(1980) 04 MP CK 0009

In the Madhya Pradesh High Court

Case No : M.C.C. No. 774 of 1974

Commissioner of Sales Tax APPELLANT

Vs

Bansal Brothers RESPONDENT

Date of Decision : 19-04-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 15

Citation : (1982) 49 STC 147

Hon'ble Judges : G.P. Singh, C.J;B.C. Varma, J

Bench : Division Bench

Judgement

G.P. Singh, C.J.—This is a reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958, made by the Sales Tax Appellate Tribunal, referring for our answer the following question of law :

Whether or not, on the facts and circumstances of the case and in view of Section 15 of the Central Sales Tax Act, the assessee is liable to pay sales tax in respect of declared goods which he had purchased from a registered dealer after payment of tax at the full rate and without furnishing to him the declarations in the prescribed form ?

2. The relevant period in the instant case is from 28th June, 1969, to 31st March, 1970. The assessee, Bansal Brothers, carries on the business of sale of iron scrap and bricks. The assessee purchased iron scrap for Rs. 28,073 from a registered dealer after payment of tax to him as part of the sale price without furnishing a declaration in the prescribed form. The assessee sold the same goods for Rs. 30,313,34 to consumers. The question before us is whether these sales made by the assessee were liable to sales tax. The assessee''s case is that u/s 15 of the Central Sales Tax Act, iron scrap being declared goods, the tax payable under the State Act could not be levied at more than one stage.

3. The argument of the learned counsel for the assessee is that as the registered dealer from whom the assessee purchased the goods without furnishing any

declaration in the prescribed form was liable to pay the tax, it is not liable to pay the tax in selling the goods to the consumers. "Taxable turnover" is defined in Section 2(r) of the State Act. In determining the taxable turnover as defined in Section 2(r), certain deductions are permissible. One of the deductions is : "Sales to a registered dealer of goods specified in Part I of Schedule II and declared by him in the prescribed form as being intended for resale by him in the State of Madhya Pradesh or for sale in the course of inter-State trade or commerce." Obviously, the assessee''s case does not fall within this deduction which is allowed u/s 2(r). Iron scraps are goods specified at item 5 in Part I of Schedule II. The effect of the above deduction allowed in the definition of "taxable turnover" in Section 2(r) is that the tax is payable in the case of iron scrap at the. last point, when the sale is made to a consumer or an unregistered dealer or to a registered dealer who uses the goods for manufacture or for resale outside the State. Referring to this provision the Supreme Court in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, observed that in Madhya Pradesh the tax on declared goods is leviable at the stage when the purchase is by a consumer or a manufacturer. Having regard to the scheme of the Madhya Pradesh Act, it cannot be said that the stage at which tax on declared goods would be levied has not been specified. If, in such a situation, the assessee. because of his own mistake, did not give the requisite declaration to the registered dealer from whom he purchased the goods and also paid the tax, he himself is to be blamed, and the guarantee contained in Section 15 of the Central Act that tax would be levied at one stage only, does not come to his help. In Rattan Lal and Co. and Another Vs. The Assessing Authority and Another, the Supreme Court, in the context of Section 15 of the Central Act, observed that the law does not take into account the actions of persons who are negligent or mistaken but only of persons who act correctly, according to law. If the'' assessee before us had acted diligently, it could have avoided the payment of tax as part of the sale price to the selling dealer from whom it purchased the goods. As earlier pointed out by us, if the assessee paid the tax as part of the price to the selling dealer, it is itself to be blamed. The sales made by it to the consumers are taxable under the scheme of the State Act and are not hit by the bar contained in Section 15 of the Central Act.

4. For the reasons given above, our answer to the question is that the assessee is liable to pay sales tax in respect of the declared goods which it had purchased from a registered dealer after payment of tax at the full rate and without furnishing to him the declarations in the prescribed form. There will be no order as to costs of this reference.

