(1972) 11 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Sales Tax Reference No. 30 of 1969

Agrawal Engineering and Construction Co.	APPELLANT
Vs	
State of Rajasthan	RESPONDENT

Date of Decision : 02-11-1972

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 2(f), 5A

Citation : (1973) RLW 138 : (1973) 31 STC 92 : (1972) WLN 890

Hon'ble Judges : M.L. Joshi, J;B.P. Beri, J

Bench : Division Bench

Advocate : C.L. Agrawal, for the Appellant; M.L. Shrimal, for the Respondent

Judgement

B.P. Beri J.

1. On the direction of this court dated 27th August, 1968, the Board of Revenue for Rajasthan has referred the following question for our answer u/s 15(2) of the Rajasthan Sales Tax Act (hereinafter called "the Act") :

Whether on the facts and circumstances of this case and on the true construction of the provisions of the Rajasthan Sales Tax Act, 1954, the petitioner''s firm is covered by the definition of a ''dealer'' u/s 2(f) of the Rajasthan Sales Tax Act, 1954?

2. Messrs. Agrawal Engineering and Construction Company, Jaipur Road, Ajmer, is a partnership firm registered under the Indian Partnership Act. It was asked by the Assistant Commercial Taxes Officer, ''B'' Ward, Ajmer, to get itself registered as a dealer u/s 6 of the Act but the petitioner contested the position saying that it was not covered by the definition of the word "dealer" as defined in Section 2(f) and, therefore, it was not liable to get itself registered. The Assistant Commercial Taxes Officer held that the petitioner was a dealer and should have registered itself as such u/s 6 of the Act and imposed a fine of Rs. 50. A revision was filed by the petitioner before the Board of Revenue for Rajasthan against the said order of the Assistant Commercial Taxes Officer and the Board dismissed the

petition on the ground that the question raised by the petitioner stood decided by the judgment of the Supreme Court in the State of Andhra Pradesh v. H. Abdul Bakshi & Bros. [1964] 15 S.T.C. 644 (S.C.) The petitioner asked the Board to refer the matter u/s 15(2) of the Act, but the Board expressed the opinion that the matter was fully covered by the authority of the Supreme Court and no reference was necessary. It is in these circumstances that the petitioner moved this court and by its court order dated 27th August, 1968, the Board was directed to refer the question aforesaid.

3. Mr. C. L. Agrawa J, the learned counsel for the petitioner, argued that on a proper interpretation of the term "dealer" as defined u/s 2(f) of the Act means any person who carries on the business of buying or selling or supplying or distributing goods. The petitioner is a building contractor who did not carry on the business of buying material as such and, therefore, does not fall within the scope of Section 2(f) and, therefore, it is not liable u/s 5A of the Act for any purchase tax, He placed reliance on K.S. Films v. The State of Maharashtra [1969] 23 S.T.C. 121 The State of Gujarat v. Vivekanand Mills [1967] 19 S.T.C. 103 (S.C.) (sic), State of Gujarat Vs. Raipur Manufacturing Company Ltd., The State of Gujarat v. Raipur Manufacturing Co. Ltd., Versova Koli Sahakari Vahatuk Sangh Ltd. v. The State of Maharashtra [1968] 22 S.T.C. 116 and Loyal Textile Mills Ltd. v. The State of Madras [1968] 21 S.T.C. 195.

4. Mr. Shrimal, the Additional Government Advocate, appearing for the department urged that the question before us is clearly covered by the decision of their Lordships of the Supreme Court in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, and no useful purpose would be served by referring to any other decision except the decision of the Madhya Pradesh High Court from which the matter went up to the Supreme Court which is reported as Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh [1966] 17 S.T.C. 14

5. A close examination of Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh, shows that the learned counsel for the department is right when he says that the question which calls for answer before us is directly covered by that case. It will be profitable to recall the salient features of similarity between the case before us and the one decided by the Supreme Court. Let us glean the facts of Ganesh Prasad''s case4 from the decision of the High Court [1966] 17 S.T.C. 14. The assessee in that case was a building contractor and registered as a dealer under the Madhya Pradesh General Sales Tax Act, 1958. In the course of his business he was required to purchase certain goods and materials for the execution of contract works undertaken by him. As he failed to submit a return for the assessment period between the 1st July, 1961, to the 30th September, 1961, a notice u/s 18(5) of the Madhya Pradesh Act was issued to him asking him to appear with his account books. The Sales Tax Officer found that the assessee''s turnover for the period in question was nil. He, however, came to the conclusion that during the relevant period the assessee

purchased building materials from unregistered dealers of the value of Rs. 40,000 and that on these purchases he was liable to pay purchase tax u/s 7 of the Madhya Pradesh Act. Accordingly an assessment of purchase tax on Rs. 40,000 was made by the Sales Tax Officer at the prescribed rate. The assessee''s appeals before the Commissioner of Sales Tax and the Sales Tax Tribunal, namely, the Board of Revenue, did not meet with success. One of the questions that arose for consideration in that case was whether on the facts and in the circumstances of the case the applicant was a "dealer" during the period of assessment under the Madhya Pradesh Act and the imposition of purchase tax on him u/s 7 of the said Act was in order. The learned Judges of the Madhya Pradesh High Court found on the basis of a comparative study of Section 2(e) of the Hyderabad General Sales Tax Act with that of the Madhya Pradesh General Sales Tax Act that they were nearly similar and, therefore, the High Court observed in this case4 that the assessee was a "dealer". The learned Judges of the Madhya Pradesh High Court observed as follows:

...Mere buying for personal consumption, i. e, without a profitmotive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use (sic) in manufacturing another commodity for sale, would be regarded as a dealer.

