
(1979) 07 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Sales Tax Case No. 103 of 1976

Assistant Commercial Taxes Officer, Ward B,

APPELLANT

Vs

National Bricks and Lime Industries

RESPONDENT

Date of Decision : 21-07-1979

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 15(3A), 9(3)(b)

Citation : (1980) 45 STC 295

Hon'ble Judges : N.M. Kasliwal, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : J.D. Agarwal, Additional Government Advocate, for the Appellant;
R.C. Ghiya, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, J.

1. This reference application u/s 15(3A) of the Rajasthan Sales Tax Act, 1954 (hereinafter called "the Act"), has been filed by the Assistant Commercial Taxes Officer, Ward B, Alwar Circle, Alwar (hereinafter referred to as "the assessing authority"), seeking a direction to the Board of Revenue for Rajasthan at Ajmer to state the case and refer to this Court three questions, which are said to arise out of the order of the Board of Revenue, for the opinion of this Court.

2. M/s. National Bricks and Lime Industries, Kedal Ganj, Alwar (hereinafter called "the assessee"), was a partnership firm, which was registered under the Act. The assessment of the aforesaid firm in respect of the assessment years 1964-65 and 1965-66 were completed by the assessing authority on 17th June, 1969, and an assessment order was passed. Thereafter, an appeal was preferred before the Deputy Commissioner, Commercial Taxes (Appeals II), Jaipur, by Shri Badri Prasad, one of the partners, on behalf of the firm which was partly allowed by the order dated 19th November, 1971. A revision petition preferred to the Board of Revenue was also partly allowed by a learned single Member of the Board of

Revenue by his order dated 17th January, 1974. A special appeal preferred by the assessing authority before a Division Bench of the Board of Revenue was dismissed on 11th April, 1975. Thereafter, the assessing authority filed an application for making a reference before the Board of Revenue u/s 15(1) of the Act, but the same was not disposed of within the statutory period and so the present reference application u/s 15(3A) has been presented before this Court by the assessing authority.

3. In this case, an objection has been raised on behalf of the ex-partners of the firm that the aforesaid firm was dissolved with effect from 1st April, 1967, and in support of this submission a photostat copy of the order of assessment passed by the assessing authority on 11th February, 1974, in respect of the assessment years 1966-67 and 1967-68, has been produced, wherein it has been held that the firm has ceased to do its business with effect from 1st April, 1967, as the registration certificate of the firm was also cancelled with effect from 1st April, 1967. In the application dated 12th May, 1977, submitted by the assessing authority in this Court, it has been admitted by the assessing authority that the firm stands dissolved, but that fact came to the knowledge of the assessing authority only when the notices in connection with the reference application were being sent. The argument of the learned counsel, appearing for the partners of the dissolved firm, is that after the dissolution of the firm with effect from 1st April, 1967, and after the registration certificate of the firm was also cancelled with effect from 1st April, 1967, the firm could not have been assessed to tax under the Act as such and the assessment order dated 17th June, 1969, and all proceedings subsequent thereto are invalid and illegal and, therefore, this Court should not call for any reference in this case. Reliance has been placed upon the decisions of their Lordships of the Supreme Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, and of this Court in *Smt. Shanti Bai v. State* [1968] 21 S.T.C. 458. and *Mst. Jeeyakanwar v. State of Rajasthan* [1968] 21 S.T.C 461 . On the other hand, Mr. Agarwal, appearing for the assessing authority, argued that in view of the recent decision of their Lordships of the Supreme Court in *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, the assessing authority was competent to assess a firm even after its dissolution and, as such, a reference application is competent and this Court should call for a reference from the Board of Revenue.

4. In the *State of Punjab Vs. Jullunder Vegetables Syndicate*, Subba Rao, J., speaking for the Court, held that there was no distinction between the dissolution of the firm, which has a legal entity for the purposes of the Sales Tax Act, and the death of a person. Although under the partnership law, the firm is not a legal entity and it only consists of individual partners for the time being, but for the purposes of the Sales Tax Act, it has been recognised as a legal entity, being included in the definition of a "dealer" given in the Act. But after its dissolution, the firm ceases to be a legal entity and cannot be assessed to tax unless there is a statutory provision permitting the assessment of a dissolved firm. There could be no assessment of a firm after its dissolution, as it ceases to have any legal

existence. It was also held in the aforesaid case that there can be no distinction between an assessment made on a firm under a proceeding initiated before its dissolution and one made in a proceeding initiated after the dissolution of the firm. The view which their Lordships of the Supreme Court took was that unless there was an express provision, it could not be held by necessary intendment that an assessment could be made on a firm which has lost its character as an assessable entity and if the firm was dissolved before the order of assessment was passed yet there could be no order of assessment after the dissolution of the firm. The aforesaid decision in the State of Punjab Vs. Jullunder Vegetables Syndicate, was followed by their Lordships of the Supreme Court in Khushi Ram Behari Lal and Co. v. Assessing Authority, Sangrur [1967 19 S.T.C. 381 S.C.), and in Additional Tahsildar, Raipur v. Gendalal [1968 21 S.T.C. 263 S.C.). In the last mentioned case, Ramaswami, J., speaking for the court, observed as under:

Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, Income Tax as well as sales tax, it is a legal entity. On the dissolution of the firm it ceases to be a legal entity and, on principle, thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm, which ceases to have legal existence. There cannot also be a distinction in principle between an assessment made on a firm under a proceeding initiated before its dissolution and one made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has-lost its character as an assessable entity.

