

(1971) 11 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 148 of 1970

Commissioner of Sales Tax

APPELLANT

Vs

Imphalbs Manufacturing Co.

RESPONDENT

Date of Decision : 10-11-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 16, 4, 7, 8

Citation : (1972) J LJ 181 : (1972) 17 MPLJ 181 : (1972) MPLJ 181 : (1972) 29 STC 450

Hon'ble Judges : S.P. Bahrgava, J; R.J. Bhawe, J

Bench : Division Bench

Advocate : M.V. Tamaskar, for the Appellant; None, for the Respondent

Judgement

R.J. Bhawe, J.

At the instance of the Commissioner of Sales Tax, M. P., the Board of Revenue has referred for our decision the following questions:

(1) Whether a dealer registered u/s 7(2) of the Central Sales Tax Act will be deemed to be a dealer registered u/s 7(1) of the Central Sales Tax Act ?

(2) Whether in the facts and in the circumstances of the case the penalty imposed u/s 18(6) of the M. P. General Sales Tax Act read with Section 9(3) of the Central Sales Tax Act has been rightly set aside ?

The answer to the second question depends on the answer of the first question. If the first question is decided against the assessee, the second question will have to be decided in the same manner.

The facts of the case, in brief, are that the assessee carries on the business of manufacture and sale of water for injections as also some medicines. The assessee was registered under the M. P. General Sales Tax Act, 1958, and had also obtained registration certificate u/s 7(2) of the Central Sales Tax Act. He was however not registered u/s 7(1) of the said Act. The period of assessment is

from 25th November, 1964, to 31st March, 1965, with regard to inter-State trade and commerce as the first sale in the inter-State trade was made by the assessee on 25th November, 1964. The assessee was assessed as an unregistered dealer u/s 18(6) of the M. P. General Sales Tax Act, read with Section 9(3) of the Central Sales Tax Act, and a penalty u/s 18(6) of the local Act was also imposed. The turnover was determined at Rs. 25,884 and the tax was assessed at Rs. 1,103.60 and the penalty of Rs. 1,000 was also imposed. This penalty was reduced, in appeal, to Rs. 500, and in other respects the order of the Sales Tax Officer was confirmed by the appellate authority. Before the Tribunal it was contended that as the assessee was registered u/s 7(2) of the Central Sales Tax Act, he should also be deemed to be registered u/s 7(1) of that Act and its assessment should not have been made as an unregistered dealer and the penalty should not also have been imposed. The Tribunal accepted the abovesaid contention of the assessee and set aside the penalty. On this question the Tribunal observed as under :

A comparison of the provisions of the State and the Central sales tax law would show that whereas Section 7(1) casts the duty to obtain a registration certificate by every dealer which is liable to pay tax under the Central Act, Section 7(2) enables a dealer to obtain the registration certificate in anticipation of the liability to pay tax under the Central Act arises. Under the State law Section 15 requires every dealer whose turnover during the 12 months immediately preceding the commencement of the Act or during the 12 months immediately preceding the date on which it exceeds the limits specified in Sub-section (5) of Section 4 to apply for registration. Section 16 provides for voluntary registration. Thus both under the State and the Central law provision has been made to enable and to obtain voluntarily registration notwithstanding the fact that the liability to pay sales tax had not arisen. In the present case the appellant had obtained a registration certificate u/s 7(2) of the Central Act, that in anticipation of its liability to pay sales tax under the Central law arises. In the circumstances it cannot be said that the appellant remained an unregistered dealer under the Central law. Therefore, the penalty imposed u/s 18(6) of the Act read with Section 9(3) of the Central Sales Tax Act is set aside.

In our opinion, the reasoning adopted by the Board of Revenue is not correct. Under the State law the liability of a dealer to pay tax arises only if his turnover exceeds the specified limit during the whole year. When a person starts business, he may not be certain as to whether he would reach the limit or not; but there is always a possibility of the limit having been reached. Under the circumstances a person may get himself registered if he feels that his turnover is likely to exceed the prescribed limit. That is not the case under the Central Sales Tax Act. Under that Act, no such limit of turnover is prescribed. Every sale is made liable to Central sales tax. It is from this aspect that the provisions of the Central Sales Tax Act should be considered. Section 7(1) of the Central Act provides:

7. (1) Every dealer liable to pay tax under this Act shall, within such time as may

be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed.

