Supreme Court of India
State Of West Bengal vs O.P. Lodha & Anr, M/S. Chowringhee ... on 31 March, 1997
Author: Sen
Bench: Suhas C. Sen, Sujata V. Manohar

PETITIONER:
STATE OF WEST BENGAL

Vs.

RESPONDENT:
O.P. LODHA & ANR, M/S. CHOWRINGHEE SALES BUREAU PRIVATE LTD.

DATE OF JUDGMENT: 31/03/1997

BENCH:
SUHAS C. SEN, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

With CIVIL APPEAL NOS. 4414-14A OF 1990 J U D G M E N T SEN, J O. P. Lodha and others (hereinafter described as `the firm') carry on business under the trade name M/s prakash Trading Corporation. Its place of business is at No. 161/1, M.G. Road, Calcutta. The business of the firm is to sell goods on its own behalf and also on behalf of 24 other principals on commission agency basis. The Commercial Tax officer, Colootola charge assessed the firms the Tax under Section 6B of the Bengal Finance (Sales Tax) Act. 1941 on total turnover of the firm comprising of sales made by the firm on its own behalf as well as on behalf of 24 principals for whom the firm acted as commission agent. The firm preferred an appeal to the Assistant Commissioner of Commercial Taxes who agreed with the Commercial Tax officer. The West Bengal Commercial Taxes Tribunal on further appeal, also took the same view.

On further appeal, the west Bengal Taxation Tribunal came to the conclusion that the assessment of the firm by including in its turnover sales made by it as commission agent of 24 other principals was erroneous in law. It was of the view that the liability of the firm and others for sales tax was confined to the sales effected by it on its own behalf. T he sales effected on behalf of 24 other disclosed principals as commission agents had to be assessed separately.

The contention made on behalf of the firm which found favour with the Taxation Tribunal was that

the definition of `dealer' provided by the Bengal Finance (Sales Tax) Act, 1941 did not permit the Commercial Tax officer to tax a dealer in respect of sales effected on behalf of the principals. The attention of the Tribunal was drawn to the definition of `turnover' in sales tax laws of some other states where goods sold by an agent on his own account as well as on account of somebody else have been brought within the mischief of the Act by specific words. Reference was made to the case of Ramaswamy Gounder and Sons V. State of Madras, 32 STC 350. There, in the definition of `turnover' provided by the Tamil Nadu General Sales Tax Act, turnover included sales effected by a dealer directly or through another 'on his on account or on account of others." These words, according to the Tribunal were crucial for determination of the liability of a dealer in cases where sales were effected on behalf of a disclosed principal'. It was contended that unless there were specific words to the contrary, the liability of the dealer would be the same as that of the principle . The agent could not be made liable for any amount of tax for which the principal was not liable. Aggregation of sales effected by a dealer on behalf of as many as 24 principals led to imposition of a higher rate of duty. If the principals were separately assessed, they would have paid a much lower rate of duty . The liability of agent was co-extensive with that of the principal . if a dealer sells any goods on behalf of the disclosed principal, the sales Tax Officer has an option to tax the principal or levy tax on the dealer on behalf of the principal. The liability of the dealer, however, will be the same as that of the Principal. There is nothing in the Act which permits the sales Tax officer to add together the sales made on behalf of as many as 24 principals so that the turnover becomes larger and the rate of tax becomes higher. There was no way the dealer could recover this larger tax from its principals.

We are unable to uphold this contention for a number of reasons.

Agents of all types have been included in the definition of `dealer'. the clear intention of the legislature is to levy tax on an agent even when such agent is selling goods on behalf of disclosed principals. There has to be only one assessment on the agent in respect of his total turnover. No exception or exemption has been provided by the Bengal Finance (sales Tax) Act for sales made by a dealer as an agent. Section 2(c) of the bengal Finance (sales Tax) Act defines "dealer" as under:

> "dealer" means any person who carries on the business of selling goods in west Bengal or of purchasing goods in West bengal in specified circumstances or any person making a sale under Section 6D and includes-
>
> the Central or a state Government, a local authority, a statutory body, a trust or other body corporate which, or a liquidator or receiver appointed by a Court in respect of a person defined as a dealer under this clause who, whether or not in the course of business sells, supplies or distributes directly; or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration.
>
> Explanation 1.- A Co-operative society or a club or any association which sells goods to its members is a dealer.

Explanation 2.- A factor, a broker, a commission agent, a del credere agent, an auctioneer, an agent for handling or transporting of goods or handling of document of title to goods or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principals is a dealer."

Section 2(h) defines ": sale-price" as follows:

"sale-price means the amount payable to a dealer as valuable consideration for-

(i) the sale, other than that referred to in section 6D of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof , other than the cost of freight or delivery or the cost of installation or interest when such cost or interest is separately charged;"

Section 2(g) defines "sale" as follows:

"sale" means any transfer of property in goods for cash or deferred payment or other valuable consideration, and includes-

(i) any delivery of goods on hire- purchase or any system of payment by instalments.

