
(1974) 04 DEL CK 0005
In the Delhi High Court
Case No : C.W. No. 590 of 1973

Fitwell Engineers

APPELLANT

Vs

Financial Commissioner, Delhi Administration and Another

RESPONDENT

Date of Decision : 26-04-1974

Acts Referred:

Citation : (1975) 35 STC 66

Hon'ble Judges : V.S. Deshpande, J;T.V.R. Tatachari, J

Bench : Division Bench

Advocate : N.A. Palkhiwala, Ravinder Narain, B.N. Kirpal, A.C. Chawla, J.N. Aggarwal and Leila Seth, for the Appellant; Lal Narain Sinha, Solicitor-General of India for Union of India, O.N. Mahindroo and R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Deshpande, J.—The decision of this and the connected six writ petitions depends on the construction of Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, as applied to Delhi (hereinafter called the Act) reproduced below :

5. (1) The tax payable by a dealer under this Act shall be levied (on taxable turnover)....

(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting there from-

(a) his turnover during that period on....

(ii) sales to a registered dealer of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for resale by him, or for use by him as raw materials in the manufacture of goods for sale ; and of containers or other materials for the packing of goods of the class or classes so specified for sale :

Provided that in the case of such sales a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed

particulars on a prescribed form obtainable from the prescribed authority is furnished in the prescribed manner by the dealer who sells the goods :

Provided further that where any goods specified in the certificate of registration are purchased by a registered dealer as being intended for resale by him or for use by him as raw materials in the manufacture of goods for sale, but are utilised by him for any other purpose, the price of the goods so purchased shall be allowed to be deducted from the gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer.

2. All the petitioners are registered dealers. Those in C. Ws. 590 of 1973, 1549 of 1973 and 894 of 1973 purchased goods specified in their registration certificates as being intended for resale by them. The others in C. Ws. 147 of 1974, 111 of 1974, 947 of 1973 and 1426 of 1973 purchased goods specified in their registration certificates for use by them in the manufacture of goods for sale. But the actual resales and the post-manufacture sales by them took place outside Delhi. The Financial Commissioner, acting for the Chief Commissioner "under Section 20(3) of the Act in revising the assessment of M/s. Fitwell Engineers for the year 1969-70, held on 26th April, 1973, that the resale as well as the post-manufacture sale of goods by the registered dealers who had purchased goods free from sales tax u/s 5(2)(a)(ii) had to be in Delhi. If the resale or the post-manufacture sale is made outside Delhi, then the conduct of the registered dealers would attract the second proviso to Section 5(2)(a)(ii). As they utilised the goods "for any other purpose" the price of the goods purchased tax-free by them would be included in their taxable turnover even though it had been already deducted from the gross turnover of the selling dealers and was not included in the taxable turnover of the selling dealers. This decision was followed by the sales tax authorities in the assessment proceedings of the other petitioners also. This action of the sales tax authorities under the second proviso to Section 5(2)(a)(ii) is being challenged in these writ petitions.

3. The grounds of challenge urged by the counsel for the petitioners may be summed up as below :

(1) The words "for resale" and "for sale" are used in Section 5(2)(a)(ii) without qualification. The resale or the sale by the registered dealers after purchasing goods tax-free, could, Therefore, be in or outside Delhi. There was no warrant to read by implication the words "in Delhi" after the words "for resale" and "for sale".

(2) The words "sale" and "turnover" defined in Sections 2(g) and 2(i) are also not confined to sales in .Delhi but could include sales outside Delhi.

(3) Even though the registration of a dealer under Sections 7, 8, 8B and 8C is confined to Delhi by the registration certificate issued there under, the undertaking given by the purchasing registered dealer u/s 5(2)(a)(ii) did not mean that he was bound to effect the resale or the post-manufacture sale in Delhi. For, even a sale outside Delhi would be by the same legal person who was

a registered dealer in Delhi. This was sufficient compliance with section (2)(a)(ii). Rules 3, 4, 6 and 26 framed under the Act also support this construction of Section 5(2)(a)(ii).

(4) A usage, with few exceptions, had grown in Delhi from 1951 to 1973 by which sales tax authorities acting u/s 5(2)(a)(ii) had allowed registered dealers to sell goods purchased by them tax-free even outside Delhi without attracting the consequences provided for in the second proviso thereto. The construction of Section 5(2)(a)(ii) by the court should not be contrary to this usage unless the language of Section 5(2)(a)(ii) is clear beyond doubt to show that the usage was wrong.

4. The respondents met the grounds urged by the petitioners as follows :

(1) The general words such as "for resale" and "for sale" used in Section 5(2)(a)(ii) have to be limited in their operation to Delhi because the legislature enacting the Act was competent to make it operate only within the State.

(2) Though the definitions of "sale" and "turnover" in Sections 2(g) and 2(i) do not require that a sale and the aggregate price of goods sold by a dealer have to be confined to sales taking place in Delhi, in view of Section 27 of the Act, the "sale" under the Act means only a sale in Delhi and "turnover" would include only prices of goods sold inside Delhi. Inter-State, export and outside sales are excluded from the definitions of "sale" and "turnover" by Section 27 of the Act.

