Supreme Court of India
Govind Saran Ganga Saran vs Commissioner Of Sales Tax And Ors on 26 April, 1985
Equivalent citations: 1985 AIR 1041, 1985 SCR (3) 985
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
GOVIND SARAN GANGA SARAN

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX AND ORS.

DATE OF JUDGMENT26/04/1985

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
VENKATARAMIAH, E.S. (J)

CITATION:
1985 AIR 1041 1985 SCR (3) 985
1985 SCC Supl. 205 1985 SCALE (1)986
CITATOR INFO :
F 1986 SC2200 (2)

ACT:
Central Sales Tax Act, ss. 14 and 15 read with Bengal Finance (Sales Tax) Act 1941, s.5 (2) (a) (ii)-Scope of-Goods declared to be of special importance in inter-State trade or commerce-Omission to specify the single point at which the tax may be levied-Effcet of

HEADNOTE:
The appellant, a registered dealer under the Bengal Finance (Sales Tax) Act 1941 as applied to the Union Territory of Delhi (for short, the State Act) used to purchase Cotton yarn and sell it to registered dealers, unregistered dealers and consumers. He submitted his return of turnover under the State Act for the assessment year 1968-69 and claimed exemption in respect of the turnover of sales of cotton thread on the ground that it was an exempted item under Entry 21 of the Second Schedule. The Sales Tax Officer held that the sales were liable to tax as the same were effected in respect of cotton yarn. The appellant ultimately went in revision to the Financial Commissioner who proceeding on the basis that the sales were in respect of cotton yarn, which was a declared item under s.14 of the

Central Sales Tax Act allowed the revision petition holding that they could not be subjected to sales tax because one of the conditions prescribed by s.15 of that Act had not been complied with, that is to say, the law had omitted to prescribe the single point at which the levy could alone be imposed. Aggrieved by the order of the Financial Commissioner, the Revenue filed a writ petition in the High Court which, relying on the construction placed by it on sub-clause (ii) of cl.(a) of s.5 in Fitwell Engineers v Financial Commissioner Delhi Admn (1975) 35 S.T.C. 66, allowed the petition holding that the single point in a series of sales is the sale made by the last registered dealer among successive dealers when he sold the goods to an unauthorised dealer or consumer. Hence this Appeal.

Allowing the Appeal,

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HELD: 1. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If
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these components are not clearly and definitely ascertainable it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity. [900D-E]

2. Where the turnover of goods declared to be of special importance in inter-State trade or commerce under s. 14 of the Central Sales Tax Act is subjected to sales tax law of a State, section 15 prescribes the maximum rate at which such tax may be imposed and requires that such tax shall not be levied at more than one point. The two conditions have been imposed in order to ensure that Inter-State trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or by multpoint taxation. Section 15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If either of the two conditions are not satisfied, the impost will be invaid- Now in order that tax should not be levied at more than one stage it is imperative that the sales tax law of the State should specify either expressly or b y necessary implication the single point at which the tax may be levied Alternatively, it may be empower a statutory authority to prescribe such single point for the purpose. Where such point is not prescribed, either by the statute or by the statutory delegate, no compliance is possible with s. 15. The single point at which the tax may be imposed must be a definite ascertainable point so that both the dealer and the

sales tax authorities may know clearly the point at which the tax is to be levied. [989G-H: 900A-C]

3. On the construction which found favour with this Court in Polestar Electronic (P) Ltd v. Addl. Commissioner, Sales Tax & Anr., (1978) 41 S. T. C. 409 it is apparent that no support can be found for the proposition that sub-cl. (ii) of cl. (a) of sub-s. (2) of s.5 of the State Act implies that the single point of taxation is Fixed by the State, Act at the resale by a registered dealer to an unregistered dealer or to a consumer. As that is the reasoning on which the High Court has proceeded in The judgment under appeal, it must be held that the basis underlying the decision of the High Court cannot be accepted. [992F-G]

Fitwell Engineers v. Financial Commissioner, Delhi Administration, Delhi and another, (1975) 35 S. T. C. 66 over-ruled.