(ii) any transfer of the right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration,

(iii) any supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration or

(iv) any supply of goods by any unincorporated association or body of persons to members thereof for cash, deferred payment or other valuable consideration, and such delivery, transfer or supply of any goods shall be deemed to be a sale of the goods by the person making the delivery, transfer or supply and a purchase of those goods by the person to whom such delivery, transfer or supply is made, but does not include a mortgage, hypothecation, charge or pledge."

"Turnover" has been defined by Section 2(i) as under:

"turnover" used in relation to any period means the aggregate of the sale-prices or parts of sale-prices receivable, or if a dealer so elects, actually received by the dealer during such period after deducting the amounts, if any,-

(i) refunded by the dealer in respect of any goods returned by the purchaser within such period or

(ii) separately charged as turnover tax payable under section 6B during such period;

Provided further that where before or after the date of the coming into force of clause (f) of section 2 of Bengal Finance (Sales Tax) (West Bengal Amendment) Act, 1950, the calculation of the turnover for any period prior to such date was or is made on the basis of the sale-prices or parts of sale-prices receivable during such period, the calculation shall not be called in question merely on the ground that it was or is so made; and no return furnished , no assessment made, no proceedings (including in particular proceedings for the recovery of any tax or penalty) taken, no order passed and no notice issued whether before or after such date shall be called in question on the ground that it was or is based on turnover so calculated;"

Section 6B which is the charging section read under:

"6B. Liability to payment of turnover tax and rate thereof-(1) Notwithstanding anything contained elsewhere in this Act,-

(a) every dealer, whose aggregate of the gross turnover under this Act and the gross turnover under the West Bengal Sales Tax Act, 1954 during the last year ending on or before the 31st day of May, 1987, exceeds rupees twenty-five lakhs, shall in addition to the tax payable by him under section 5 and section 6D if any, be liable to pay from the 1st day of June, of 1987, a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2);

(b) every dealer, other than those referred to in clause (a) , whose aggregate of the gross turnover under this Act and the gross turnover under this Act and the gross turnover under the West Bengal Sales Tax Act, 1954 calculated from the commencement of any year ending on or after the 11th day of April., 1994, exceeds twenty - five lakh rupees at any time within such year shall, in addition to the tax payable by him under section 5 and section 6D, if any, be liable to pay, with effect from the date immediately following the day on which such aggregate first exceeds twenty-five lakh rupees or from the 11th day of April, 1994 , whichever is later , a turnover tax at the rate specified in sub-section(3) of such part of his turnover as specified in sub-section (2) -

(c) x x x X X It will appear from the wide definition of dealer that a person who sells goods on behalf of disclosed or undisclosed principals has been treated as `dealer' the extended definition given to a dealer which includes, inter alia, a commission agent, del credre agent and auctioneer goes to show that the agents who sell goods for and on behalf of others for a commission will have to be treated as dealers and are liable to be assessed as such under Section 6B of Bengal Finance(Sales Tax) Act. The charge

of turnover tax has been imposed upon "every dealer" whose gross turnover is in excess of a specified amount specified in Section 6B. "sale-price" has been defined as valuable consideration for the sale of any goods including any sum charged for anything done by the dealer in respect of the goods at the time of or a before delivery thereof.

The incidence of taxation under Section 4 of the Bengal Finance (sales Tax) Act is on the gross turnover in excess of the taxable quantum has to be fixed by a notification issued in the official Gazette. Taxable quantum has been defined in Sub-section (5) of section 4 to mean :

(a) in relation to a dealer who imports for sale any goods into West Bengal-Rs. 20,000/-,

(b) in relation to any dealer who manufactures or produces any; goods other than cooked foods, for sale- Rs.50,000/-

(c) in relation to any dealer who manufactures or produces cooked foods for sale, Rs.1,00,000/-

(d) in relation to any other dealer-Rs. 2,00,000/-

`Taxable turnover' has been defined by section 5(2) as under:

"5(2). in this Act, the Expression "taxable turnover" means in the case of a dealer who is liable to pay tax under section 4 or under sub-section (3) of Section 8, that part of his gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on-

(i) the sale of goods declared tax-free under section 6;

(ii) sales to a registered dealer of goods other than iron and steel, rice and wheat, referred to in section 14 of the Central Sales Tax Act, 1956(74 of 1956) specified in the certificate of registration of such dealer as being intended for re-sale, other than that by way of sale referred to in sub-clause(ii) of clause (g) of section 2 or in section 6D, by him in West Bengal, and of containers and other materials for the packing of such specified goods;

(iii) Omitted.

(iv) Omitted.