(3) u/s 7(1) a dealer liable to pay sales tax must get himself registered. In his application for registration and in the certificate of registration issued to him the place or places of his business must be mentioned. It is only those sales by him which take place at the place of his business that will be regarded as sales by him as a registered dealer. Sales at places other than his place of business will not be regarded as sales by him as registered dealer. A sale by a registered dealer outside Delhi will not be a sale by him as a registered dealer. For, each State's Sales Tax Law requires separate registration by a dealer under that State law in respect of places of business situated in that State. A registration certificate cannot be issued under a State law in respect of a place of business situated outside that State. The Act distinguishes between an ordinary dealer and a registered dealer. It presumes that the former is not liable to pay sales tax while the latter is so liable. This is why Section 5(2)(a)(ii) exempts the first sale to a registered dealer from sales tax because the second sale by him would be taxable. But the first sale to an ordinary dealer is not exempted from sales tax because the second sale by him is not expected to be taxable. This classification between the two is reasonable under Article 14 of the Constitution. If Section 5(2)(a)(ii) is construed to allow a registered dealer who has purchased goods tax-free to sell them outside Delhi, then the sole reason for giving the exemption from sales tax to the registered dealer on the first sale of the goods to him would disappear and the favorable treatment given to him as against the treatment given to an ordinary dealer would amount to discrimination contrary to Article 14.

(4) The practice of the sales tax authorities not to invoke the consequences of the second proviso to Section 5(2)(a)(ii) was based on a layman's view of Section 4(2)(a)(ii) which means simply a superficial reading of that provision. Such a view did not take into account the significance of the second sale having to be by a registered dealer which necessarily implies that the sale has to be in Delhi. The layman's view that the words "in Delhi" being absent in Section 5(2)(a)(ii), the resale or the sale by registered dealers could be outside Delhi not only violates the true meaning of Section 5(2)(a)(ii) but also makes it unconstitutional as stated in meeting ground No. (3) above.

5. Having heard the counsel for the petitioners led by Shri N.A. Palkhiwala and the counsel for the respondents led by Shri Lal Narain Sinha, Solicitor-General, the legal position regarding the opposing contentions of the parties appears to us to be as follows :

6. Under the Government of India Act, 1935, the power to levy sales tax was within the exclusive competence of a Provincial Legislature. The Bengal Finance (Sales Tax) Act, 1941, was enacted by a Provincial Legislature. The law made by it could operate only within the State. Even if the goods sold ultimately went out of the State, the transaction of sale could be analysed into various components and at least one of these components was required to have a territorial nexus with the State. Otherwise such a sale could not be taxed under the State law. Therefore, though outside sales could not be taxed, all other sales could be taxed even if a part of the sale transaction was connected with the State. This was why Clause (v) of Section 5(2) (a) exempted not only export and outside sales but even inter-State sales. This exemption was confirmed by the enactment of Article 28(5) of the Constitution. Section 27 was added to the Act by an Adaptation Order issued by the President under Article 372(2) to make it clear that the pre-Constitution sales tax law was modified by Article 286 of the Constitution which exempted from levying of sales tax by a State not only the export and outside sales but also inter-State sales. Such modifications were made in all the States' Sales Tax Acts by the President acting under Article 372(2) -of the Constitution, as pointed out by the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, .

7. The effect of the addition of Section 27 on the construction of the Act was described by the Supreme Court in *A. V. Fernandez v. State of Kerala*, in considering the analogous Section 26 added to the Travancore-Cochin Sales Tax Act. The Supreme Court pointed out that there were two ways of construing a pre-Constitution sales tax law. On the one hand, the definitions of "sale" and "turnover" were in general terms capable of including all sales whether within or outside the State or Province concerned. On a prima facie reading of these provisions, Therefore, one would think that the gross turnover of a dealer would include all the sales made by him whether inside or outside the State and two types of sales would be excluded from it in arriving at the taxable turnover, namely, (1) sales exempted from taxation by the Constitution, and (2) sales

exempted from taxation by the State Sales Tax Law. This was the position prior to the Constitution. After the Constitution and the addition of Section 27 to the Act there was a basic change in the position. Thereafter, "sale" and "turnover" under the State Sales Tax Law had to be understood to refer only to such sales as were taxable under the State law and the gross turnover would automatically exclude the sales of which taxation was forbidden by the Constitution. The gross turnover would, however, include all sales taxable under the State law. Deducting there from the sales on which exemption from payment of tax was granted by the State law, the taxable turnover would be arrived at. The argument for the petitioners that the definitions of "sale" and "turnover" should be construed to include sales taking place outside Delhi is, Therefore, rebutted by the decision of the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, .

8. As a rule the meaning of the same word used in the same statute would be the same wherever that word occurs in the statute unless the context requires otherwise. The word "sale" in the Act has to be restricted to a sale in Delhi because that is the only sale which was taxable under the Act and the only object of the Act is to impose a tax on sales. It was argued for the petitioners, however, that the reason for thus limiting the word "sale" applies only when the word is used to denote a sale which is taxable. It does not apply when that word is used to denote a sale which is not taxable. It is argued that u/s 5(2)(a)(ii) only the first sale by the selling dealer to a purchasing dealer is taxable and, Therefore, that has to be a sale in Delhi, It is argued further that the second sale by the registered dealer is not taxable and it could, Therefore, be outside Delhi. The argument appears to be plausible but when intensively considered it is seen to be untenable. Firstly, the rule of construction of a State Sales Tax Law laid down by the Supreme Court in *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, is applicable to rebut this argument. The court states the rule as follows :

It should be remembered that unlike the Constitution, the law of a State can speak only within its own territories. It cannot operate either to invest another State with a power which it does not possess or divest it of a power which it does possess under the Constitution. Its mandates can run only within its own borders.

