(1960) 05 MP CK 0001

In the Madhya Pradesh High Court

Case No : M.C.C. No. 290 of 1961

Battulal APPELLANT

Vs

Commissioner, Sales-Tax. RESPONDENT

Date of Decision : 02-05-1960

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 11(5), 44(1)

Citation : (1962) JLJ 657

Hon'ble Judges : P.V. Dixit, J;K.L. Pandey, J

Bench : Division Bench

Advocate : R.K. Taokha, for the Appellant; H.L. Khas-kalam, Government Advocate, for the Respondent

Judgement

Pandey, J.—The questions of law formulated for our opinion in this reference at the instance of the dealer u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958 are:

(i) Whether the word ''period'' in section 11 (5) of the Act means the period during which an unregistered dealer was liable to pay tax and during which he wilfully failed to apply for registration, as interpreted by this Board or any specific interval of time ?

(ii) Whether any part of the assessment made by the Assistant Sales-tax Officer under his order of 2-6-55 is barred by limitation ?

2. The facts giving rise to this petition may be briefly stated. The Petitioner, who is a dealer, did not get himself registered under the Central Provinces and Berar Sales-Tax Act, 1947 (hereinafter called the Act), though he was liable to pay tax thereunder. On 26 June 1950, a notice u/s 11(5) of the Act in Form XII for the period 1 June 1947 to 26 June 1950 was issued to the dealer and he received it on 4 July 1950. An enquiry was held and, thereupon, on 21 June 1954, a fresh notice u/s 11(5) of the Act in Form XII for the period 8 October 1948 to 6 November 1953 was issued to the dealer, who received it on 2 June 1955. In due

course, on 2 June 1955, the sales made by the dealer during that period were assessed to tax. In the second appeal (1960 RN 174), out of which this reference arises, the dealer unsuccessfully urged that the word "period" occurring in Section 11(5) should be construed as meaning a quarter, for which period a dealer is required by the rules framed under the Act to furnish his returns.

3. Section 11 (5) of the Act reads:

If upon information which has come into his possession, the Commissioner is satisfied that any dealer has been liable to pay tax under this Act in respect of any period and has nevertheless wilfully failed co apply for registration, the Commissioner shall, at any time within three calendar years from the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assets to the best of his judgment the amount of tax due from the dealer in respect of such period and all [subsequent periods; and the Commissioner may direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed a sum not exceeding one and a half times that amount.

The material part of the Sub-section is that if a dealer "has been liable to pay tax under this Act in respect of any period", then the amount of tax payable may be assessed "at any time within three calendar years from the expiry of such period". While it is urged on behalf of the revenue that the period, which is not defined in the Act, means the entire period during which the dealer was liable to pay tax, the dealer contends that it should be construed as meaning a quarter for which, under Rule 19, every registered dealer is required to furnish a return. Shri Tankha, the learned Counsel for the dealer, strongly relies upon Madan Lal Aurera v. The Excise and Taxation Officer Amritsar 1961 (XII) STC 387. In that a case, a registered dealer had furnished his returns in respect of a period but failed to comply with a notice u/s 11(2) of the East Punjab General Sales Tax Act, 1948. The Supreme Court held that, since the returns were required to bp burnished quarterly, the word period meant a quarter. That case is easily distinguishable because it dealt with the case of a registered dealer, who had furnished the prescribed returns. In the instant case, there is an unregistered dealer not required to furnish returns. Further, unless the context so requires, a word cannot be construed on the basis of rules made by a subordinate authority. Such rules cannot control the construction, to be placed on the provisions of the Act. So, in The Great Fingall Consolidated Ltd. v. Sheehan 3 CLR 176 at 184. Griffith C. J., observed:

I cannot assent to the arguments that a regulation made by the Governor can be used for the purpose of construing the statute under which it is made.

4. The word "period" is not defined in the Act. As provided in Sections 11 (5), the assessment can be made for "such period", which refers to any period in respect of which the dealer has been liable to pay tax under the Act. To ascertain this period, we have to go to subsections (1) to (3) of Section 4 which read:

(1a) In Madhya Pradesh excluding the merged territories every dealer whose turnover during the year preceding the commencement of this Act exceeded the limits specified in Sub-section (5) shall be liable to pay tax in accordance with the provisions of this Act on all sales effected after the commencement of this Act.

(b) In the merged territories every dealer whose turnover during the year preceding the commencement of this Act exceeded the limits specified in Sub-section (5) shall be liable to pay tax in accordance with the provisions of this Act on all sales effected on or after the 1st April 1949:

Provided that the tax shall not be payable on sales made in the course of the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into before the commencement of this Act.

(2) Every dealer to whom Sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the date of the expiry of two months after the month up to the end of which his turnover calculated from a date specified in Sub-section (2-A) exceeds the limits specified in Sub-section (5).

(2a) For the purposes of Sub-section (2) the specified date shall be the date of-

(i) the commencement of business in the case of a dealer who has been in business for less than twelve months; and

(ii) the commencement of the year in any other case.

(3) Every dealer who is liable to pay tax under this Act shall continue to be so liable until the expiry of a period of three consecutive years during each of which his turnover has not exceeded the limits specified in Sub-section (5) and such further period thereafter as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

It is manifest that once the liability to pay tax has commenced, it continues for more than 3 years even after the dealer''s turnover shrinks to a figure below the limits prescribed by Sub-section (5). If the dealer is liable to pay tax during this period computed in accordance with Section 4, we see no compelling reason to give a different meaning to the expression "any dealer has been liable to pay tax under this Act in respect of any period". We may add that the Act no where prescribes any fixed period for purposes of assessment. This period may be one quarter or any number of quarters.

5. We also think that Section 11(5) of the Act, which is enacted against evasion of tax, ought not to be narrowly construed in order to facilitate evasion. It is no doubt true that a taxing statute cannot be extended in operation beyond what the words used in the statute express but, within the limits set by the words, it is the duty of the Courts so to construe statutes as to suppress the mischief against which they are directed and to advance the remedy which they are intended to provide.

6. We are fortified in the view we have indicated in the foregoing paragraphs by a decision of the Supreme Court in The State of Orissa and Anr. v. Chakobhai Ghelabhai and Co., 1960 (XI) STC 716. In that case, their Lordships considered the meaning of the word "period" in an expression, which is identical with the one here, namely, "any dealer has been liable to pay tax under this Act in respect of any period" . That expression occurs in Section 12(5) of the Orissa Act, which, being directed against a dealer who has wilfully failed to apply for registration, corresponds to Section 11(5) of the Act. Their Lordships observed-

Section 12 (5) talks of a period, and the period may consist of more than one quarter.

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Their Lordships took this view even when the Orissa Act and the rules made thereunder provided for assessment of the taxable turnover for each quarter.

7. In our opinion, the word "period" occurring in Section 11(5) of the Act covers the whole period during which a dealer, being liable to pay tax under the Act, had wilfully failed to apply for registration. The limitation of three calendar years has to be computed from the end of this period. That being so, no part of assessment made on 2 June 1955 was barred by time.

8. Our answers to the two questions are-

(i) The word "period" in Section 11(5) of the Act means the whole period during which the dealer has been liable to pay tax under the Act and has nevertheless wilfully failed apply for registration. It does not mean any lesser interval of time.

(ii) No part of the assessment made on 2 June 1955 was barred by time.

9. The dealer, Battulal, shall pay all costs of this reference. Hearing fee Rs. 75.