(v) sale of goods which are shown to the satisfaction of the Commissioner naot to have taken place in West Bengal, or to have taken place in the course of inter- state

> trade or commerce, within the meaning of section 3 of the Central Sales Tax Act, 1956 (74 of 1956), or in the course of import of the goods into, or export of the goods out of, the territory of India, within the meaning of section 5 of that Act;
>
> (va) sales of goods specified in section 14 of the central Sales Tax Act, 1956 (74 of 1956), on a prior sale whereof in West Bengal due tax is shown to the satisfaction of the Commissioner to have been paid;"

it is not necessary to enumerate various other deductions which are permissible under sub-clauses (vb) to (vd) and also sub-clause (vi) of section 5(2) of the Act.

It is of significance to note that an agent who is a dealer is not entitled to any deduction on account of the sales made by him for and on behalf of the principal. In fact, there is no sense in treating the agent on the one hand as a dealer for the purpose of levying sales tax on its taxable turnover and exclude from his turnover the sales made for and on behalf of others on the other hand . The mere fact that the agent is being treated as a dealer for imposition of sales tax precludes the argument that the real liability to pay the tax is on the principal for and on whose account the goods are sold by the agent. The Act has made agent directly liable to pay sales tax on his taxable turnover. There is no provision in the Act which permits the Commercial Tax Officer to look beyond the sales effected by the agent and find out for and on whose behalf the sales have been effected. Section 6B merely provides for levy; of an additional amount of tax on 'dealers' whose aggregate of the gross turnover under the Bengal Finance (Sales Tax) Act and the West Bengal Sales Tax Act taking together exceed RS. 25 lakhs. If the dealer happens to be an agent, he will have to pay this tax on his gross turnover because the statute treats him as dealer in respect of the sales effected by him. In fact, the argument that the liability of the dealer must be determined by excluding the sales made for or on account of somebody else will nullify the charging section which levies tax on the agent himself.

It is true that unlike some other state Acts, the Bengal Finance (Sales Tax) Act has not defined `turnover' specifically to include sales made by a dealer whether on his own account or on account of somebody else. That, in my judgment, does nota made any difference. if a person sells goods on his own account, he is liable not as an agent but as seller. But when he sells on behalf of somebody else or on account of somebody else, then he sells the goods as an agent of the principal. Such agents have been made liable to pay tax by the enlarged definition of the word `dealer' in the Act. If the sales effected by the dealer exceeds "taxable quantum" or the total sales exceeds the taxable turnover, he will be liable to pay tax under Section 4 or Section 6B of the Bengal Finance (Sales Tax) Act. Whether such persons sell goods on his own behalf or on behalf of somebody else is quite immaterial for this purpose.

In my judgment, the scheme of the Act leaves no room for doubt that an agent who sells goods on behalf of somebody else cannot excape the liability to pay sales tax on the sales made by him for and on behalf of others merely because, he was selling goods on behalf of others. The charge under Section 6B has been imposed directly upon him by the broad definition of `dealer'.

On behalf of the respondents, reliance was placed on H.Veerabhadrappa v. Commissioner of Commercial Taxes, 24 STC 919 and Gudathur Bhemappa V. Commercial Taxes 47 STC 121 which were noted in the judgment of the Tribunal. These decisions of the High Courts were based on the principle that the liability of the commission agent in respect of business carried on by him on behalf of the principal was only in his character as agent and the turnover brought to tax in such a case was the turnover of the principal and not the turnover of the agent himself. If the turnover of the principal did not exceed the taxable limit, the Commercial Tax officer could not aggregate the transactions of the several known principals and then made the agent liable for payment of the additional tax.

We are of the view that this approach is erroneous . The liability of the agent to pay sales tax on the sales made by him has to be found out from the Sales Tax Act itself and not on any general principle of agency. The agent has been made liable to pay turnover tax by the provisions of section 6B read with Section 2(c) of Bengal Finance (sales Tax) Act. This liability to pay tax is his own. so far as the Act is concerned the agent is the assessee. He may have his claims against the principals arising out of the agency agreement. But it is something between him and his principals. So far as the sales Tax Act is concerned, tax has been levied directly on the agent on his turnover. it is not possible to uphold the argument that agent's liability is limited only to the extent that his principal was liable and that in order to find out the liability of the agent, it has to be found out what exactly is the liability of each of his principals. This argument has been specifically negatived by this Court in the case of Cardamom Planters Association, Bodinayakanur v. Deputy Commissioner of Sales Tax(law), Board of Revenue(Taxes) Ernakulam 1989 (3) SCR 719. That was a case of society of which the members were cardamom growers in the state of Kerala. The Society carried on the business as an auctioneer under a licence issued to it under the Cardamom Act read with the Cardamom (Licensing and marketing) Rules, 1977. The mode of selling cardamom was that the planters left their produce with the society and the Society after mixing the produce of all the planters put the same to auction. The Society used to collect one per cent as commission out of the sale proceeds from each of the planters. Besides cardamom, the society also sold goods on their own.

