
(1970) 02 AHC CK 0020
In the Allahabad High Court
Case No : S.T.R. No. 155 of 1969

Commissioner, Sales Tax

APPELLANT

Vs

Ganga Ram Ghurey Lal

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1971) 27 STC 109

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The Additional Judge (Revisions) Sales Tax, Agra, has submitted this reference at the instance of the Commissioner of Sales Tax, U.P., Lucknow, u/s 11(3) of the U.P. Sales Tax Act and invited the opinion of this court on the following question of law:

"Whether sales made through the commission agents can be added to the other turnover of the assessee for purposes of fixing his gross sales?

2. The assessee is a dealer in food-grains, oil-seeds and gur. In respect of assessment years 1960-61 and 1961-62 it filed returns of its turnover showing gross sales of Rs. 4,368 and Rs. 3,773 for the two years respectively. These figures were not accepted by the Sales Tax Officer and were enhanced to Rs. 6,583 and Rs. 10,383 for the two years respectively. Even the enhanced figures of sales are below the minimum taxable limit which is Rs. 12,000 per year. The assessee would, therefore, have not been liable to any tax. The assessee, however, had made certain sales through commission agents and the extent of such sales was Rs. 24,000 for the year 1960-61 and Rs. 21,000 for the year 1961-62. If the sales made through the commission agents are also added to the turnover of the assessee, the assessee becomes liable to tax. It appears that the sales made through the commission agents were not included in the assessee's

net turnover liable to sales tax but were included in the assessee's gross turnover with a view to levy tax on the sales effected by the assessee directly. The question is as to whether this could be done, under the law.

3. Section 3 which is the charging section provides that every dealer shall for each assessment year pay the tax at the rate of 2 naye paise per rupee on his turnover provided the turnover exceeds Rs. 12,000. The dealer has been defined in Section 2(c) of the Act. to mean "any person...carrying on the business of buying or selling goods in Uttar Pradesh" and according to the explanation attached to that provision "a factor, a broker, a commission agent or arhati,...or any other mercantile agent by whatever name called...who carries on the business of buying and selling goods on behalf of his principals, or through whom the goods are sold or purchased shall be deemed to be a dealer for the purposes of this Act." The word "turnover" according to its definition u/s 2(1) means "the aggregate amount for which goods are supplied or distributed by way of sale...either directly or through another on his account or on account of others.

4. According to the definition of a dealer and of turnover as given in the Act where goods are sold through a commission agent, the principal and the commission agent both become dealers so that tax can be levied on either of them. At the end of Section 3, however, there is an explanation which says that where tax is payable and has been so paid by the commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover. This means that if a particular turnover has been assessed in the hands of the commission agent, the principal ceases to be liable to tax on such turnover. In other words, a principal is granted exemption from tax where his turnover is assessed in the hands of the commission agent. Rule 8 of the Rules framed under the Act is headed "liability to pay tax" and provides "a dealer's liability to pay tax under the Act shall be determined on the basis of his gross turnover." "Gross turnover" means the proceeds of the sales effected by a dealer whether directly or through a commission agent. It follows, therefore, that in order to determine the gross turnover of a dealer, all sales effected by him will have to be aggregated even though the tax would be levied only upon the net turnover, which means the turnover liable to tax, so that a part of the turnover, which is exempted by any of the provisions of the Act, shall have to be excluded from the levy of the tax. From the question referred, it appears that the department is not proceeding to levy tax on the turnover effected through the commission agents, presumably on the basis that such turnover has either been assessed in the hands of the commission agents or it is so assessable.

5. A Division Bench of this court in Commissioner of Sales Tax, U.P., Lucknow v. Balbir Singh and Co. [1963] 14 S.T.C. 546 was called upon to answer the following question:

Whether the sales of the opposite party Balbir Singh & Co., 2J, A.P. Sen Road, Lucknow, made by them in the capacity of a commission agent would be included in their gross turnover in order to determine their liability to tax.

6. The Bench answered the question in the affirmative holding that the sales made by the assessee as a commission agent could be included in the assessee's gross turnover even though such sales were not subject to tax in his hands. In *Commissioner of Sales Tax, U.P. v. Allied Chemicals* 1969 A.L.J. 33 (F.B.), a Full Bench of this court, of which one of us (Gulati, J.) was a member, held that the sales effected by a dealer outside the State of Uttar Pradesh could not be included in the assessee's gross turnover because of the provisions contained in Section 27 of the Act. Section 27 before it was repealed provided that notwithstanding anything contained in the Act, a tax on the sale or purchase of goods shall not be imposed where such sale or purchase takes place outside the State of Uttar Pradesh. This provision had been enacted to give effect to the provisions of Article 286 of the Constitution which prohibits a State from levy of tax on inter-State trade. The Full Bench held that in view of the absolute prohibition contained in Section 27, the inter-State sales could not be taken into consideration for any purpose of the Act whatsoever and, therefore, could not even be taken into consideration for determining the gross turnover of a dealer within the meaning of the second proviso to Section 3 and Rule 8. That was so because of the fact that in Section 27 there was a complete prohibition with regard to inter-State sales but there also it was held that gross turnover for the purpose of Rule 8 would mean the aggregate turnover of such sales as are taxable or would be taxable but for an exemption provided in the Act.

7. In the instant case the sales made by the assessee through commission agents were taxable either in the hands of the assessee or in the hands of the commission agents, but by reason of the explanation attached to Section 3, such sales were exempted from tax where they were taxed in the hands of the commission agents. Clearly this is a case where the turnover in dispute would have been taxable but for the exemption granted by the explanation to Section 3. There was no sale of the nature in respect of which there was a prohibition like the one contained in Section 27 of the Act.

8. We are therefore of the opinion that the sales made by the assessee through the commission agents can be taken into consideration for the purpose of determining the gross turnover of the assessee within the meaning of Rule 8, even though they are not liable to tax in the hands of the assessee.

9. We accordingly answer the question in the affirmative, in favour of the department and against the assessee. As no one has appeared on behalf of the assessee to contest this reference, we make no order as to costs. The fee of the learned counsel is assessed at Rs. 100.