9. In enacting Section 5(2)(a)(ii) the legislature was concerned only with two stages of the taxability of a sale. The sale by a selling dealer to a registered dealer at the first stage, though taxable, was exempted from sales tax only because the sale of the same goods by the registered dealer at the second stage was expected to be taxable. For, the second sale had to be by the registered dealer who could act as a registered dealer only in Delhi. The word "sale" used by the legislature in respect of both the first sale and the second sale in Section 5(2)(a)(ii) referred only to taxable sales. If Section 5(2)(a)(ii) is construed to mean that the second sale could be outside Delhi, then the second sale would be a non-taxable sale being outside Delhi. When the goods are originally in Delhi but go out of Delhi in one of several ways for being sold outside Delhi, Clause (v)

to Section 5(2)(a) exempts such sales from liability to sales tax. To construe the resale or the post-manufacture sale by a registered dealer under Clause (ii) of Section 5(2)(a) as referring to sales of goods outside Delhi would also mean the same thing, namely, that goods moving outside Delhi to be sold outside Delhi would be exempt from sales tax on the outside sales. It is a settled rule of interpretation of statutes that the legislature is not to be accused of tautology or redundancy if such construction can be avoided. Clause (v) refers only to sales exempted from sales tax. The legislature should not Therefore be accused of repeating the same provision in the second part of Section 5(2)(a)(ii), which has a different subject-matter.

10. Secondly, it is well-known that for the purpose of levy of sales tax each State is a separate unit. The whole of India is not one unit inasmuch as each State levies sales tax only on sales within its own borders. The Sales Tax Laws of the States are divisible into two classes : (1) levying a single point sales tax and (2) levying multi-point sales tax. Our Act like the Orissa and Punjab Acts provides for a single point levy of sales tax. The meaning of single point levy is that within this State sales tax is levied on the sale of the same goods only once even if the same goods are actually sold within the State more than once. It is important to remember that the single point levy system is meant to work within one State only. It does not mean that sales tax may be imposed only once on the same goods anywhere in India, i.e., in any of the States. The observation of the Supreme Court in *The State of Assam Vs. Ramesh Chandra Dey and Others*, brings out the working of a single point levy of sales tax in the following words :

What Section 15 does, is to grant an additional exemption in respect of sales in which the goods, though sold to a registered dealer, are meant for resale in the State itself. It is quite easy to see that unless this exemption was granted, it was possible that there would have been sales tax at more than one point, namely, at the point at which the first registered dealer sold to the second registered dealer and again, when the second registered dealer sold in his turn. To avoid taxation at multiple points on transactions of sale of the same goods within the State, it was provided that the tax shall be paid only on the last sale and not on the previous sales, so long as the previous sales were from registered dealers to registered dealers in respect of goods mentioned in the registration certificate of the latter and provided the goods were for resale in the State. When the charging section itself excluded taxation of sales in the course of inter-State trade or commerce, it was hardly necessary to look for a repetition of the same exemption in the machinery section.

11. It is true that in the Assam Act under consideration in the *State of Assam v. Ramesh Chandra Dey* [1902] 1 S.C.R. 980 as also in the Orissa Act considered in *Endupuri Narasimham and Son v. State of Orissa* [1902] 1 S.C.R. 314, the provisions relating to single point levy contained the words "in Assam" and "in Orissa". But the system of single point levy did not depend on the presence of these words. It depended on the fact that at least one sale of the same goods

must be taxed within the State. The observation of the Supreme Court, Therefore, applies equally to Section 5(2)(a)(ii) of our Act even though the words ""in Delhi" are not present there. The very object of a State legislation being to impose sales tax on a sale within the State, the single point levy system of sales tax cannot contemplate that the only sale taking place in the State should be exempt so that the next sale of the same goods taking place outside the State may be left to be taxed by the other State within which it may take place. Such a construction of Section 5(2)(a)(ii) would mean that its object was to exempt the only sale which would be taxed in the State from sales tax leaving the goods to be taxed only in some other State. No State Sales Tax Law can have such an intention.

12. Thirdly, the object of Section 5(2)(a)(ii) is not to stop at exempting the first sale from sales tax. No sales tax law can stop at the first sales only with an exemption. The only reason of the exemption is to secure the levy of sales tax on the second sale. The object being to tax the second sale by the registered dealer, the meaning to be attached to the second sale would be the same as the meaning to be attached to the first sale. Since according to the decision in A.V. Fernandez Vs. The State of Kerala, by the Supreme Court, the taxable "sale" must be a sale inside Delhi, the words "for resale" and "for sale" referring to the second sales by the registered dealers could only mean resales or sales inside Delhi.

