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**(1959) 06 BOM CK 0022**  
**In the Bombay High Court**

Central Potteries Ltd., Nagpur

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 16-06-1959

**Acts Referred:**

Central Provinces and Berar Sales Tax Act, 1947 — Section 23(1), 28, 3, 4, 6  
Government of India Act, 1935 — Section 311(2)

**Citation :** AIR 1960 Bom 470 : (1960) 62 BOMLR 187 : (1960) 11 STC 399

**Hon'ble Judges :** Kotval, J;G.B. Badkas, J

**Bench :** Division Bench

**Advocate :** M.R. Bobde, M.R. Rajkarne, S.P. Oke and T.L. Sheode, for the Appellant; G.R. Mudholkar, Assistant Special Government Pleader, for the Respondent

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**Judgement**

Kotval, J.—The judgment in this appeal shall also govern the disposal of Civil Reference No. 37 of 1957 which, it was agreed by counsel for the parties, should be heard along with the first appeal. The first appeal arises out of the judgment and decree of the First Additional Judge to the First Civil Judge, Class I, Nagpur, dismissing the appellant-plaintiff's suit, Civil Suit No. 1-A of 1952.

2. The appellant-company filed a suit for recovery of Rs. 8,650-11-9 paid as sale tax. The company also claimed other reliefs, such as a declaration that it was not liable to pay sales tax and the granting of an injunction against the defendants prohibiting them from proceeding to demand, assessee or receive sales tax from the plaintiff. The original defendants in the suit were the then State of Madhya Pradesh through the Deputy Commissioner, Nagpur, and the Commissioner of Sales Tax, Madhya Pradesh, Nagpur. Pending the appeal, however, the plaintiff applied for amendment and added the Collector of Sales Tax, Bombay, as a party to the appeal in view of the States Re-organisation Act. It was conceded before us on behalf of the respondents that today the liability to refund the sales tax to the appellant-assessee would be that of the Collector of Sales Tax, Bombay, and that the first two defendants were not liable.

3. The fact necessary for the disposal of the appeal are as follows : The Central Provinces and Berar Sales Tax Act, 1947 (XXI of 1947) received the assent of the then Governor-General on the 23rd May, 1947, and the assent was first published in the Central Provinces and Berar Gazette, Extraordinary, on the 27th May, 1947. As soon as the Act came into force, the Department called upon all dealers liable to pay sales tax to register themselves. Pursuant to this announcement in the press, a copy of which was placed before us in the appeal, the appellant-company applied for registration to the Sales Tax Officer, Nagpur, on 2nd July, 1947, and a certificate of registration was granted to it on 21st July, 1947. (Certificate No. B. G-8.)

4. The period of assessment which was challenged in the suit was from 1st June, 1947 (i.e. from the inception of the Act) to 30th September, 1951. The appellant challenged the assessment upon several grounds with all of which we are not concerned here.

5. Mr. Sheode on behalf of the appellant has confined himself to three points in the appeal. His first contention has been that the officer who granted the certificate of registration had no jurisdiction to grant it for the reason that he was not validly appointed and had no power to register the company at all. The second contention of his, and depending upon the first, is that if the certificate of registration was not validly granted and was granted by an officer who had absolutely no jurisdiction, then all the subsequent proceedings taken to assess the company and the actual assessment made would be wholly illegal and without jurisdiction. The remaining point raised by him is a point of constitutional law. It was urged that the tax levied by Act No. XXI of 1947 was not in substance a sales tax but a corporation tax and that it fell under Entry No. 46 in List I of the Seventh Schedule to the Government of India Act, 1935. It is to be noticed that the period of assessment which I have mentioned above would be covered partly by the latter Act and partly by the Constitution. The relevant entry so far as the Constitution is concerned is Entry No. 85 of the Union List. In this connection, Mr. Sheode also referred to the definition of corporation tax in clause (6) of Article 366 of the Constitution, and sub-section (2) of section 311 of the Government of India Act and urged that the State Legislature could not authorize the levy. As a part of the same argument Mr. Sheode also urged that assuming that the legislation, namely, Act No. XXI of 1947, was valid under the provisions of the Government of India Act and the Constitution, it did not fall under Entry No. 48 in the State List of the Seventh Schedule to the Government of India Act and Entry No. 54 of the State List in the Constitution. He contended that having regard to the definition of turnover in the Sales Tax Act read with the charging section - section 4 of the Act - what was so sought to be taxed was not the sale of any goods but the proceeds of those goods or the consideration, and to that extent it cannot partake of the nature of a tax on the sale of goods.

