

Madhya Pradesh High Court

Hiranand Tejumaal vs Commissioner Of Sales Tax And Anr. on 13 September, 1961

Equivalent citations: 1962 13 STC 74 MP

Author: K Pandey

Bench: P Dixit, K Pandey

ORDER K.L. Pandey, J.

1. This petition under Article 226 of the Constitution is directed against an order dated 2nd December, 1960, by which the Sales Tax Officer, Jabalpur (respondent 2), rejected the petitioner's application for the grant of a licence under Section 13 of the Madhya Pradesh General Sales Tax Act, 1958, which is hereinafter called the Act.

2. The petitioner, who is a registered dealer, carries on in the city of Jabalpur the business of preparing and selling sweetmeats and khara under the name and style of "Hira Sweet Mart". In the assessment year 1959-60, his turnover in respect of sales of sweetmeats amounted to Rs. 39,983-11-0, though, inclusive of sales of khara which is not taxable under the Act, the total turnover exceeded Rs. 50,000. On 18th November, 1960, the petitioner made, under Section 13 of the Act read with Rule 4 of the rules framed thereunder, an application in the prescribed form for the grant of a licence stating that his turnover in respect of sales of sweetmeats in the previous year was Rs. 39,983-11-0. In rejecting the application on 2nd December, 1960, the Sales Tax Officer took the view that the "turnover" mentioned in Section 13 of the Act referred to the total turnover of all sales, whether or not the whole or any portion of such turnover was liable to tax. Being aggrieved by that order, the petitioner has moved this Court for quashing it by certiorari and also for issuing a writ of mandamus to oblige the Sales Tax Officer to grant the required licence.

3. The controversy in this case lies within a narrow compass. The question is whether the word "turnover" mentioned in Section 13(1) of the Act is restricted to the turnover in respect of sales of goods specified in Schedule III or it means the turnover of the totality of sales of all goods whether or not the whole or any portion of such goods be liable to tax. We have formed the opinion that, in the context, the word has a restricted meaning and it covers only the sales of goods specified in Schedule III.

4. The provisions, which have an important bearing on the question, are contained in Sections 2(t) and 13 and in Rule 4(3) which may be reproduced :

Section 2(t): " 'turnover' used in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period :

Provided that in the case of a sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, the amount of the consideration relating to such sale shall be

excluded from his turnover when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting;.

Section 13(1): "The Commissioner may, subject to such conditions as may be prescribed, licence under this section any dealer who carries on business in any of the goods specified in Schedule III and whose yearly turnover does not exceed ordinarily fifty thousand rupees, on advance payment of such licence fee not exceeding five hundred rupees a year as may be determined in relation to such dealer in accordance with the rules made in this behalf.

Rule 4 (j); "The fee for the grant of a licence shall be as follows:-

If the turnover in respect of sales of goods specified in Schedule III- Rs.

(i) does not exceed Rs. 5,000	...	50
(ii) exceeds Rs. 5,000 but does not exceed Rs. 15,000		100
(iii) exceeds Rs. 15,000 but does not exceed Rs. 25,000		150
(iv) exceeds Rs. 25,000 but does not exceed Rs. 40,000		250
(v) exceeds Rs. 40,000 but does not exceed		

5. In view of Rule 4(3), there can be no question that the graduated licence fee payable

(i) If a dealer carries on business only in the goods specified in Schedule III and his

(ii) If, in the case mentioned above, the turnover does not exceed Rs. 50,000, the concess

(iii) If the dealer carries on business in the goods specified in Schedule III and also in other goods and his total turnover exceeds Rs. 50,000, the concession is not available even though the turnover in respect of the specified goods may be below Rs. 50,000.

(iv) If, in the above case, the total turnover does not exceed Rs. 50,000, the concession is available but it is limited to the turnover in respect of the specified goods.

Since the concession is not available except as regards the turnover in respect of the specified goods, the consequences are clearly anomalous. In certain cases, it may be claimed upto the limit of Rs. 50,000 In other cases, it cannot be had even if the turnover in respect of the specified goods does not exceed a much smaller amount. Now, if the concession is not available generally and has meaning only in the context of the sale of certain specified goods, the point is whether the turnover in respect of sales of other goods was intended to control it.