5. The aforesaid decisions of their Lordships of the Supreme Court were followed by this Court in Smt. Shanti Bai v. State [1968] 21 S.T.C. 458. This Court took notice of the amendment made in the provisions of Section 9(3)(b) of the Act by the Rajasthan Taxation Laws (Amendment) Act, 1964, and observed that if the firm stood dissolved, then the case could not have but been dealt with u/s 9(3) (b), as amended. In the Mst. Jeeyakanwar's case [1968] 21 S.T.C. 461 , it was held that as the assessment order was passed long after the dissolution of the firm, the same was not valid and, consequently, it was set aside. It was observed that after the amendment of Section 9(3)(b) there could be an assessment order relating to the partners, but not in respect of the dissolved firm. State of Punjab Vs. Jullunder Vegetables Syndicate, lays down the following propositions:

- (a) A dissolved firm cannot be assessed to sales tax unless the statutory provision, under which the assessment is made, authorises an assessment of the dissolved firm, either by making an express provision or by necessary implication.
- (b) If a firm is a "dealer" under the Act, it becomes a legal entity for the purposes of the Act and is an assessable entity for the purposes of assessment and is liable to pay tax.
- (c) The firm ceases to be a legal entity on being dissolved and thereafter it cannot be assessed to sales tax, unless the statute so authorises, expressly or by

necessary implication.

(d) Neither a provision requiring the dealer to inform the authorities about the discontinuance of its business nor a provision imposing a joint and several liability on the dealer and its partners for the payment of tax, penalty or any amount due under the Act or the Rules made thereunder, includes within its ambit a case of the dissolution of a firm or the assessment of a dissolved firm.

(e) The court cannot proceed to make good the deficiencies in a fiscal statute and while interpreting its provisions the court is bound to interpret the statute as it stands and the language of the taxing law cannot be strained in order to hold a subject liable to tax.

6. In the *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, their Lordships of the Supreme Court distinguished the *State of Punjab Vs. Jullunder Vegetables Syndicate*, on account of the specific provisions contained in the Bombay Sales Tax Act, 1953, and in the Bombay Sales Tax Act, 1959. Sections 5(3), 15(1) and 26(1), (2) and (3) of the Bombay Act of 1953 were relied upon by their Lordships of the Supreme Court to come to the conclusion that a dissolved firm could be assessed in respect of its pre-dissolution turnover under the Bombay Act. Under Sub-section (3) of Section 5 of the Bombay Act, it was observed by their Lordships of the Supreme Court, the liability of a firm to pay sales tax continued, until the cancellation of the registration certificate of the firm and, by that provision, the liability of the firm for assessment and payment of tax was kept alive during the period between the dissolution of the firm and the cancellation of its registration certificate. In the Rajasthan Act, there is no provision corresponding to Sub section (3) of Section 5 of the Bombay Act. Mr. Agarwal, appearing for the assessing authority, relied upon the provisions of Sub-section (6) of Section 6S and Section 6A and Sub-section (3) of Section 6B of the Rajasthan Act in this connection. Sub-section (6) of Section 6 only imposes liability upon the dealer for payment of registration fees until the registration is cancelled. Significantly, there is no mention in Sub-section (6) of Section 6 about the liability of a dealer for payment of tax until the cancellation of registration of the firm, as contained in Sub-section (3) of Section 5 of the Bombay Act. In Sub-section (2) of Section 6A, a provision has been made in respect of the liability of the dealer to pay tax under the Act for the period during which the registration of the firm remains in force in case of voluntary registration and a similar provision has been made in Sub-section (3) of Section 6B of the Act in respect of persons to whom provisional certificate of registration has been granted, for the period until such provisional certificate remains in force. It is significant that the legislature made the provisions of Section 6 applicable to a dealer to whom voluntary registration is granted u/s 6A and a provisional certificate of registration is granted u/s 6B and, besides making that provision, specific provision has also been made imposing liability to make payment of tax under the Act until the voluntary registration continues or the provisional certificate of registration remains in force, as the case may be. If the provisions of Section 6