6. Civil Reference No. 37 of 1957 has been made to the Court by the Sales Tax Tribunal, Bombay, u/s 23(1) of the Sales Tax Act and in it two questions have

been referred to us, namely :

(1) Whether the authority who issued the registration certificate to the applicant had jurisdiction to do so, and if not, (a) whether the said registration certificate was not invalid, and (b) whether the assessment was not invalid.

(2) Whether the authority who made the assessment had jurisdiction to do so, and if not whether the assessment made in this case was not invalid.

7. Mr. S. P. Oke appearing on behalf of the applicant in the reference, Messrs Ganesh Mahadeo Lele, Sharaf Shop, Nagpur, adopted the arguments of Mr. Sheode but also urged some other points. They are covered by questions Nos. 4, 5, 6 and 7 mentioned in the order of reference as points which arose according to the applicant, but which the Tribunal considered, fell within the scope of the two points formulated by it and, therefore, did not separately refer. We shall advert to these contentions raised by Mr. Oke at the proper time.

8. Certain facts may now be stated in order to show how the first point raised by Mr. Sheode in the appeal arises and to appreciate counsel's contentions. By virtue of the provisions of sub-section (1) of section 3 of the Sales Tax Act, the State Government is empowered to appoint any person to be a Commissioner of Sales Tax and such other persons under any prescribed designations to assist him as it thinks fit. Sub-section (2) prescribes that the persons appointed under sub-section (1) shall, within such areas as the State Government may specify, "exercise such powers as may be conferred and perform such duties as may be imposed, by order under this Act". We have already stated that the plaintiff obtained a certificate of registration on 21st July, 1947. The officer who has signed it was one Mr. D. P. Kashyap. It is the contention of the plaintiff that this Sales Tax Officer was not validly appointed under the provisions of section 3.

9. On behalf of the State, the only relevant order of appointment relied upon is exhibit P-16 which runs as follows :

"In exercise of the powers conferred by section 3 of the Central Provinces and Berar Sales Tax Act, 1947 (XXI of 1947) the Provincial Government is pleased to direct that the District Excise Officers in charge of districts shall be the Sales Tax Officers within the district to which they are attached for the purpose of receiving applications for registration and for issuing registration certificates u/s 8 of the Act."

10. This Gazette Notification No. 599-748-VIII was issued on 27th May, 1947. Therefore, the learned Additional Special Government Pleader who appeared on behalf of the State was on firm ground when he urged that there was an officer validly appointed to receive applications for registration and for issuing certificates of registration. Mr. Oke on behalf of the appellant made a small point upon the terms of this notification. He contended that it only empowered the officer to receive applications for registration and issue certificates of registration u/s 8, but not to decide whether a dealer ought to be registered or not. In out

opinion, however, the power to receive application and to issue a certificate necessarily implies the power to consider whether such a certificate ought to be issued. The law must be reasonably interpreted. If an officer is empowered to issue a certificate of registration surely that can only mean that he must apply his mind to the question of its issue and decide it, and not act like an automaton.

11. But the principal and substantial contention is that though exhibit P-16 appointed Sales Tax Officers, there was no proper conferment upon them of powers as required by sub-section (2) of section 3. Sub-section (2) lays down that the officer appointed under sub-section (1) shall exercise such powers as may be conferred and perform such duties as may be imposed, by or under this Act and that refers back to sub-section (1) which prescribes that the State Government may appoint any person to be a Commissioner of Sales Tax, and such other persons under any prescribed designations to assist him as it thinks fit. The emphasis is upon the words "under any prescribed designations". The word "prescribed" has been defined in the Act as meaning "prescribed by rules made under this Act". Now Mr. Sheode's contention is that the rules made under the Act were not in existence on 21st July, 1947, when the certificate of registration was granted to the plaintiff. The rules were first published in the Central Provinces and Berar Gazette on 15th August, 1947, by which date the certificate of registration had been issued already. Since the rules were made on 15th August, 1947, there was no valid compliance with sub-section (1) of section 3 of the Act and the Sales Tax Officer was not validly appointed because the "prescribed designations" had not been laid down by the rules. If we turn to the Central Provinces and Berar Sales Tax Rules, 1947, we find that such "prescribed designations" have actually been laid down by rule 3(1). It says that besides the Commissioner there shall be the following classes of Sales Tax Authorities ..... and clause (c) in sub-rule (1) is as follows : "(c) Sales Tax Officer." But it is urged that all this was done after the date of the registration certificate in the instant case.