13. The second sale u/s 5(2)(a)(ii) could be made taxable by the legislature only by ensuring that it takes place in Delhi. The legislature could have achieved this purpose in either of two ways. It could have either stated that the second sales must be made in Delhi or it could have simply said that the same registered dealers, the first sale in whose favor was exempt from taxation, would be required to make a second sale of the same goods in their capacity as registered dealers. The first alternative could be adopted by the legislature if Section 5(2)(a)(ii) had dealt with the first sale to a dealer and a second sale by that dealer as distinguished from a sale to and a second sale by a registered dealer. Had the legislature dealt with a dealer and not with a registered dealer then the circumstances would have been as follows: Firstly, the sales tax authorities would have had no supervision and control over the dealers. They would not have known whether the second sale by the dealers would be in Delhi or not. A dealer does not file a return of his sales with the sales tax authorities unless he is required to do so u/s 10(2) of the Act. The reason why the first method was not followed by the legislature may be that Section 5(2)(a)(ii) was concerned not with dealers but with registered dealers. The second method was more suitable to deal with the registered dealers. A registered dealer is bound to file a return u/s 10(2). He is given the privilege of collecting the sales tax u/s 10A. A list of registered dealers is published u/s 9. Registered dealers are, Therefore, known to the sales tax authorities and are under their control and supervision. This is why the sales tax authorities could take" the risk of exempting the first sale to registered dealers from sales tax. For, they could be sure that the second sale by

a registered dealer would be ensured to be in Delhi and could, Therefore, be certainly taxed. All that was necessary was to secure an undertaking from the registered dealer at the time of the first sale to him that he would resell the same goods directly or after using them as raw materials to manufacture goods. The undertaking was that the registered dealer who had got the benefit of a tax-free purchase was to make the second sale. The argument of the learned Solicitor-General was that it was because of this undertaking that the words "in Delhi" became unnecessary to qualify the second sale in Section 5(2)(a)(ii). The crux of the matter, Therefore, is : whether the undertaking by a registered dealer to make a second sale as a registered dealer is sufficient to ensure the same result as would have been brought about by expressly using the words "in Delhi" to qualify the second sales in Section 5(2)(a)(ii). The concept of registration must Therefore be examined very carefully.

14. Only a dealer is qualified to be registered. A dealer is defined in Section 2(c) to mean "any person who carries on the business of selling goods in Delhi". The definition has two requirements, namely, (1) selling of goods and (2) as a business. If not all, at least some of the sales by a dealer must take place in Delhi and they must amount to a business ; they must not be casual sales. It is significant to note that a commission agent in Delhi acting for an outside seller will be a dealer under Explanation 2 to Section 2(c) but the outside seller would not be such a dealer in Delhi. Similarly, under Explanation 3 to Section 2(c) the manager or an agent in Delhi of an outside seller would be the dealer even though the outside seller will not be a dealer in Delhi. The conception of a dealer is Therefore bound up with the territory of Delhi. This is why in *Commissioner of Sales Tax, U.P. v. D.C. Dhimani & Brothers Ltd.* [1970] 25 S.T.C. 12, the Supreme Court observed as follows :

To be a dealer, it had to be shown that not only the respondents were selling goods in Uttar Pradesh, but they were carrying on the business of selling goods in Uttar Pradesh.

15. This concept of territoriality of a dealer is strengthened by his registration. For, in his application for registration he must mention his place or places of business. The registration certificate which is issued to him is restricted to the sales made by him at his place of business. Sales by him outside his place of business would not be regarded as sales by him as a registered dealer. This is established by the decision of the Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh v. Minerva Minerals* [1970] 26 S.T.C. 64. The dealer in that case was registered in the old Madhya Pradesh with his places of business at Nagpur and Gondia. Chhindwara and Wara Seoni were also in Madhya Pradesh but were not shown as places of business of the dealer in the registration certificate. After the division of Madhya Pradesh in 1956 Chhindwara and Wara Seoni were included in the new Madhya Pradesh while Nagpur and Gondia went into Maharashtra. The dealer obtained a registration certificate for the new Madhya Pradesh on 8th March, 1958. The question was whether in the assessment for

the period from 1st November, 1956, to 3rd July, 1958, the sales made by the assessed at Chhindwara and Wara Seoni could be regarded as sales made by him as registered dealer in the new Madhya Pradesh. It is to be noted that some of these sales in new Madhya Pradesh were made after 8th March, 1958, when he was registered in the new Madhya Pradesh. But even then Chhindwara and Wara Seoni were perhaps not shown as his places of business. The question was whether the sales which took place at Chhindwara and Wara Seoni before as well as after the date of registration could be regarded as sales by a registered dealer. The question was dealt with by their Lordships at pp. 68, 69 and 70 in the following words:

It was argued that having regard to the scheme of the Act, the High Court ought to have held that the registration certificate obtained by a dealer in Madhya Pradesh operated for his benefit in respect of all places of business throughout the territory of the State of Madhya Pradesh as it existed on 31st October, 1956, and this was the legal position notwithstanding the fact that some places of business like Chhindwara and Wara Seoni were not shown in the registration certificate as places of business of the respondent. In support of this argument reference was made to Section 2(c) of the Act defining a "dealer" as "any person who whether as principal or agent carries on in Madhya Pradesh the business of selling or supplying goods whether for commission, remuneration or otherwise". It was said that u/s 4 of the Act every dealer was liable to pay tax if his turnover during the year preceding the commencement of the Act exceeded the* limits specified in Sub-section (5). It was Therefore argued that the liability of the dealer to pay tax was dependent on the totality of transactions in the entire area of Madhya Pradesh and not on the transactions carried on in any particular place or places of business noted in the registration certificate. In other words, the contention was that when a dealer got himself registered under the Act he was getting himself registered as a dealer who carries on the business of selling and supplying goods in Madhya Pradesh and not vis-a-vis any particular place or places noted in the registration certificate. We are unable to accept the argument of the appellant for we are satisfied that the provisions of the Act and rules do not support such an argument.... It is plain on an examination of the relevant sections and statutory rules that the certificate of registration is granted with reference to the place of business or places of business of the dealer and not with reference to the whole area of the State though for the purpose of determining the liability of the dealer, his turnover in respect of all places of business in the State including those not mentioned in the registration certificate is to be taken into consideration. It follows Therefore that if a registered dealer carries on business in places not disclosed in the registration certificate he will have to be treated as an unregistered dealer vis-a-vis those places. Our conclusion in the present case is that the respondent cannot be treated as a registered dealer in the new State of Madhya Pradesh on the strength of the registration certificate issued to the respondent before coming into force of the States Reorganisation Act as no place of business in that area was specified in

the registration certificate.

16. In *Tobacco Manufacturers (India) Ltd. v. State of Bihar* [1960] 1 S.T.C. 282, the Imperial Tobacco Company was a registered dealer in Bengal with its place of business at Calcutta. It was also a registered dealer in Bihar with its place of business at Muzaffarpur. The purchases made by it in Bihar but not at Muzaffarpur could not be regarded by Das, J., as purchases made by registered dealer inasmuch as the said company was not a registered dealer vis-a-vis those purchases in Bihar. For, the purchase was made outside the place of business which was Muzaffarpur. The sales to the company by Tobacco Manufacturers (India) Ltd. could not Therefore be regarded as sales to a registered dealer in Bihar.

17. Reference was made to the decision of a Division Bench of this Court in *Tulsi Bhai Gordhan Bhai v. Lt. Governor of Delhi* ILR (1973) 2 Delhi 609 by the petitioners to support the proposition that a dealer in Delhi could also be a dealer outside Delhi. This decision has no applicability to our case. Firstly, it dealt with the definition of a "dealer" defined in Section 2(b) of the Central Sales Tax Act. That definition is in complete contrast with the definition of a "dealer" in Section 2(c) of our Act. For, it does not restrict the business of selling to any place or State at all. Further, u/s 6 of the Central Sales Tax Act all inter-State sales are liable to the payment of sales tax without any exemption in respect of sales below the taxable quantum. The concept of a "dealer" in the Central Sales Tax Act being essentially for inter-State sales could not be restricted to any one State. On the other hand, the concept of a dealer and even more so of a registered dealer in our Act is restricted to Delhi.

18. We are, Therefore, in agreement with the following propositions advanced by the learned Solicitor-General as to the concept of registration :

(1) Registration is of a person who carries on the business of selling goods in Delhi with reference to his place or places of business, whose total sales in Delhi make him liable to tax u/s 4 (vide Section 7) or whose gross turnover of sales in Delhi exceeds Rs. 10,000 (vide Section 8).

Registration certificate must contain (1) the goods or classes of goods in which he deals and (2) the place or places of business.

(2) Registrability is thus dependent on the volume of dealer's sales; but only the volume of sales in Delhi is relevant and the sales outside are wholly irrelevant.

(3) A dealer is a registered dealer only in respect of articles and places of business entered in his certificate. Beyond those articles and places he is an unregistered dealer : *Commissioner of Sales Tax v. Minerva Minerals* [1970] 25 S.T.C. 64.

It Therefore follows that he is a registered dealer qua sales in Delhi only.

19. As to the construction of the provisions in the Orissa and Punjab Sales Tax

Acts in pari materia with our Section 5(2) (a) (ii), there is a conflict of decisions. In an unreported decision by a Division Bench of the Orissa High Court in *Hindustan Cellulose and Paper Mills Ltd. v. State of Orissa* O.J.C. No. 194 of 1951 decided on 25th March, 1955 (Orissa High Court), it was held that even though the words "in Orissa" were not included in Section 5(2)(a)(ii) of the Orissa Act as it stood then, the resale in Orissa alone by the registered dealer who had obtained exemption on his previous purchase was contemplated by Section 5(2) (a)(ii). The subsequent amendment inserting the words "in Orissa" to qualify the resale and the second sale there under was only by way of abundant caution. This decision was followed by another Division Bench of the Orissa High Court in *Netrananda v. Commissioner of Sales Tax, Orissa* [1961] 12 S.T.C. 169.