4. It is well settled that when the language of the statute is clear and admits of no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statutory provision is not permissible Section SA Of the State Act clearly empowers the Chief Commissioner to specify the single point in a series of sales at which single point taxation may be levied. The widest amplitude of power has been conferred on the Chief Commissioner in the matter of selecting the point for taxation in a series of sales and, if that is so, clearly do single point can be spelled out, even by implication, from the provision of sub-cl. (ii) of cl. (a) of sub-s. (2) of s.5. For to do so would mean either accepting an inconsistency between the two provisions or narrowing down correspondingly the scope of s. 5 A. No such notification has been placed before
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the Court which could relate to the assessment year under consideration. There- fore a vital prerequisite of s. 15 of the Central Sales Tax Act, namely, that the tax shall not be levied at more than one stage, has not been satisfied in respect of the turnover of cotton yarn, and accordingly the assessment complained of is liable to be quashed. [993BG]

Polestar Electronic (P) Ltd. v. Additional Commissioner, Sales Tax and Another. (1978) 41 S. T. C. 409. followed.

Bhawani Cotton Mills Ltd. v. The State of Punjab and Another, (1967) 20 S. T. C. 290 &Rattan Lal and Co. v. The Assessing Authority and Another (1970 25 S. T. C. 136, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2083 of 1974.

From the judgment and order dated 10. 9. 1974 of the Delhi High Court in Civil W. P. No. 460/1973.

L.M. Singhavi, Mrs. Anjali Verma, R.C. Chawla, N.K Bhuraria and L. K. Pandey for the appellant.

S. C. Manchanda and R. N. Poddar for the Respondents. The judgment of the Court was delivered by PATHAK; J: This appeal by special leave is directed against the judgment and order of the High Court of Delhi dismissing the appellant's writ petition questioning the liability imposed in him on a sales taxassessment.

The appellant carries on business as a dealer in the re-sale of cotton yarn. As a dealer he has been registered under the Bengal Finance (Sales Tax) Act, 1941 as applied to the Union Territory of Delhi (hereinafter referred to as the 'State Act'). The appellant says that he purchases cotton yarn and sells it to registered dealers, unregistered dealers and consumers. For the assessment year 1968-69 the appellant submitted his return of turnover under the state Act and claimed exemption in respect of the turnover of sales of cotton thread on the ground that it was an exempted item under Entry No. 21 of the Second Schedule. The Sales Tax Officer, by his order dated October 29,1970, held that the sales were effected in respect of cotton yarn and, therefore, they were liable to tax at one per cent on appeal, the Assistant (commissioner of Sales Tax took a contrary view and on his finding that the transactions were in respect of cotton thread he allowed the appeal and struck the assessment down. Acting suo motu in the exercise of his revisional jurisdiction, the Deputy Commissioner of Sales Tax made an order under Sub-s. (3) of S. 20 of the State Act reversing the order of the Assistant Commissioner and restoring that of the Sales Tax Officer on the ground that what was sold was cotton yarn. The appellant now applied in revision to the Financial commissioner, Delhi Administration, and the Financial Commissioner, proceeding on the basis that the sales were in respect of cotton yarn, which was a declared item under s. 14 of the Central Sales Tax Act, held that they could not be subjected to sales tax because one of the conditions prescribed by s. 15 of that Act had not been complied with, that is to say, the law had omitted to prescribe the single point at which the levy could alone be imposed. Accordingly, the Financial Commissioner allowed the revision petition and quashed the assessment. The Commissioner of Sales Tax thereupon filed Civil Writ Petition No. 460 of 1973 in the High Court of Delhi praying for the quashing of the order of the Financial Commissioner. The writ petition was allowed by the High Court by its judgment and order dated September 10, 1974. Against that judgment and order the appellant has filed the present appeal.

S. 14 of the Central S-ales Tax Act enumerates the commodities declared to be goods of special importance in inter-State trade or commerce. Among the goods so declared is cotton yarn. S. 15 of the Central Sales Tax Act, 1956 provides :-

15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be levied

at more than one stage."

The tax is payable by a dealer under the State Act on taxable turnover, and sub-s. (2) of s. 5 provides;

"(2) In this Act, the expression "taxable turnover" means that part of a dealer's gross turnover during any period, which remains after deducting thereform-

> (a) his turnover during that period on- (i) the sale of goods declared tax free under section 6,
>
> (ii) sale to a registered dealer-of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for re-sale by him, or for use by him as raw-materials in the manufacture of goods for sale; and of containers or other materials for the packing of goods of the class or classes so specified for sale:
>
> Provided that in the case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the good; Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for re-sale by him or for use by him as raw-materials in the manufacture of goods for sale, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer."

