
(1965) 01 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 393 of 1964

Bajranglal Bajaj

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 05-01-1965

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) ILR (MP) 246 : (1965) JLJ 392 : (1965) 10 MPLJ 364 : (1965) MPLJ 364 : (1965) 16 STC 350

Hon'ble Judges : P.V. Dixit, C.J.; Shiv Dayal Shrivastava, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.

By this application under Article 226 of the Constitution, the petitioner seeks a writ of certiorari for quashing an order of assessment made on 29th November, 1960, by the Sales Tax Officer, Jabalpur, u/s 18(4) of the Madhya Pradesh General Sales Tax Act, 1958, holding the petitioner liable for the payment of sales tax for the period from 23rd October, 1958, to 9th April, 1960, as transferee of the business of the dealer M/s. Rajasthan Paper Mart (hereinafter called the Mart). The Sales Tax Officer held the petitioner liable for the payment of Rs. 6,970-78 nP., being the amount of tax and penalty levied on the Mart. An application preferred by the petitioner to the Additional Commissioner of Sales Tax for revising the order of the Sales Tax Officer was dismissed on 30th October, 1963. The petitioner has sought a writ of certiorari also for quashing the aforesaid order of the Additional Commissioner of Sales Tax.

The material facts are that one Mohanlal, Sodhani and his son Harprasad Sodhani, used to carry on business as paper merchants under the name and

style of "M/s. Rajasthan Paper Mart, Jabalpur". The Mart used to purchase from time to time stationery goods, paper etc. from the petitioner who also carries on business of selling stationery and allied materials under the name and style of "M/s. Bharat Paper Mart, Jabalpur". On 9th April, 1960, there was a settlement of accounts between the petitioner and the Mart as a result of which it was found that an amount of Rs. 3,101-71 nP. was due to the petitioner from the Mart. The petitioner also claimed interest on this sum amounting to Rs. 1,348-29 nP. On 9th April, 1960, the Mart had also to pay Rs. 90 as rent for the premises in which it had stocked its goods, as also a sum of Rs. 768 to M/s. Jupiter Traders for the paper purchased from them. In order to discharge these liabilities Mohanlal Sodhani and Harprasad Sodhani decided to sell the goods in stock they had for Rs. 6,100 to the petitioner. This consideration of Rs. 6,100 was made up of Rs. 3,101-71 nP., and Rs. 1,348-29 nP. as interest thereon, due to the petitioner, Rs. 90 which had to be paid to the landlord of the premises and Rs. 768 which had to be paid to M/s. Jupiter Traders, and a sum of Rs. 792 paid in cash by the petitioner to the two Sodhanis. On 9th April, 1960, Mohanlal and Harprasad passed a receipt in favour of the petitioner about the sale of their goods for Rs. 6,100 to him. That receipt inter alia contained a recital that Rs. 90 had been obtained from the petitioner and paid to the landlord of the premises and similarly Rs. 768 had been received from the petitioner and paid to M/s. Jupiter Traders, and that receipts for these payments had been obtained from the landlord and the Jupiter Traders.

The Rajasthan Paper Mart was registered as a dealer under the M.P. General Sales Tax Act, 1958. When in response to the notices issued to it for assessment for the period from 2nd October, 1958, to 9th April, 1960, none appeared on behalf of the Mart before the Sales Tax Officer, an enquiry was initiated by him about the turnover of the business done by the Mart. During the course of that enquiry, the Sales Tax Officer gathered the information that Mohanlal Sodhani and Harprasad Sodhani had transferred their stock-in-trade consisting of stationery paper, ink, pencils, fountain-pens, furniture etc., for Rs. 6,100 to the petitioner. On the information which he had collected, the Sales Tax Officer took the view that the petitioner was the transferee of the business of the Mart and as such liable to pay tax u/s 33 of the Act for the period in question. A notice was, therefore, issued to the petitioner by the Sales Tax Officer to show cause why he should not be made liable to pay tax u/s 33 of the Act. Before the Sales Tax Officer, the petitioner contended that he was not the transferee of the business of the Mart; that he had merely purchased the goods in stock, furniture etc. of the Mart; and that merely because of this purchase no liability could be fastened on him u/s 33 of the Act. This contention was rejected by the Sales Tax Officer on grounds which are none too intelligible. He first observed that the petitioner had not only purchased the stock-in-trade of the Mart but had also taken over some of its liabilities. Then he said that the petitioner's answer to his query whether the Mart had also transferred its liability for the payment of sales tax to him showed that at the time of the transfer effected on 9th April, 1960, he "had full