20. On the other hand, the Board of Revenue, Orissa, in *Khemchand Chandumal v. Collector of Sales Tax, Orissa* [1953] 4 S.T.C. 394, took a contrary view of the unamended Section 5(2)(a)(ii) of the Orissa Act. Similarly, the High Court of Punjab and Haryana in *Tulsi Ram Sud v. Excise and Taxation Commissioner, Punjab* [1963] 14 S.T.C. 526, *Amar Hosiery Works v. State of Punjab* [1963] 14 S.T.C. 634 and *Mohan Dal Mills v. State of Punjab* [1971] 28 S.T.C. 424 expressed the view that a resale or second sale u/s 5(2)(a)(ii) of the Punjab Act by a registered dealer could be even outside Punjab. In a different context a Division Bench of the Madhya Pradesh High Court also held in *v. A. Trivedi Brothers v. Commissioner of Sales Tax, Madhya Pradesh, Indore* 1973 Tax. L.R. 1850, that the words "for resale" in the M. P. Act would mean resale anywhere and not necessarily in the State of Madhya Pradesh.

21. With respect, the decisions of the Board of Revenue, Orissa, and of the High Courts of Punjab and Madhya Pradesh referred to above do not consider the crucial question as to whether a sale by a registered dealer outside the State could be regarded as a sale by him in his capacity as a registered dealer. Consequently, it was not considered whether the sale by a registered dealer had Therefore to be inside the State. Further, many points regarding the construction of Section 5(2)(a)(ii) taken into consideration by us were not referred to at all in these decisions. They are, Therefore, not of much help to us.

22. The crux of the matter, Therefore, is this : is there a conception of sale to a registered dealer and sale by a registered dealer under our Act ? The sale to a registered dealer is a definite conception u/s 5(2)(a)(ii) regarding the first sales by the selling dealers to registered dealers. The object is to exempt what are called "trading transactions" from sales tax because these very goods were expected to be resold by the registered dealers* to persons who were not registered dealers and would then be subject to the levy of sales tax. All sales to registered dealers of goods specified in their registration certificates are exempted u/s 5(2)(a)(ii). Therefore, even after the first sales which were exempted from taxation the chain of sales to registered dealers can continue and so long as the chain is not broken by a sale to a person other than a registered dealer no sales tax could be levied.

23. The concept of sale by a registered dealer is also relevant under the Act. Firstly, a sale by a registered dealer is taxable because his taxable turnover has already exceeded the taxable quantum and that was the reason why he had to register himself u/s 7(1). The sale by a dealer is to be contrasted with this inasmuch as a dealer is not liable to pay sales tax till the expiry of two months after his turnover exceeds the taxable quantum in view of Sub-section (4) of Section 4. This might have been the reason why in Commissioner of Sales Tax, M. P. v. Minerva Minerals [1970] 25 S.T.C. 64, the dealer was keen to show before the Supreme Court that the sales by him could not be regarded as sales by a registered dealer. Secondly, the concept of sale by registered dealer is a necessary corollary of the concept of a sale to a registered dealer in Section 5(2)(a)(ii). The two are inter-dependent. Sale to a registered dealer is exempted from tax only because the subsequent resale or post-manufacture sale by him was expected to be taxable.

24. In C. W. No. 947 of 1973 at page 81 the statement of objects and reasons explaining the proposed amendment of Section 5(2)(a)(ii) in the Finance Bill of 1972 is reproduced as follows :

Certain changes are being made in the Sales Tax Law applicable to Delhi, which seek to make good certain lacunae which act to the detriment of the sales tax revenue accruing to Delhi Administration. The proposed amendments will help in the realisation of sales tax dues in the event of transfer of a business, winding up of a company, in partition of a Hindu undivided family which is not possible at present in the absence of specific provisions to this effect. At present, sales of raw materials in Delhi are exempted from tax irrespective of the fact, whether the goods manufactured there from are sold in Delhi or not. It is, Therefore, made clear that sales of raw materials will be tax-free only when such sales are made to those who manufacture in Delhi taxable goods for sale.

25. It was argued for the petitioners that the necessity to introduce the words "in Delhi" to qualify the manufacture of goods would show that without those words the manufacture of goods could be in or out of Delhi. In our view, the statement of objects and reasons supports the case of the respondents rather than that of the petitioners. Firstly, it does not propose to add the words "in Delhi" to qualify either the resale or the post-manufacture sale of the goods by registered dealers. This shows that the legislature was satisfied that the resale and the post-manufacture sale had to be in Delhi because they had to be by registered dealers. Secondly, the manufacture is not a taxable event. It can Therefore be outside Delhi provided that the manufactured goods are sold in Delhi. The object of Section 5(2)(a)(ii) did not, Therefore, suffer by the manufacture of goods outside Delhi. Thirdly, it would appear that the necessity to add the words "in Delhi" to qualify the situs of manufacture arose not from Section 5(2)(a)(ii) but from Sub-section (5) of Section 4 which distinguishes between the taxable quantum of a manufacturer in Delhi and of other dealers. The former is Rs. 10,000 while the latter is Rs. 30,000. The object of the amendment was perhaps,

Therefore, to get the advantage of a lower taxable quantum in respect of the manufacturers. The actual amendment of Section 5(2)(a)(ii), however, went beyond the statement of objects and reasons in regard to the post-manufacture sales but even now the direct resale of the goods by registered dealers is not qualified by the addition of the words "in Delhi". The post-manufacture sales u/s 5(2)(a)(ii) have to be of three kinds after the amendment, namely, (a) inside Delhi; or (b) inter-State sales ; or (c) export sales. No inference can Therefore be drawn from the actual amendment that the legislature thought that without the addition of the words "in Delhi" the resale or the post-manufacture sale by registered dealers could be outside Delhi.