6. It is no doubt true that the word "turnover" as defined in Section 2(t) means the aggregate of the amount of sale prices in respect of all goods, whether or not any portion of such turnover is liable to tax but this is prefaced and conditioned by the expression "unless there is anything repugnant in the subject or context". Having regard to the anomalous consequences shown in the last paragraph, there is a doubt about the true meaning of that word as used in Section 13(1). It is well settled that the words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion in which they are used, and the object to be attained. In order, therefore, to come to a decision as to the true meaning of a word used in a statute, one has to enquire as to the subject-matter of the enactment and the object which the Legislature had in view : *The Slate of Uttar Pradesh v. C. Tobit and Ors.* [1958] S.C.R. 1275.

7. For purposes of the concession available under Section 13, the goods specified in Schedule III are:

1. Sweetmeats other than chocolates, toffees, lozenges and peppermint drops.
2. Bones of animals including powdered bones, horns and hoofs.
3. Chapri, lac, kiti, wax and honey.
4. Betel leaves.

Since betel leaves are also imported, Section 4(5) (a) of the Act excludes the value of imported betel leaves for fixing the taxable turnover in respect of sales of imported goods. Also, as long as the turnover in respect of sales of these specified goods does not exceed Rs. 50,000 and the dealers have been duly licensed, the rules do not require them to maintain accounts or to submit periodical returns (Rule 26 and the proviso to Rule 52). It appears to us that the goods of the four categories mentioned above have been chosen for the concession because the business carried on in these goods consists of numerous petty sales in regard to which it is difficult, if not impossible, to maintain accounts in the prescribed manner. It is significant that the licence fee is payable in lieu of the tax leviable in respect of such goods as provided by Sub-section (2) of Section 15. Further, the concession is made available so long as the business in these goods is carried on on a small scale. It is for this reason that the limit of the turnover is fixed at Rs. 50,000. If this is the object of the enactment what has to be considered is the turnover in respect of sales of these goods and not the turnover in respect of the totality of sales of the dealer claiming the concession. The language employed in Section 13(1) also lends some support to this view. The concession is available to "any dealer who carries on business in any of the goods specified in Schedule III and whose yearly turnover does not exceed ordinarily fifty thousand rupees". There is in this provision no express reference to any dealing in goods other than those specified in Schedule III. Also, whenever such dealings are intended to be impliedly included in the limit fixed, the Legislature has taken care to clarify that intention by an explanation. In this connection, we may refer to the explanation under Section 4(5), which reads :

For the purposes of this section the limits shall be-

- (a) in relation to a dealer who imports goods other than betel leaves, whatever their value in Madhya Pradesh-five thousand rupees ;
- (b) in relation to a dealer who manufactures any goods other than cooked food-five thousand rupees ;
- (c) in relation to a dealer being a co-operative society registered under any law for the time being in force relating to co-operative societies, dealing exclusively in goods produced or manufactured by such society or its members without the aid of hired labour-twenty five thousand rupees ; and
- (d) in relation to a dealer not falling in Clause (a), Clause (b) or Clause (c)-fifteen thousand rupees.

Explanation.-For the purposes of the limits specified in Clauses (a), (b), (c) or (d) the turnover shall include the aggregate amount for which all goods are sold or supplied irrespective of the fact whether any of such goods are imported or manufactured or otherwise obtained by the dealer concerned, or whether or not they are exempted from payment of the tax.

For all these reasons and having due regard to the subject-matter of the enactment, its object and the words of Section 13(1), we are of opinion that the word "turnover" used in that section means only the turnover in respect of sales of goods specified in Schedule III.

8. In the view we have taken, this petition succeeds and is allowed. The order of the Sales Tax Officer, Jabalpur, dated 2nd December, 1960, is quashed and he is directed to consider the petitioner's application dated 18th November, 1960, in the light of the observations which we have made in this order. The respondents shall bear their own costs and pay those of the petitioner to whom the security amount shall also be refunded. Counsel's fee Rs. 50.