12. So far as this contention of Mr. Sheode is concerned, on behalf of the State the learned Additional Special Government Pleader sought to justify the registration of the appellant and the grant of the certificate of registration by referring firstly to the provisions of section 28 of the Act which contains the rule-making power of the State Government. It was urged that so long as the State Government had the power to make the rules, registration could be made by an officer appointed by the State Government although no rules were framed. Considering the provisions of section 28 by themselves, there may be some substance in the contention, but having regard to the mandatory provisions of sub-section (2) of section 3 read with sub-section (1), it is clear that unless rules are framed, the power conferred upon and the duties to be performed under sub-section (2) by the officers appointed under sub-section (1) cannot come into play, because such persons can only be appointed after the "prescribed designations" are laid down and duties and powers under sub-section (2) can be imposed and conferred only after their appointment, and since "prescribed" is

defined as "prescribed by the rules" the necessity of first framing the rules is established.

13. Reference was also made to rule 6-A of the Sales Tax Rules. Rule 6-A prescribed that the dealer who is liable to pay tax shall obtain registration on or before the date notified u/s 8 of the Act. Rule 6-A enjoins upon all dealers who are liable to pay sales tax at the commencement of the Act to obtain registration by a certain date. Rule 7 prescribes that the application for registration shall be made to the Sales Tax Officer and rule 8 gives the power to grant a certificate and enjoins upon the Sales Tax Officer to issue a certificate of registration in Form II to the dealer whom he has ordered to be registered. It was contended that in the instant case even assuming that there was no power to register, at any rate on the date on which the certificate was granted the appointment of Sales Tax Officers was there because the notification (exhibit P-16) dated 27th May, 1947, was promulgated by that date. The notification runs as follows :

"In exercise of the powers conferred by section 3 of the Central Provinces and Berar Sales Tax Act, 1947 (XXI of 1947) the Provincial Government is pleased to direct that the District Excise Officers in charge of districts shall be the Sales Tax Officers within the district to which they are attached for the purpose of receiving applications for registration and for issuing registration certificates u/s 8 of the Act."

14. The certificate issued in the case of the appellant in the first appeal was on 21st July, 1947, and therefore it was contended that the registration was valid.

15. In our opinion, however, it is not necessary to decide these questions. We are of opinion that the appellant must fail upon the second point raised by Mr. Sheode in the appeal, namely, that if the registration or the grant of the certificate of registration is invalid then the entire subsequent proceedings are ipso facto invalid. We cannot accept this contention. On the other hand, it seems to us having regard to the provisions of the Act that the question of the validity of the registration is not relevant in considering whether the assessment was valid or the liability to pay arose or did not arise. The charging section in the act is section 4 which lays down the incidence of taxation. Section 4(1) in particular provided as follows on the relevant date :

"Subject to the provisions of section 6, every dealer whose turnover during the year preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the commencement of this Act."

16. Thus the liability to pay is laid down in the widest terms and is plenary. In all the subsequent provisions of the Act there is no exemption from this liability except in the case of articles expressly excluded or exemptions expressly granted. Mr. Sheode on behalf of the appellant referred to the provisions of sections 8 and 11(5) in order to show that the registration was an initial and vital step in the process of taxation and that it was only after a dealer was registered

that all his obligations and the duty to pay and the liability to be assessed arose.

17. Section 8 is concerned with the registration of dealers and all that it prescribes is that no dealer shall while he is liable to pay tax under the Act carry on business as a dealer unless he is registered as such and possesses a certificate or registration. Then it prescribes the mode in which the dealer has to apply and how the authority has to dispose of the application and satisfy itself that the registration should be made. It also gives power to the Commissioner to amend the certificate and to cancel it, if necessary. Sub-section (5) of section 11 permits the Commissioner to come to an assessment to the best of his judgment in the case of any dealer who has been liable to pay the tax under the Act but has nevertheless wilfully failed to apply for registration. Both the sections, in our opinion, give powers and lay down a machinery for the effective realization of the tax which is levied u/s 4. We are unable to accept the contention that these sections or any interpretation of them can possibly affect the liability to pay created by section 4. The provisions of a taxing statute providing the machinery for recovery of tax cannot control its charging section or other provisions creating the liability to pay the tax. In the instant case, we hold that it is section 4 which controls and governs the provisions of section 8 and 11(5) and not vice versa.

18. At this stage, we may also conveniently consider some points raised by Mr. Oke in his arguments. His first point was based on the provisions of rule 3(1) from which we have already reproduced the relevant clause. The clause speaks of Sales Tax Officers, whereas it was pointed out that one Mr. R. G. Shukla who was appointed by exhibit P-16 was only an officiating Sales Tax Officer. We do not think that much turns upon this distinction. In our opinion, a person who is officiating holds the same rank and has unless otherwise specified the same jurisdiction as the person in whose place he is officiating. At any rate, the fact that he was only officiating cannot affect his jurisdiction as a Sales Tax Officer.