26. The most formidable argument against construing Section 5(2) (a) (ii) to include the resale or post-manufacture sale by registered dealers outside Delhi was advanced by the learned Solicitor-General when he said that such a construction would make Section 5(2) (a) (ii) unconstitutional as being discriminatory in favor of the registered dealers and against the ordinary dealers contrary to Article 14 of the Constitution. The argument is as follows:

Sales outside Delhi being wholly irrelevant for the purposes of the Act, registered and unregistered dealers stand alike for the purposes of those sales.

27. Since outside sales as well as the total volume of Delhi sales and outside sales are irrelevant for the purposes of registration, a law which discriminates between unregistered dealers and those who are registered necessarily solely with reference to Delhi sales, in extending a privilege to the registered dealers even with regard to outside sales while denying the same to unregistered dealers, is violative of Article 14 because there is no rational nexus between the outside sales and registrability under the Act.

28. The general object of the Act is to tax all sales in Delhi. The exemption of sales tax to registered dealers by Section 5(2)(a)(ii) is an exception to this rule. The restriction of the exemption to registered dealers leaves the ordinary dealers outside the benefit of the exemption. A classification is thus made between registered dealers on the one hand and ordinary dealers on the other hand. The classification must be based on intelligible differentia which are relevant to the object of the Act if the classification is to be valid. The distinction between the registered dealers and dealers is based on intelligible differentia which have been already considered above. The most relevant of them u/s 5(2)(a)(ii) is this : The system of single point levy of sales tax can be worked only if the sales tax authorities are able to ensure that the exemption of certain goods from payment of sales tax on the first sale would be subject to the payment of sales tax on a subsequent sale. This postulates that the exemption on the first sale is given to such purchasers as would be known to make a second sale taxable in Delhi. It is only the registered dealers whose second sales could be known to the sales tax authorities because they are compelled to submit returns while ordinary dealers are not compelled to submit returns unless a particular dealer is called upon to do so. The registered dealers have also to maintain accounts which are subject to

inspection by the sales tax authorities u/s 10 while an ordinary dealer is not required to maintain accounts. These differentia are directly connected with the object of the Act which is to impose a single point levy of sales tax. The sales tax authorities do not have any supervision and control over an ordinary dealer. They cannot, Therefore, ensure that if an exemption is granted to an ordinary dealer he would make the second sale in Delhi. Further the presumption is that an ordinary dealer is not liable to pay sales tax at all. Correspondingly he is not given the privilege of collecting sales tax from his purchasers while the registered dealers have such a privilege u/s 10A. There was no point Therefore in granting exemption to an ordinary dealer inasmuch as a second sale by him would not be taxable at all. The crucial distinction which sustains the constitutionality of Section 5(2)(a)(ii) is Therefore the presumptive taxability of the second sale by a registered dealer and presumptive non-taxability of the second sale by an ordinary dealer. If Section 5(2)(a)(ii) is construed to mean that the second sale by a registered dealer could be outside Delhi then the very basis of the distinction between a registered dealer and an ordinary dealer is wiped out. On such a view the advantage enjoyed by the registered dealer in making purchase of goods specified in his registration certificate free of tax becomes unjustifiable. If the second sales by registered dealers were not intended by the legislature to be taxed, then there is no reason why an ordinary dealer should also not have been given the exemption by the legislature on his purchase of the same goods even though the second sales by him were not expected to be taxed, In *Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others*, , the Supreme Court held that the distinction between a registered dealer and an ordinary dealer, even if based on intelligible differentia would not be valid unless the differentia have a reasonable relation to the object sought to be achieved. In our case the object of Section 5(2)(a)(ii) is to exempt the first sale to a registered dealer with a view to tax the second sale by the said registered dealer to some one who is not a registered dealer. The differentia between a registered dealer and a dealer will be connected with this object only if the second sales by the registered dealers are construed as being necessarily taxable. If, on the other hand, Section 5(2)(a)(ii) is so construed as to make these second sales also non-taxable then the differentia between the two would not be a reasonable one and further it would have no rational connection with the object. Article 14 of the Constitution was also applied to strike down the exemption of goods manufactured within the State when the same goods were subject to sales tax when imported from outside the State in (1969) 2 SCC 710 .

29. It is a well-known rule of interpretation of statutes that a statute should be construed as far as possible to avoid its becoming unconstitutional. Assuming for the sake of argument that two interpretations of Section 5(2)(a)(ii) are possible, one allowing the resale and the post-manufacture sale by the registered dealer outside Delhi and the other requiring that they be inside Delhi then the latter interpretation would have to be accepted inasmuch as it alone makes Section 5(2)(a) (ii) constitutional. The former has to be rejected as it would make it

unconstitutional: Kedar Nath Singh Vs. State of Bihar, .

30. It is true that Rules 3, 4, 5 and 26 framed under the Act require that in the application for registration the places of business and branches thereof have to be stated and in the registration certificate also they have to be stated. It is argued for the petitioners that the location of branches of the business outside Delhi had to be stated because resales and post-manufacture sales by them outside Delhi would be covered by Section 5(2)(a)(ii). Firstly, rules cannot be used to interpret a statute under which they are made. Secondly, the mere mention of a branch outside Delhi either in the application for or in the registration certificate itself does not lead to such an inference. Such information may, for instance, be necessary to know whether a sale has been an inter-State sale.

