

Allahabad High Court

Sales Tax Officer And Ors. vs J.L. Morison Son And Jones (India) ... on 16 July, 1956

Equivalent citations: 1956 7 STC 755 All

Bench: Mootham, Chaturvedi

JUDGMENT

1. This is an appeal from a judgment of Mr. Justice Chowdhary, dated the 4th March, 1955, quashing an order of assessment dated the 16th March, 1952, made by the Sales Tax Officer, Banaras, against the respondent company.

2. The respondent company is incorporated under the Indian Companies Act and has its registered office in Bombay. It has branch offices at Calcutta, Madras and Delhi, but it is common ground that it has no office or agent within this State. In the course however of its business the company supplied goods to persons in the United Provinces. These goods were despatched by rail to purchasers in this State by the company's branch office at Calcutta where payment for the goods was made.

3. In respect of the assessment year 1948-49 the respondent company was assessed to sales tax on the turnover of the goods despatched from Calcutta to the United Provinces. The company, in the petition out of which this appeal arises, challenged the validity of the assessment on two grounds. It contended, in the first place, that the company was not a "dealer" within the meaning of the U. P. Sales Tax Act, and, secondly, that as the company had not under Rule 6 of the Rules made under that Act made a declaration as to which Sales Tax Officer should be the assessing authority, and as the Commissioner had also failed to determine as to who the Sales Tax Officer should be, no assessment could validly be made.

4. Mr. Justice Chowdhary was of opinion that both the submissions were well-founded. In his opinion a person or association of persons would not be a "dealer" within the meaning of that term as defined in Section 2(c) of the Act unless he or it was physically present within the territorial limits of the State. He was further of opinion that as no declaration had been made by the respondent company under Rule 6(c), or determination by the Commissioner under Rule 6(d), the Sales Tax Officer, Banaras, had no power to make the assessment order.

5. Learned counsel for the State has argued before us that the conclusion arrived at by the learned Judge on both these matters was erroneous. He has contended that it is immaterial where the person or association is resident, liability to tax as a dealer being dependent upon whether the goods, the turnover on which is sought to be taxed, were sold within the State. As regards the interpretation of Rule 6 he has submitted that the failure of a dealer to make a declaration under Rule 6(c) would not enable him to avoid assessment which can be made by the Sales Tax Officer under Sub-rule (a) of that rule.

6. Learned counsel for the appellants however found himself unable to contend that upon the facts of this case, as set out in the affidavit accompanying the petition, the sales of the goods despatched by the respondent company to the United Provinces took place in this State. It is clear therefore that

even if the submissions made by learned counsel with regard to the true interpretation of the word "dealer" and the proper construction of Rule 6 of the rules made under the Act are correct this appeal is bound to fail, for it is not suggested that the respondent company comes within the definition of a "dealer" if the sales which it effected took place outside this State. In these circumstances it is unnecessary for us to express an opinion on the two points which have been argued by learned counsel for the appellants, and it is undesirable that we should do so as we have not heard argument on behalf of the respondent company thereon. The fact that we are not expressing an opinion on these points must not be taken to mean that we necessarily concur with the views expressed by Mr. Justice Chowdhary.

7. The appeal accordingly fails and is dismissed with costs which we assess at Rs. 200.