In the instant case, we are concerned with the taxation of goods which under s. 14 of the Central Sales Tax Act have been declared to be of special importance in inter-State trade or commerce. Where the turnover of such goods is subjected to tax under the sales tax law of a State, s. 15 prescribes the maximum rate at which such tax may be imposed and requires that such tax shall not be levied at more than one point. The two conditions have been imposed in order to ensure that inter-State trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or bymulti point taxation. S.

15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If either of the two conditions are not satisfied, the impost will be invalid. Now in order that tax should not be levied at more than ond stage it is imperative that the sales tax law of the State should specify either expressly or be, necessary implication the single point at which the tax may be levied. Alternatively, it may empower a statutory authority to prescribe such single point for the purpose. Where such point is not prescribed, either by the statute or by the statutory delegate, no compliance is possible with s

15. the single point at which the tax may be imposed must be a definite ascertainable point so that both the dealer and the sales tax authorities may know clearly the point at which the tax is to be levied.

The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness ill the legislative scheme defining any of those components of the levy will be fatal to its validity.

The charging provision, s. 4, of the State Act enacts that every dealer whose gross turnover during the year exceeds the taxable quantum shall be liable to pay tax. The ordinary rule under . the State Act appears to be that the scale made by every dealer in a series of sales by successive dealers is liable to tax. That is multi point taxation. In a scheme of single-point taxation, the levy is confined to a single point in a series of sales by successive dealers. According to the Revenue, the present levy falls in the latter category, and sub-cl. (ii) of cl.

(a) of sub-s. (2) of s.5 implies the single point at which the turnover of goods may be taxed. That argument from favour with the High Court, and it held the single point in a series of sales to be the sale made by the last registered dealer among successive dealers when he sold the goods to an unregistered dealer or a consumer In this connection, the High Court relied on the construction placed by it on sub-cl. (ii) of cl. (a) of sub-s. (2) of s.5 in Fitwell Engineers v. Financial Commissioner, Delhi Administration, Delhi, and Another' (1) In that case, the High Court had held that it was for the purpose of taxing the goods at least at one point that sub-cl. (ii) of c1. (a) of sub-s. (2) of s.5 of the State Act had been enacted, that there would be a taxable sale when the registered dealer sold the goods to an unregistered dealer or to a consumer, and that in order that such resale by the registered dealer should attract tax the resale to an unregistered dealer or to a consumer had to be effected in Delhi, because if the resale was effected outside the Union Territory of Delhi the Union Territory of Delhi would have no legislative competence to tax the resale. Now the question whether the expression "resale" in sub-cl. (ii) of cl. (a) of sub-s. (2) of s.5 of the State Act was confined to a resale in the Union Territory of Delhi by the last registered dealer was subsequently considered by this Court in Polestar Electronic (P) Ltd. v. Additional Commissioner, Sales-Tax And Another.(2) Overruling the decision of the High Court in Fitwell Engineers (supra) this Court held that the expression "resale" was not confined to a resale in the Union Territory of Delhi and could include a resale outside it. That was the position upto May 28, 1972 when sub-cl.

(ii) of cl. (a) of sub-s. (2) of s.5 was amended by the Finance Act, 1972. This Court observed that the position before the amendment in 1972 was not affected by the possibility that on the construction preferred by the Court the Union Territory of Delhi would be unable to re- cover any tax. The Court said:

"It is true that if the purchasing dealer resells the goods outside Delhi, the Union Territory of Delhi would not be able to recover any tax since the sale to the purchasing dealer would be exempt from tax under section 5 (2) (a) (ii) and the resale by the purchasing dealer would also be free from tax by reason of section

27. But that is not such a consequence as would compel us to read the word "resale" as limited to resale inside Delhi. The argument of the revenue was that the legislature could never have intended that the Union Territory of Delhi should be altogether deprived of tax in cases of this kind. The legislative intent could only be to exempt the sale to the purchasing (1) [1975] 35 S. T. C. 66.

(2) [1978] 41 S, T. C. 409.

dealer in those cases where the Union Territory of Delhi would be able to recover tax on resale of the goods by the purchasing dealer. The goods must be taxed at least at one point and it could not have been intended that they should not be taxable at all at any point by the Union Territory of Delhi. The revenue urged that it was for the purpose of taxing the goods at least at one point that the second proviso was enacted by the legislature. We do not think this contention based on the presumed intention of the legislature is well-founded."