6. The learned Judge of the High Court accordingly answered the question in the affirmative, holding that the assessee was a dealer. The matter was taken up to the Supreme Court and their Lordships referred to L.M.S. Sadak Thamby & Co. v. The State of Madras [1963] 14 S.T.C. 753 in which a similar question was decided by the High Court of Madras. In that case, the assessee had purchased tanning bark and had consumed it for tanning raw hides. The Madras High Court was of the opinion that the buying of the goods must be in the course of business which means that the activity should be associated with a profit-making motive. Their Lordships further referred to the fact that where no sales tax was payable u/s 6 on the sale price of the goods, purchase tax was payable by the dealer on the purchase price of the goods (raw material) purchased from unregistered dealers and consumed in the manufacture of other goods. The Supreme Court affirmed the decision of the Madhya Pradesh High Court in Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh [1966] 17 S.T.C. 14 and found the building contractor a "dealer".

7. We have already noticed that the assessee in Ganesh Prasad Dixit''s case [1966] 17 S.T.C. 14 and the one before us are both building contractors. Let us now examine to what extent the provisions of law relevant for the determination of the question are similar. The material portion of Section 2(b) defining the term "dealer" in the Madhya Pradesh General Sales Tax Act, 1958 and the Rajasthan Sales Tax Act, 1954, Section 2(f), are placed below in juxtaposition :

Madhya Pradesh : Rajasthan : "2(d)-''dealer'' means any person "2(f)-''dealer'' means any person who carries on the business who carries on the business of of buying, selling, supplying buying, selling, supplying or or distributing goods, directly distributing goods, directly or or otherwise, whether for cash, otherwise whether for cash, or for deferred payment, or for or for deferred payment, or for commission, remuneration or commission, remuneration, or other valuable consideration other valuable consideration and and includes- includes-

8. It would be sufficient to say that the material part of the definition is not only similar but exactly identical and the portions that we have excluded from the quotation, in the interest of brevity, are also similar.

9. Section 7 of the Madhya Pradesh Act and Section 5A of the Rajasthan Act are also similar. They are quoted below for the purpose of reference :

Section 7. Levy of purchase tax.-Every dealer who in the course of his business purchases'' any taxable goods from a registered dealer in. circumstances in which no tax u/s 6 is payable on the sale price of such goods or from any other person and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods u/s 6.

Section 5A. Levy of purchase tax.-Every dealer who in the course of his business purchases any goods, other than exempted goods in circumstances in which no tax under Sections 5 and 5E is payaple on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise, or disposes of such goods in any manner other than by way of sale in the State, or if such goods are the specified goods, despatches them to a place outside the State or if such goods are goods other than the specified goods despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods under Sections 5 and 5E.

10. The only distinction that the learned counsel for the assessee endeavoured to emphasis was that in the Madhya Pradesh case, the assessee was a registered dealer while in the case before us he was resisting such a registration. This distinction is without difference. What was considered in the Madhya Pradesh case was whether a building contractor who purchases material for the execution of his building contracts was a dealer or not within the definition of the Madhya Pradesh General Sales Tax Act and, therefore, liable for the purchase tax. The fact that the Madhya Pradesh building contractor was registered as a "dealer" would not make him a "dealer" within the meaning of the term as defined in the statute if he did not fall within its ambit. Nor would a Rajasthan building contractor fall out of the scope of the term when he is within its plain language merely because he resists registration. The question is determined by reference to the business of the assessee and the applicability of the statutory provisions

and not by the attitude of the assessee. We are satisfied that in the light of the opinion expressed by the Supreme Court, which affirms the judgment of the Madhya Pradesh High Court, the petitioner before us is a dealer within the meaning of the term "dealer" as defined in Section 2(d) of the Rajasthan Act. We might observe at this stage that the learned Members of the Board of Revenue for Rajasthan have rightly directed the Assistant Commercial Taxes Officer to determine the liability of the assessee by excluding from his turnover goods which he had purchased and on which sales tax had already been paid before. This is the correct view to take in view of the language of Section 5A.

11. We have already indicated the cases cited by the learned counsel for the assessee and it would be enough to say that our case is governed by the direct authority of the Supreme Court and the cases referred to by the learned counsel for the assessee are distinguishable and no useful purpose would be served by analysing them.

12. The result of the aforesaid discussion is that we answer the question in the affirmative. We make no order as to costs in the circumstances of the case.