19. The other contentions raised by Mr. Oke are founded upon the terms of the notification dated 27th May, 1947, contained in exhibit P-11 by which the Government appointed the Excise Commissioner C.P. and Berar to be the Commissioner of Sales Tax, C.P. and Berar and directed that "he shall exercise all the powers conferred and discharge all the duties imposed by or under the Act upon the Commissioner" u/s 2(A). The contentions are that in the first place, the area of jurisdiction of the Commissioner has not been specified in the notification which it was essential to do under sub-section (2) of section 3. No doubt, under the provisions of section 3(2), the State Government has to specify the area in which the Commissioner is to exercise his powers or perform his duties; and if the contention be correct that for want of specification of the area the Commissioner was not validly appointed, then all the proceedings taken by the authorities would be rendered illegal because if the Commissioner was not validly appointed then the Sales Tax Officer would also not be deemed to be validly appointed nor any powers validly delegated to him. But the contention, in our

opinion, is not borne out on a correct interpretation of the terms of the notification. The notification in terms states that "the Provincial Government is pleased to appoint the Excise Commissioner, Central Provinces and Berar, to be the Commissioner of Sales Tax, Central Provinces and Berar." Now, the addition of the words "Central Provinces and Berar" after "the Commissioner of Sales Tax" can only indicate one thing and that is the territorial extent of his jurisdiction. Otherwise, there was not meaning in adding the words "Central Provinces and Berar". No doubt, the matter could have been clarified further by addition of the words "for the area of the" before the words "Central Provinces and Berar", but we do not think that it is a correct argument to say that without the use of the specific word "area, the area within which the Commissioner was to act could not be specified in the notification.

20. The next contention raised by Mr. Oke was based upon the provisions of the repealed section 19 of the Sales Tax Act. Section 19 was in force during the period of assessment with which we are concerned. The portions relied on provided :

"If any question arises otherwise than in a proceeding before a Court whether for the purposes of this Act, -

\* \* \* \* (c) any dealer is liable to registration,

\* \* \* \* the Commissioner shall determine such question after affording the party concerned an opportunity to be heard."

21. The contention is that the Commissioner in the instant case did not determine the question. The certificate of registration granted without considering whether the applicant was a dealer and liable to registration was "illegal and ultra vires."

22. In our opinion, section 19 was inapplicable in the instant case. Section 19 only applies where a dispute arises or is raised by a dealer as to his liability to registration. No such dispute arose in the present case. On the other hand, the dealer himself applied in Form I appended to the Sales Tax Rules. The form contains a statement that the dealer desires to be registered voluntarily u/s 8-A of the Act. Therefore, the dealer in the instant case was registered as a dealer voluntarily and upon his own application, and there was no question disputed or otherwise arising as to his liability to registration. The contention cannot be upheld. The other contentions raised by Mr. Oke are the same as have been raised by Mr. Sheode on behalf of the appellant in the first appeal.

23. There then remains the constitutional objection raised on behalf of the assessee. The assessment in the first appeal being for the period 1st June, 1947, to 30th September, 1951, will be partly governed by the provisions of the Government of India Act and partly by the provisions of the Constitution. Fortunately, however, the relevant entries in both the enactments are substantially the same for the purposes of the point raised. The relevant entry

regarding the power to tax the sale of goods is entry No. 48 in List II of the Seventh Schedule to the Government of India Act. The relevant entry so far as the Constitution is concerned is entry No. 54 in List II - State List of the Seventh Schedule. Whereas the entry in the list appended to the Government of India Act is "48. Taxes on the sale of goods and on advertisements," the entry in the list appended to the Constitution prior to the sixth amendment (with which we are concerned) was "54. Taxes on the sale or purchase of goods other than newspapers."

24. Mr. Sheode's contention is that the present tax levied by the Sales Tax Act is in substance a "corporation tax" and falls within entry No. 46 in List I of the Seventh Schedule to the Government of India Act or within entry No. 85 in List I - Union List - of the Seventh Schedule to the Constitution. He contends that this would amount to a corporation tax having regard to the definitions of corporation tax in section 311(2) of the Government of India Act or Article 366(6) of the Constitution. In section 311 of the Government of India Act the definition was as follows :-

""Corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled -

- (a) that it is not chargeable in respect of agricultural income;
- (b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
- (c) that no provision exists for taking the tax so paid into account in computing for the purpose of Indian Income Tax payable by, or refundable to, such individuals."