The question in that case was how far was the Society liable to pay the surcharge under the kerala General Sales Tax Act, 1963. The Kerala Act imposed sales tax on every dealer whose total turnover in a year exceeded a specified sum which varied from year to year. In 1957, the Kerala Legislature introduced a surcharge on sales tax payable by a dealer whose turnover exceeded Rs. 30,000/- a year. An important feature of this surcharge was that unlike sales tax, the seller could not pass on the burden of this surcharge to the consumers and had to bear it himself.

The Society's contention was that it sold goods in its capacity as commission agent for various principals and on the general principal of agency, an agent would be liable to surcharge only to the same extent as the principal whom he represented. Therefore, his liability could not be more than the liability of his principal. It was, therefore, contended that the Society could not be made liable for any surcharge in respected of the sales effected by it on behalf of the principals whose sales to the Society did not exceed the limits set out in Section 3(1) of the Surcharge Act. The principals could not be made liable to surcharge if they were assessed individually. The sales made by the Society on behalf of the disclosed principals could not be clubbed together and subjected to one assessment.

This argument was rejected by this Court on two grounds. The first was that the commission agent fell within the ambit of the definition of "dealer" in the Kerala Act and made its turnover liable to tax. The Act did not contemplate any dissection of this turnover into transactions on behalf of various principals by reference to their individual liabilities to pay such taxes.

The other ground was that the statutory interpretation apart, if the contention of the asessee that separate assessment must be made on the sales effected on behalf of each of the principals, is accepted, it will make the Act unworkable. A commission agent will be dealing on behalf of hundreds of Constituents and each of his constituents may be dealing not only through him but also through several other agents. The transactions may not be confined to the territories of one State and may be spread over the entire Indian sub-continent. The sales through different agents may be of different goods attracting liability to tax at different rates. it may be that a principal whose sales through one commission agent may not come upto the limits of turnover for levy of tax or surcharge may have been dealing through other agents and, if assessed directly, may have a turnover exceeding those limits. In this state of affairs, it will be absolutely; impracticable, if not impossible, for a Sales Tax officer having jurisdiction over one particular commission agent to make his sales tax assessment on the basis suggested by the assessee. That would require the collection data, in the assessment of every commission agent, regarding the entire sales turnover of each of his constituents who may or may nota be assessed by the officer assessing the particular commission agent. The assessment order on the commission agent would then have to be split up, as it were, into a number parts each containing the determination require exercises which cannot be practically undertaken by an officer assessing a commission agent but can easily be undertaken by the different officers assessing the principals. That is why the statute evolved a very simple procedure to meet the situation. It brought the commission agent within the definition of a dealer and made his aggregate turnover liable to tax. But it provided at the same time that turnover so included and taxed in the hands of the agent should be excluded from the turnover of the principal, where he is separately assessed.

We are of the view that basically, the West Bengal Act is on similar lines as the Kerala Act. An agent as a dealer has been made directly liable to pay sales tax for good reasons. The Act has not provided for splitting of the sales made by the dealer for and on behalf of different principals and make separate assessment on the dealer . It is the total turnover of the dealer. It is the total turnover of the dealer which has been brought to tax under the Act. In the making the assessment of the dealer, the Commercial Tax officer does not have to find out what was the exact quantum of sales effected on behalf of each principal and what was the liability, if any, of that principal. The liability to pay tax imposed by Section 6B is on the dealer himself and not on the principal through the dealer. For computing his liability, the taxable turnover of the dealer has to be found out.

The Taxation Tribunal has attached great significance to the definition of "turnover" given in the Bengal Finance (Sales Tax) Act, and pointed out that unlike the Tamil Nadu General Sales Tax Act, 1959, the Bengal Act did not define `turnover' to mean the aggregate amount for which the goods were bought and sold by a dealer on his own account or on account of others, In our judgment, the absence of these words does not made any difference in the case of a dealer who is an agent. The agent has been made liable to pay sales tax. The agent may sell goods on account of others. But that

will not absolve the agent from the liability to pay tax on such sales. Otherwise, the imposition of tax by Section 6B on an agent who is a dealer will become meaningless.

We are of the view that the Taxation Tribunal clearly fell into error in holding that the aggregate of the turnover of the principals cannot be computed for assessing the agent fora turnover tax under Section 6B. The judgment and order dated 20.9.1989 of the Tribunal is set aside. the appeal is allowed with no order as to costs. C.A Nos. 4414-14A of 1990 In view of our decision in C.A. No. 1374 of 1990, the judgment and order dated 4.1.1990 of the West Bengal Taxation Tribunal is also set aside and the above appeals are allowed with no order as to costs.