

(1965) 08 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 321 of 1964

Ganesh Prasad Dixit

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 31-08-1965

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 2(d), 44, 7

Citation : (1968) ILR (MP) 839 : (1965) JLJ 1073 : (1965) 10 MPLJ 971 :
(1965) MPLJ 971

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and R.K. Tankha, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Judgement

P.V. Dixit, C.J.

This is a reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the assessee Ganesh Prasad Dixit of Marhatal, Jabalpur. The questions which we have been asked to answer by the Sales Tax Tribunal are :-

(1) Whether, in the facts and circumstances of the case, the notice in Form XVI that was served on the applicant was invalid and, therefore, the assessment of the applicant on the basis of that notice was bad in law ?

(2) Whether, in the facts and circumstances of the case, the applicant was a dealer during the assessment period under the Act and the imposition of purchase tax on him u/s 7 of the Act was in order ?

The material facts are that the assessee is a building contractor and registered as a dealer under the Madhya Pradesh General Sales Tax Act, 1958. In the course of his business he is required to purchase certain goods and materials for the execution of contract works undertaken by him. As he failed to submit a return for the assessment period 1st July, 1961, to 30th September, 1961, a notice u/s 18(5) of the Act in Form XVI was issued to him asking him to appear with his

account books. The Sales Tax Officer found that the assessee's turnover for the period in question was nil. He, however, came to the conclusion that during the material period the assessee purchased building materials from unregistered dealers of the value of Rs. 40,000 and that on these purchases he was liable to pay purchase tax u/s 7 of the Act. Accordingly an assessment of purchase tax on Rs. 40,000 was made by the Sales Tax Officer at the prescribed rate. The assessee's appeal before the Commissioner of Sales Tax and the Sales Tax Tribunal, namely, the Board of Revenue, failed.

The first question must be answered in the negative. under Rule 33 of the Madhya Pradesh General Sales Tax Rules, 1959, a notice for assessment u/s 18(5) has to be in Form XVI. That rule says that ordinarily not less than 15 days" time from the date of the service of the notice should be given to the assessee to show cause why he should not be assessed or reassessed to tax and/or penalty should not be imposed upon him. As has been found by the Sales Tax Tribunal, the notice given to the assessee was served on the applicant on 23rd November, 1961, and he was called upon to show cause by appearing on 30th November, 1961. That notice no doubt did not give to the assessee 15 days" time. But for that reason neither the notice nor the assessment proceeding taken on the basis of that notice becomes invalid. Rule 33 says that ordinarily not less than 15 days" time from the date of the service of the notice should be given. The use of the word "ordinarily" in Rule 33 indicates that the giving of 15 days" notice is not an invariable or a rigid rule. It may be that in a particular case a notice giving less than 15 days to the assessee may have resulted in prejudice to him. But that is not the complaint before us in this reference, and we are not called upon to answer whether the petitioner was in any way prejudiced by being required to show cause within seven days of the service of the notice.

On the second question, the argument put forward on behalf of the assessee was that as during the material period his turnover was nil, the assessee could not be regarded as having carried on any business of buying, selling, supplying or distributing goods and was not, therefore, a dealer u/s 2(d) of the Act. It was said that there could not be any such thing as business of buying goods ; and, consequently, the assessee could not be made liable to purchase tax u/s 7 of the Act for any goods purchased during the relevant period. There is no substance in this contention which is not founded on a proper and reasonable construe don of the definition of the terms "dealer" and "turnover" given in the Act. The definition given in Section 2(d) of the Act of the term " dealer ", in so far as it is material here, is as follows:-

2. (d) "dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and includes-

* * *

A somewhat similar definition contained in Section 2(e) of the Hyderabad General Sales Tax Act came up for consideration before the Supreme Court in *State of Andhra Pradesh v. Abdul Bakshi & Bros.* [1964] 15 S.T.C. 644. In the Hyderabad Act "dealer" has been defined as meaning "any person, local authority, company, firm, Hindu undivided family or any association or associations of persons engaged in the business of buying, selling or supplying goods in the Hyderabad State whether for a commission, remuneration or otherwise...". In that Act "turnover" has been defined as meaning, "the aggregate amount for which goods are either brought by or sold by a dealer". On the construction of the definition of "dealer" given in the Hyderabad Act the Supreme Court said :

A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression "business" though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e., without a profit motive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer : the definition merely requires that the buying of the commodity mentioned in Rule 5(2) must be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another salable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such salable commodity.

From these observations of the Supreme Court, which apply equally in the construction of the definition of the term "dealer" given in the Madhya Pradesh General Sales Tax Act, 1958, it is clear that if goods are bought in the course of business for sale or use with a view to make profit out of the integrated activity of buying and disposal, then there would be a business of buying.

Now, it has been found by the Tribunal that the assessee purchased goods in the relevant period in the course of his business for using the material purchased in the execution of contract works. The assessee was, therefore, clearly a dealer in that period. If he was a dealer and if he purchased taxable goods in the course of his business in circumstances in which no tax u/s 6 of the Act was payable on the sale price of such goods, then when the other circumstances mentioned in Section 7(1) existed, the assessee was clearly liable to pay purchase tax. The assessee did not cease to be a dealer merely because during the assessment period his turnover was found to be nil. The term "turnover" as defined in

Section 2(t) of the Act used in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period. It does not include the aggregate amount for which goods are bought by the dealer in the course of his business for sale or use with a view to make profit in the integrated activity of buying and selling or disposal. That being so, it cannot be held that when the assessee's turnover in relation to the period in question was found to be nil, he could not be assessed to any purchase tax liability u/s 7. It is wholly immaterial whether in respect of a period the assessee did or did not have any turnover of sales. What is essential is that in that period he must have either consumed the goods purchased in the manufacture of goods for sale or otherwise or disposed of such goods in any manner other than by way of sale in the State or despatched them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. The second question must, therefore, be answered in the affirmative.

Shri Sen, learned counsel for the assessee, referred us to" our decisions in State of M.P. v. Bengal Nagpur Cotton Mills Ltd. [1961] 12 S.T.C. 333. and Commissioner of Sales Tax v. Ram Dulare Balkishan & Bros. [1963] 14 S.T.C. 202. to support his contention that the assessee was not a dealer inasmuch as during the relevant period he carried on no business of selling or supplying of goods and his turnover was nil. The cases cited by learned counsel are of no assistance to the assessee. In those cases, the definition of the term "dealer" in Section 2(c) of the Central Provinces and Berar Sales Tax Act, 1947, which defined the word as meaning "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..." was under consideration. It was in connection with that definition that we expressed the opinion in the two cases referred to above that the expression " carries on the business of selling or supplying goods " in the definition of " dealer " must be construed in its commercial sense and so construed it means the carrying on of continuous trading operations with a view to earn profit. We further said, " A person engaged in continuous trading operations may not actually obtain profit, He may incur a loss. But if he engages himself in those operations with the object of earning profit, then he is carrying on a business." It will be noticed that the definition of "dealer" in the Act of 1947 did not use the word "buying". The decisions relied on by learned counsel for the assessee cannot, therefore, be read as meaning that when the turnover of sales of a dealer is nil in respect of a particular period, then he cannot be treated as having carried on during that period the business of buying. The present case is fully governed by the decision of the Supreme Court in State of Andhra Pradesh v. Abdul Bakshi & Bros. [1964] 15 S.T.C. 644.

For the above reasons, we answer the first question in the negative and the second one in the affirmative. The assessee shall pay costs of this reference. Counsel's fee is fixed at Rs. 100.