of the Act could be construed, as argued by the learned counsel appearing for the assessing authority, so as to provide by necessary intend-ment imposing the liability upon a dealer, who is a firm, for payment of tax until the continuance of the registration certificate, then the legislature need not have made specific provisions for voluntary registration as contained in Section 6A and provisional registration as contained in Section 6B. So far as Section 15(1) of the Bombay Act is concerned, it relates to reassessment and there is a corresponding provision in the Rajasthan Act contained in Section 12(1), but reassessment can only be made in respect of a dealer whose income has escaped in part or whole. In case a dissolved firm could not be assessed after its dissolution, the question of reassessment thereof could not arise. The learned counsel, appearing for the assessing authority, drew our attention to the provisions of Section 9(3) of the Act and argued that they are similar to the provisions of Section 26(3) of the Bombay Act. So far as the provisions of Clause (a) of Sub-section (3) of Section 9 of the Act are concerned, they are no doubt similar to Section 26(3) of the Bombay Act but they are limited to the extent of the liability to pay tax on the goods allotted to any partner on dissolution of such firm, as if the goods were sold to such partner. This provision only envisages assessment of the dissolved firm for the limited purpose inasmuch as the goods allotted at the time of dissolution to a partner of the dissolved firm shall be deemed to be sold to that partner. Their Lordships of the Supreme Court in this connection made the following observations:

By the use of the words as if, Section 26(3)(ii) creates a fiction that the allotment of goods to a partner on dissolution of the firm shall be deemed to be a sale made by the dissolved firm to that partner. The fiction cannot be extended further than the Sub-section warrants but there is no fiction in regard to the liability of the dissolved firm to be assessed to sales tax in respect of the goods thus deemed to be sold.

7. Significantly, in the Bombay Sales Tax Act, 1959, Section 19(3) was introduced which made a clear provision for assessment of a firm after dissolution, by providing that every partner shall be jointly and severally liable to pay tax or penalty due from the firm, whether such tax (including any penalty) has been assessed before or after dissolution of the firm. Section 19(3) of the Bombay Sales Tax Act of 1959 runs as under:

Where a dealer, liable to pay tax under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable u/s 18, the tax (including any penalty) due from the firm under this Act or under any earlier law, up to the time of dissolution, whether such tax (including any penalty) has been assessed before such dissolution but has remained unpaid or is assessed after dissolution.

8. The learned counsel, appearing for the assessing authority, contended before us that the provisions of Clause (b) of Sub-section (3) of Section 9 of the Rajasthan Act are similar to those of Section 19(3) of the Bombay Act. The

relevant provisions contained in Section 9(3)(b) of the Rajasthan Act are as under:

9.(3)(b) Every person who was at the time of such dissolution, discontinuance or partition, a partner or member of such firm, association or family and the legal representative of any such person who is deceased, shall, in respect of the turnover of such firm, association or family, be jointly and severally liable to assessment and for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment and liability for payment of tax or imposition of penalty or other sum.

9. If the two provisions are compared, it will be clear that under the Bombay Act the partners of a dissolved firm are made jointly and severally liable to pay tax, to the extent to which he is liable u/s 18 of that Act up to the time of dissolution of the firm, whether such tax has been assessed before such dissolution but remains unpaid or is assessed after such dissolution. On the other hand, under the Rajasthan Act, the liability of the ex-partners of the dissolved firm, are joint and several, not only for payment of tax but for assessment also and there is no such provision which might envisage the assessment of a dissolved firm. On the other hand, the provisions of Clause (b) of Sub-section (3) of Section 9 make it clear that after the dissolution of a firm, the liability for assessment and payment of tax is to continue as joint and several upon the partners thereof. Thus, the partners of the dissolved firm are to be assessed to tax after its dissolution and not the dissolved firm itself.

10. The two decisions of their Lordships of the Supreme Court in the Jullundur State of Punjab Vs. Jullunder Vegetables Syndicate, and the Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others, were referred to by the High Court of Delhi in Janki Devi v. Sales Tax Officer, Ward No. VIII, New Delhi [1977] 39 S.T.C. 268. In the Delhi Sales Tax Rules, 1951, Rules 39 and 39(1A) have been incorporated and Rule 39(1A) is similar to Sub-section (3)(b) of Section 9 of the Rajasthan Act. It was held by the Delhi High Court in that case that all the partners have been made jointly and severally liable in the case of a dissolved firm for payment of tax but there is no power of assessment in the case of a dissolved firm. It was also observed that the power of assessment and the power to recover tax are two different powers. It may also be pointed out that in the Bengal Finance (Sales Tax) Act, 1941, which is extended to the Union Territory of Delhi, Section 12F was introduced by the Finance Act of 1972, which made a similar provision as was made in Section 19(3) of the Bombay Sales Tax Act, 1959.

11. In view of the aforesaid discussion, we are in respectful agreement with the decisions of this Court in the Shanti Bai's case [1968] 21 S.T.C. 458. and the Mst. J eeyakanwar's case [1968] 21 S.T.C. 461. and we hold that the present reference application is not maintainable as no proceedings can be taken or continued against a dissolved firm for assessment of tax and we are unable to call for a reference in respect of the dissolved firm.

12. The reference application is, therefore, dismissed.