or Chhindwara had no jurisdiction to assess the writ petitioner to tax in respect of sales which took place from the districts of Bhandara and Nagpur which were part of the State of Maharashtra. As the order of assessment included sales of ore from those districts also it was void. (2) The Sales tax Officer had no jurisdiction to include the sales in

> respect of manganese in the taxable turnover when those sales were for export outside India (3) The Sales tax Officer had no power to assess the writ petitioner under s.

18(6) of the Act of 1958 when the liability arose for the period prior to April 1, 1959 when the provisions of the Act of 1947 were in force. (4) That the assessments were barred by time. (5) By virtue of s. 78 of the States Reorganisation Act 1956, the State of Madhya Pradesh had no jurisdiction to recover the amount of tax in respect of sales prior to November 1, 1956 which had been completed at Nagpur which was included in the State of Maharashtra with effect from November 1, 1956 and (6) the Appellate Assistant Commissioner and the Board of Revenue were in error in not entertaining the appeals on the ground that the amount of tax assessed had not been deposited.

The State contested the writ petition and controverted the points raised therein by the writ petitioner. It also raised certain objections and contentions. The High Court held that the notices that were issued by the sales tax authorities were within limitation. But without deciding the other points which had been raised in the writ petition the High Court disposed of the whole matter by referring to S. 78 of the States Reorganisation Act 1956. That section is in the following terms :-

> "The right to recover arrears of any tax or duty on property, including arrears of land revenue shall belong to the successor State in which the property is situated and the right to recover arrears of any other tax or duty shall belong to the successor State in whose territories the place of assessment of that tax or duty is included".

It was urged on behalf of the assessee before the High Court that after the reorganisation of States, the Sales tax Officer, Balaghat, had no jurisdiction to assess the sales tax in respect of the sales from the mines in the Nagpur and Bhandara districts which no longer formed part of the State of Madhya Pradesh and as no separate turnover was determined for the different areas the order of assessment in its entirety was liable to be quashed. On behalf of the State the argument raised was that the expression right to recover arrears of any tax or duty" covered not only tax which had already been assessed but also all those taxes which became due but remained to be assessed. This argument was not accepted by the High Court and was disposed of in the fol- lowing manner "Before the assessment proceedings are completed and the final amount due is determined it cannot be said that any particular amount of tax is due against the assessee. So long as there is no such determination and no demand for payment of the tax is raised, it cannot be said that the assessee is in arrears of any taxes. This is so even where the assessee is required to pay the tax amount as per his own determination along with the returns submitted by him".

In the opinion of the High Court under s. 78 the place of assessment of the tax must be the place which was included in the territories of the successor State. So long as the assessee was not registered as a dealer with reference to any particular place of business it could not be said that Katangjhiri in Balaghat district was the place of business with respect to the ore extracted from the mines in Nagpur and Bhandara districts. Registration certificate granted to the assessee in 1958 after the reorganisation of the States in which the place of business was shown at Katanjhiri could

not be made use of as that certificate could have no relation to Nagpur and Bhandara districts which were no longer within the State of Madhya Pradesh on that date. Therefore the Sales tax Officer, Balaghat, had no jurisdiction to assess the: tax with respect to sales effected from the mines in Nagpur and Bhandara districts. As the assessment order was a composite order it was liable to be quashed as a whole.

Part VII of the States Reorganisation Act 1956 relates to- apportionment of assets and liabilities of certain Part A and-Part B States. Section 76 deals with land and goods, s. 77 with treasury and bank balances and s. 78 with arrears of taxes. It is unnecessary to refer to other sections in the Chapter except ss. 83 and 91. Section 83 provides, inter alia, that the liability of an existing State to refund any tax or duty other than that on property..... collected in excess shall be the liability of the successor State in whose territories the place of assessment of that tax or duty is included. Section 91 is the residuary provision. According to it the burden or benefit of assets and liabili- ties of an existing State not dealt within the foregoing provisions of Part VII has to pass in the manner indicated in clauses (a) and (b). Thus so far as taxes are concerned ss. 78 and 83 indicate that when the question is of any tax or duty other than that on property the right has been conferred and the liability imposed, in case of refund, on the successor State in whose territories the place of assessment of that tax or duty is included. Part VII in the States Reorganisation Act was intended to effectuate apportionment of assets and liabilities between the existing State and the successor State. '.'Existing State" was defined by s. 2 (g) to mean a State specified in the first schedule to the Constitution at the commencement of the Act of 1956. A "successor State" was defined by s. 2(o) to mean in relation to an existing State that State to which the whole or any part of the territories of that existing State was transferred by the provisions of Part II. It is difficult to give a narrow meaning to the word "arrears" in s. 78 in the manner done by the High Court. If' the view of the High Court is to be accepted arrears of tax can refer to only that amount of tax which has been quantified after a proper assessment. This would lead to the result that where there has been no quantification or assessment order the position would be wholly uncertain and it would not be possible to say which State would be entitled to realise those taxes or duties. In other words, in the present case since the tax liability had not been determined or quantified there would be no arrears of tax and s. 78 will be inapplicable. In our judgment arrears should be given their proper meaning as understood in the ordinary sense of that word. According to the Webster's New International Dictionary "arrears" means among other things "that which is behind in payment or which remains unpaid though due". The-

example given is of arrears of rent, wages or taxes. In Stroud's Judicial Dictionary, third edition, it has been stated that the word "arrears" presupposes a time fixed for payment of a sum of money and the lapse of time thereafter without payment". It is a part of the general scheme of all sales tax laws that taxes become due the moment a dealer makes either purchases or sales which are subject to taxation and the obligation to pay the tax arises. Although the tax liability which comes into existence cannot be enforced till the quantification is effected by assessment proceedings the liability for payment of tax is independent of the assessment : (See Kedarnath Jute Mfg. Co. Ltd. v. Commissioner of Income tax, Central Calcutta)(1). We have no doubt that the word "arrears" in respect of tax has been used in the sense of dues or what has become ' due by way of tax and that does not depend on assessment proceedings or quantification of the amount. We do not consider

that the amounts due by way of tax are covered by the residuary provisions i.e. S. 91 of the Act of 1956.

The High Court has disposed of the mater mainly on the interpretation of s. 78 of the Act of 1956 with which we are unable to agree. For these reasons the judgment of the High Court is set aside and the matter is remanded to it to redecide the same and while doing so all the material points that arise for determination will also have to be decided by it.

The appeal is allowed accordingly but there will be no order as to costs.

S.N. Appeal allowed.
(1) [1972] 1 S.C.R. 277.