And again, "The intention of the legislature was clearly not that the Union Territory of Delhi should be entitled to tax the goods at least at one point so that if the sale to the purchasing dealer is exempt, the resale by the purchasing dealer should be taxable. We do not find evidence of such legislative intent in any provision of the Act" (Emphasis supplied) Further on, in the same passage, the Court reiterated:

"It will, therefore, be seen that it is not possible to discover any legislative intent to tax the goods at least at one point and to exempt the sale to the purchasing dealer only if the resale by the purchasing dealer is liable to tax."

On the construction which found favour with this Court in Polestar Electronic (P) Ltd, (supra) it is apparent that no support can be found for the proposition that sub-cl.

(ii) of cl. (a) of sub-s. (2) of s.5 of the State Act implies that the single point of taxation is fixed by the State Act at the resale by a registered dealer to an unregistered dealer or to a consumer. As that is the reasoning on which the High Court has proceeded in the judgment under appeal, we must hold that the basis underlying the decision of the High Court cannot be accepted.

It may be noted that the State Act as applied to the Union Territory of Delhi was amended by Parliament in 1959, and s. 5A, was inserted. S. SA provides:

"Notwithstanding anything to the contrary in this Act, the Chief Commissioner may, by notification in the Official Gazette, specify the point in the series of sales by successive dealers at which any goods or class of goods may be taxed."

That provision clearly empowers the Chief Commissioner to specify the single point in a series of sales at which single point taxation may be levied. The widest amplitude of power has been conferred on the Chief Commissioner in the matter of selecting the point for taxation in a series of sales and, if that is so, clearly no single point can be spelled out, even by implication, from the provision of sub- cl. (ii) of cl. (a) of sub-s. (2) of s. 5. For to do so would mean either accepting an inconsistency between the two provisions or narrowing down correspondingly the scope of s. 5A. We have already pointed out that the provision for single point taxation cannot, in the view of this Court expressed in Polestar Electronic (P) Ltd. (supra), be discovered in sub-cl. (ii) of cl. (a) of sub-s (2) of s.5 of the State Act. To our mind, provision has been made in that behalf in the statute by the insertion of s.5A. The High Court has referred to the Statement of Objects and Reasons attached to the Bengal Finance (Sales Tax) (Delhi Amendment) Act 1959 in support of its conclusion that s.5A was inserted only to provide for the levy of tax at any point other that the point of last sale so that sales-tax may be levied at the first point on certain items which were manufactured in factories. It is well settled that when the language of the statute is clear and admits to no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statuory provision is not permissible. We are of opinion that there is ample power under s 5A of the State Act enabling the Chief Commissioner to specify the single point at which tax may be levied in a series of sales. This can, however, be done by a him only by a notification in the Official Gazette. No such notification has been placed before us which could relate to the assessment year under consideration. We hold therefore that a vital prerequisite of section 15 of the Central Sales Tax Act, namely, that the tax shall not be levied at more than one stage, has not been satisfied in respect of the turnover of cotton yarn, and accordingly the assessment complained of is liable to be quashed.

While concluding, we may point out that a somewhat similar question arose before this Court in Bhawani Cotton Mills Ltd. v. The State of Punjab and Another, (1) the question being whether the second proviso to s. (i) of s.5 and sub-cl (vi) of cl.

(a) of sub-s. (2) of s. 5 of the Punjab General Sales Tax Act 1948 implied the single point at which goods were taxable. The contention was negatived by This Court. That is how that decision was understood by this Court subsequently in Rattan Lal and Co. And Another v. The Assessing Authority And Another.(2) Accordingly, we hold that the assessment of the turnover of cotton yarn for the assessment ytra 1968-1969 under the Bengal Finance (Sales Tax) Act, 1941 as applied to the Union Territory of Delhi cannot be sustained. In the result, the appeal is allowed, the judgment and order of the High Court of Delhi are set aside and the assessment of the turnover of cotton yarn is quashed. The appellant is entitled to its costs.

M. L. A. Appeal allowed.

(1). [1967] 20 S. T. C. 290.

(2). 11970] 25 S, T. C. 136.