knowledge" of the fact that sales tax amount was outstanding against the Mart. The Sales Tax Officer proceeded to say that the question whether the Mart did or did not transfer its goodwill was immaterial and that the intention of the transferor, the Sodhanis, to defraud their creditors was evident from the fact that they had absconded and that a warrant for their arrest had been issued by a civil court. He then referred to the facts of a prosecution launched by one Narmada Bai against the petitioner which had no bearing whatsoever in the assessment proceedings before him. Ultimately the Sales Tax Officer reached the conclusion that the petitioner Was a transferee of the business of the Mart and liable to pay tax amount and penalty imposed on it in respect of the assessment period from 23rd October, 1958, to 9th April, 1960.

In upholding the conclusion of the Sales Tax Officer, the Additional Commissioner of Sales Tax laid stress on the fact that the petitioner did not adduce any evidence before the Sales Tax Officer to show that he was not a transferee of the business of the Mart, arid on the circumstance that while purchasing the stock-in-trade of the Mart the petitioner undertook to pay off certain liabilities of the Mart. The Additional Commissioner further said:

The goodwill of the business Rajasthan Paper Mart may not have value to the applicant so the name of the shop was not continued by him. The applicant was also carrying on the same line of business and thus it is clear that the ownership of Rajasthan Paper Mart was entirely transferred to the applicant and according to the above cited provisions in Section 33, the applicant is liable to pay the tax payable in respect of business Rajasthan Paper Mart for any year or relatable to a part of any year.

Shri Sen, learned Counsel appearing for the petitioner, argued that u/s 33 of the Act the transferor and the transferee were made jointly and severally liable to pay the tax together with penalty only when the ownership of the business of a dealer liable to pay tax was entirely transferred; that under the terms of the settlement arrived at between the petitioner and the Mart there was no complete or partial transfer of the business of the Mart to the petitioner; that the petitioner did not acquire the trade-name or goodwill of the business; that he merely purchased the stock-in-trade of the Mart and did not even take over any liability of the Mart; and that the transferor-Mart itself discharged its liabilities in respect of rent and the amount owed to M/s. Jupiter Traders out of the consideration amount paid by the petitioner for the purchase of the stock-in-trade.

In our judgment, the contention advanced on behalf of the petitioner must be given effect to. The question of the liability of the petitioner for the payment of tax and penalty payable by the Mart turns on Section 33(1) of the M.P. General Sales Tax Act, 1958) which is as follows:--

33. (1) When the ownership of the business of a dealer liable to, pay the tax is entirely transferred, the transferor and the transferee shall jointly and severally be liable to pay the tax together with penalty, if any, payable in respect of such

business, for any year or relatable to a part of any year and remaining unpaid at the time of the transfer and the transferee shall also be liable to pay, the tax on the sales or purchases of goods effected by him with effect from the date of such transfer and shall within thirty days of the transfer apply for registration unless he already holds a certificate of registration.

It will be seen that one of the essential conditions that, must be fulfilled before liability for payment of tax can be fastened, under the said provision is that the ownership of the business, of a dealer liable to, pay tax must have been entirely transferred. "Business" means an adventure or concern in the nature of trade, and for the purposes of Section 33(1) there must be a transfer of the ownership of "business" as such and not of the goods or material with which the business is carried on. A person may carry on a business and yet may not at a point of time possess stock-in-trade at all or sufficient stock-in-trade. Again, a person carrying on a business may sell at one point of time his entire stock and yet continue the business thereafter by acquiring some new stock later on. Or, he may after selling the stock-in-trade decide to close his business. The transfer of a business implies the transfer of a running business together with all its rights, liabilities, stock-in-trade and goodwill. The "goodwill" of a business is not the business, but is one result springing out of it. "It is considered a subject of sale and part of, and incident to, any business which is sold as business." (See Lord Jowitt's Dictionary of English Law). "Goodwill" cannot be sold apart from the business, and the sale of a business implies the sale of its goodwill, though not expressly mentioned.