31. As to the practice of the Delhi sales tax authorities to allow resales and post-manufacture sales by registered dealers outside Delhi u/s 5(2)(a)(ii), the reason seems to be that the sales tax authorities have read Section 5(2)(a)(ii) like laymen superficially. They did not read Section 5(2)(a)(ii) in the light of the object of the Act, the object of the section and its consistency with Article 14 of the Constitution. For the reasons stated by us above it cannot be said that two interpretations of Section 5(2)(a)(ii) were possible. Had that been so, we would have been glad to accept the interpretation which was in accord with the practice of the sales tax authorities. But the discussion above would show that the object of the Act, the object of Section 5(2)(a)(ii) and Article 14 of the Constitution would all be violated if the resale and the post-manufacture sale by registered dealers are allowed to be outside Delhi in construing Section 5(2)(a)(ii). Even a purely literal construction of Section 5(2)(a)(ii) requires the resale and post-manufacture sale to be by registered dealers as such and a sale outside Delhi cannot be said to be a sale by a registered dealer as such. We conclude, Therefore, that only one interpretation of Section 5(2) (a)(ii) was always possible and, according to it, the resale and the post-manufacture sale had to be by registered dealers as such so that the sales tax is levied in Delhi at least at one point and, Therefore, they had to be in Delhi. As observed by Lord Blackburn in *Trustees of the Clyde Navigation v. Laird and Sons* (1882) 8 App. Cas. 658, such usage raised a strong prima facie ground for thinking that there must exist some legal ground for such usage. A court should, Therefore, be cautious and should not decide unnecessarily against the usage. But if the meaning of the statute is clear then such usage based on a mistaken construction does not bind the court. In *Bourne v. Keane* [1919] A.C. 815, Lord Buckmaster opined in favor of decisions being in accordance with such usage if a contrary decision would affect the general conduct of affairs so as to mean that "taxes had been unlawfully imposed, or exemption unlawfully obtained". But in that very case Lord Buckmaster and other Lords held that the statute was so clear that the long usage extending over 80 years could not prevent its construction contrary to the usage. Commenting on Lord Buck-master's above observation Lord Upjohn stated in *Campbell College, Belfast v. Commissioner of Valuation for Northern*

Ireland [1964] 1 W.L.R. 912:

But there is, in my opinion, another principle of great importance, which conflicts to some degree with the dicta of Lord Buckmaster, that where taxes or rates have been illegally demanded and paid upon a clearly wrong construction of a statute, justice demands that the illegal impost, however innocently made, should be terminated unless there is some very good reason to the contrary.

32. The usage can be respected only if the construction of statute is in doubt but not if the contrary construction is clear.

33. In *Commissioner of Income Tax, West Bengal III Vs. Balkrishna Malhotra*, the Supreme Court observed that the meaning of the word "assessment" was construed by the High Court of Madras in 1953. No other High Court has taken a contrary view. In these circumstances, even if two views were possible, the view long acted upon should not be disturbed. Firstly, this observation applies to the construction of a statute by a High Court and not by a sales tax authority. Secondly, it postulates that between two possible views the established view could be adopted as a reasonable construction. We have shown above, however, that the construction of Section 5(2)(a)(ii) urged by the petitioners would not only be unreasonable but would be contrary to the very object of the Act and of Section 5(2)(a)(ii) and also to Article 14 of the Constitution.

34. From the above discussion it would be clear that we have attempted the construction of Section 5(2)(a)(ii) in a purely objective manner without any preconception. We could not, Therefore, be influenced either by the rule that a taxing statute should be strictly construed or by the counter rule that an exemption from tax liability should be construed against the assessed. Our approach would be found to be justified by the following observation of Lord Russell of Killowen, C. J., in *Attorney-General v. Carlton Bank* [1899] 2 Q.B. 158:

I see no reason why any special canone of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of the court is, in my opinion, in all cases the same, whether the Act to be construed relates to taxation or to any other subject, viz., to give effect to the intention of the legislature, as that intention is to be gathered from the language employed, having regard to the context in connection with which it is employed.

35. The conclusion, Therefore, is that the registered dealers who purchase goods specified in their registration certificates u/s 5(2)(a)(ii) free from payment of sales tax contravene the second proviso to Section 5(2)(a)(ii) when they resell the goods so purchased tax-free outside Delhi either directly or use them as raw materials in the manufacture of goods and sell the manufactured goods outside Delhi. For, such resales and sales outside Delhi would not be made by these registered dealers in their capacity as registered dealers. In selling the goods outside Delhi, they will not be acting as dealers registered under the Act. As they have done so, the purchase price of the goods has been rightly included in their

taxable turnover by the sales tax authorities. The decision of the Financial Commissioner in M/s. Fit-well Engineers" case was Therefore right. The Writ Petitions (Nos. 590 of 1978, 1549 of 1978, 894 of 1973, 147 of 1974, 111 of 1974, 947 of 1973 and 1426 of 1973) are, Therefore, dismissed but in the circumstances without any order as to costs.