In the Constitution, Article 366(6) is as follows :-

""Corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled -

- (a) that it is not chargeable in respect of agricultural income;
- (b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
- (c) that no provisions exists for taking the tax so paid into account in computing for the purposes of Indian Income Tax the total income of individuals receiving such dividends, or in computing the Indian Income Tax payable by, or refundable to, such individuals."

25. There is little substantial difference between the two definitions except in clause (c) which was slightly altered by the Constitution. Having regard to the definitions referred to above, and particularly clause (c) of Article 366(6), it is



clear that a tax, in order to be deemed a corporation tax, must be a tax on income and such tax must be payable by corporations and corporations alone. As stated in *Flint v. Stone Tracy Co.* (1910) 220 U.S. 107, "it is a tax upon the doing of business, with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described. As the latter organizations share many benefits of corporate organizations, it may be described generally as a tax upon the doing of business in a corporate capacity." On the other hand, a sales tax or rather a tax on the sale of goods is a tax upon a particular activity of a corporation namely a sale of goods and as explained by the Supreme Court of India in *Poppatlal Shah Vs. The State of Madras*, there is no sale of goods unless and until all the component transactions inherent in a sale of goods are completed. In that case *Mukherjea, J.*, (as he then was) delivering the judgment on behalf of the Court observed :

"Thus, there are the elements of a bargain or contract of sale, the payment or promise of payment of price, the delivery of goods and the actual passing of title, and each one of them is essential to a transaction of sale ....."

26. It is now settled law that in order to determine the true nature of a legislation impeached as colourable, the Court must look to the substance and not merely the form of the Act. As the Supreme Court has pointed out, "In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority." See *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, and AIR 1939 1 (Federal Court) . Therefore if the substance of a legislation falls within the legitimate power of the Legislature, the legislation does not become invalid merely because it incidentally encroaches upon a subject or affects a matter outside its authorized sphere.

27. Having regard to these principles it is impossible to hold that the tax levied by the Sales Tax Act was in any manner a corporation tax simply because the incidence of the tax might fall on corporations. We have already referred to the charging section, section 4, of the Act. Section 4 refers to turnover and turnover is defined in section 2 of the Act as it then stood as "the aggregate of the amounts of sale prices, and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period"; and the expression "taxable turnover" means -

"that part of a dealer's turnover during such period which remains after deducting therefrom -

(a) his turnover during that period on -

(i) the sale of goods declared tax-free u/s 6;

(ii) sales to a registered dealer of goods .....

(iii) sales to any undertaking supplying electric energy to the public .....;

(iv) such other sales as may be prescribed; and

(b) two per centum of the balance remaining after making the deductions allowed by sub-clauses (i) to (iv) of clause (a)."

28. The definitions of turnover and taxable turnover read with the charging section make it clear that the pith and substance of the enactment was to tax the sales of goods alone and nothing else, and the mere fact that sales which may be made by corporations would also come within the purview of the tax is, in our opinion, merely ancillary to the main purpose of the charging section. Considering the nature of the tax and contrasting it with the corporation tax as defined in the Government of India Act and in the Constitution, it is clear that substantially what was intended to be taxed were the transactions of sales of goods and not the income accruing therefrom. Indeed, a corporation may enter into several transactions of sales of goods and be liable to pay tax and yet not make any income and, therefore, not become liable to corporation tax. This serves to illustrate the distinction between the tax as levied by the Sales Tax Act and a corporation tax. We reject the contention.

29. The further contention was that the tax levied by the Sales Tax Act only sought to tax the consideration or the price of the goods and not the sale of the goods as required by entries Nos. 48 and 54 referred to above. We do not think that so far as the incidence of sales tax is concerned any distinction can be drawn in this respect between the consideration of a sale of goods and the sale of the goods itself. Having regard to the definition of "sale", "goods" and "sale price" in the Act, the consideration is a part and parcel of a sale of goods because without the consideration there cannot be any sale. In fact, the definition of turnover read in the light of the above definitions shows that what is taxed is the amount of the sale price or part of sale price in respect of the sale or supply of goods and, therefore, the consideration is inseparably a part of the transaction which is sought to be taxed. This contention, in our opinion, also cannot succeed.

30. These were all the contentions raised on behalf of the assessee. The appeal fails and is dismissed. So far as Civil Reference No. 37 of 1957 is concerned, we answer the first part of the first question referred to us in the affirmative. The second part of the question, therefore, does not call for decision. The first part of the second question referred is also answered in the affirmative. The second part does not arise in view of the answer to the first part. An order answering the reference as above shall be separately drawn up.

31. The appeal is dismissed with costs. The reference is answered as above. So far as the reference is concerned there shall be no order as to costs.

32. Appeal dismissed.