Under the rules the application for registration under Sub-section (1) of Section 7 of the Central Act is required to be made not later than 30 days from the date on which the dealer becomes liable to pay tax under the Act, which means that u/s 7(1) the dealer is required to get himself registered within one month from the date of the first sale effected by him in the course of inter-State trade and commerce. The language of Section 7(1) is also imperative. Sub-section (2) of Section 7, on the other hand, provides:

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State...or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay, tax under this Act, apply for registration under this Act to the authority referred to in Sub-section (1), and every such application shall contain such particulars as may be prescribed.

It is clear from the wording of Sub-section (2) of Section 7 that this sub-section cannot be used by every dealer. Two conditions are required for registration under Sub-section (2), namely, (i) that he must be a dealer liable to pay tax under the sales tax law of the appropriate State, and (ii) that he is not liable to pay tax under the Central Sales Tax Act. In the case of such a person only a provision has been made that he may apply for registration. Apart from this distinction, we find that there is a definite purpose as to why this enabling provision has been made under which a dealer not liable to pay tax under the Central Sales Tax Act is entitled to get himself registered under that Act. The explanation can be found in the provisions of Section 8 of the Central Sales Tax Act. Sub-section (1) of Section 8 reads :

(1) Every dealer, who in the course of inter-State trade or commerce,-

(a) sells to the Government any goods ; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3) ;

shall be liable to pay tax under this Act, which shall be two per cent, of his turnover.

Sub-section (3) of Section 8 describes the goods referred to in Clause (b) of Sub-section (1) as:

(b)...are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the

generation or distribution of electricity or any other form of power ;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in Clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in Clause (c).

When Section 8(1) and Section 8(3) of the Central Sales Tax Act are read together, it becomes clear that the concessional rate of 2 per cent, is available to a seller in the inter-State sale if his purchaser is a registered dealer, and a registered dealer means a dealer who is registered u/s 7, which includes both u/s 7(1) and Section 7(2). Now, a person, who is not himself a seller in inter-State trade but is only a purchaser of goods from outside the State, if he gets himself registered u/s 7(2), can obtain the goods at cheaper rate if those goods are entered in his certificate of registration. It is because of this advantage conferred under the provisions of the Act that a dealer indulging in intra-State sales alone gets himself registered u/s 7(2). This would show that the two sections are designed for two different purposes and are to be used by two different classes. From Section 8(1), read with Section 8(3), it is also clear that the concessional rate of 2 per cent, is allowed because the purchaser-dealer under his registration undertakes either to resell the goods purchased by him or to utilise them for manufacture and thus paying the sales tax at the time of the resale or sale of manufactured goods. We may also refer to Sub-section (4)(b) of Section 7 of the Central Act which provides that a registration certificate granted under Sub-section (2) of Section 7 can be cancelled where the dealer ceases to be liable to pay tax under the sales tax law of the appropriate State. This also shows that where the possibility of recovering sales tax on the sales effected by the purchasing dealer ceases, the certificate granted under Sub-section (2) of Section 7 is also cancelled. The whole scheme of the Act, therefore, clearly points to the fact that the registration certificate u/s 7(2) is obtained by purchasing dealers who are not liable to pay Central sales tax with a view to purchase goods at a cheaper rate for being utilised for resale or in manufacture of goods purchased by them.

It is no doubt true that the language of Section 7(1) and Section 7(2) is not very clear and that on a first look at the provisions one is tempted to take the view that the registration u/s 7(2) is only voluntary or anticipatory registration contemplated under Sub-section (1) of Section 7. But that is not so. The purposes of the two registrations are altogether different. It, therefore, follows that if a person indulges in inter-State sale, he has to get himself registered u/s 7(1) and if he fails to do so, he exposes himself to the penalties prescribed under the law. The Board of Revenue was altogether in error in holding that the registration under Sub-section (2) of Section 7 can be deemed to be registration

under Sub-section (1) thereof.

For the aforesaid reasons, our answer to the first question is that a dealer registered under Sub-section (2) of Section 7 of the Central Sales Tax Act cannot be deemed to be a dealer registered under Sub-section (1) of Section 7 of the Act, and the answer to the second question is that on the facts and in the circumstances of the case the penalty imposed u/s 18(6) of the M. P. General Sales Tax Act, read with Section 9(3) of the Central Sales Tax Act was not rightly set aside. As the assessee did not put in appearance, we direct the parties to bear their own costs.