Now, in the present case there was no material whatsoever before the Sales Tax Officer and the Additional Commissioner of Sales Tax for reaching the conclusion that the Mart transferred its business to the petitioner. The question whether the ownership of the business of a dealer was entirely transferred is a question of fact, and Section 33(1), as it is worded, makes it incumbent on the Revenue to establish beyond doubt the conditions necessary for bringing into play that provision. It was for the Department to prove that the Mart had transferred the ownership of its business to the petitioner and not for the applicant to tender evidence for proving the negative that he was not the transferee of the Mart's business. No material was, however, produced by the Department to prove that the petitioner was the transferee of the Mart's business. Both the Sales Tax Officer and the Additional Commissioner of Sales Tax said that the officers of the Department had collected information which showed that the petitioner was the transferee of the business. But the only material to which they referred and on which they rested their conclusion that the applicant was the transferee of the Mart's business was the receipt (exhibit A-1) produced by the petitioner himself embodying the terms on which he purchased for Rs. 6,100 the stock-in-trade of the Mart. That receipt clearly shows that what the petitioner purchased for Rs. 6,100 was the stock in the form of stationery, fountain-pens, pencils etc., which was at the time of the sale with the Mart, and not the business of the Mart, and further that the applicant did not take over any liability of the Mart. It is true that

the receipt contained a recital that the Mart had to pay Rs. 90 towards rent and Rs. 768 to M/s. Jupiter Traders. But it also contained a recital that out of the consideration of Rs. 6,100 received by the Sodhanis, they themselves had paid Rs. 90 towards rent to the landlord and Rs. 768 to the Jupiter Traders and obtained receipts for the payment. Thus the Mart itself had on the date of the sale of the stock discharged its liabilities. Those liabilities were not passed on to the petitioner. There is no evidence whatsoever to show that after 9th April, 1960, the petitioner fulfilled certain contracts and commitments made by the Mart during the course of its business. If the petitioner, himself being a dealer in stationery and allied material, sold during the course of his own business the stock purchased from the Mart, then that circumstance cannot be regarded as decisive of the fact that he carried on the business of the Mart. The Additional Commissioner of Sales Tax clearly erred when he said that as the petitioner himself "was also carrying on the same line of business", therefore, it was clear that the ownership of the business of the Mart was entirely transferred to him. Again, if after purchasing the stock-in-trade the petitioner continued to use the premises which were formerly used by the Mart as a godown, that user by itself can have no significance, when there is no evidence whatsoever to indicate whether after 9th April, 1960, the landlord continued the old tenancy in favour of the Mart or created a new one in favour of the petitioner.

The conclusion of both the Sales Tax Officer and the Additional Commissioner that the petitioner was the transferee of the Mart's business is entirely vitiated when they hold that the goodwill of the business of the Mart was not transferred to the petitioner. The Sales Tax Officer said that the question of the transfer of goodwill was "immaterial". The Additional Commissioner of Sales Tax observed that the goodwill of the business of the Mart had no value to the applicant. Whether the goodwill of the Mart's business did or did not have any value to the petitioner the legal position remains that goodwill is a part of, and incident to, any business which is sold as a business; it cannot be sold apart from the business; and if there is a sale of business, then there is necessarily the sale of its goodwill (See *Smale v. Graves* (1850) 3 De G. & Sm. 706). So also, in *Commissioners of Inland Revenue v. Mutter & Co.'s Margarine, Limited* [1901] A.C. 217, Lord Macnaghten observed at pages 223-224 that,--

...goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though elements remain which may perhaps be gathered up and be revived again.

If, therefore, as the Sales Tax Authorities themselves have found, there was no transfer of goodwill of the Mart's business, then it is impossible to hold that the petitioner became a transferee of the Mart's business merely because he purchased the stock which was in hand with the Mart on the date of its sale to him.

For the foregoing reasons, our conclusion is that the ownership of the Rajasthan

Paper Mart's business was not transferred to the petitioner when he purchased on 9th April, 1960, for Rs. 6,100 the stock of stationery paper, pencils, fountain-pens etc. the Mart had on that day. That being so, the petitioner cannot be asked u/s 33 of the Act to pay the tax and penalty which the Mart was liable to pay. The result is that this petition is allowed and the orders of the Sales Tax Officer and the Additional Commissioner of Sales Tax holding the petitioner liable u/s 33 of the Act for payment of the tax and penalty, which the Rajasthan Paper Mart was liable to pay, are quashed. The petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 100. The outstanding amount of security deposit shall be refunded to the petitioner.