

(1971) 12 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 510 of 1969

Gopaldas

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 06-12-1971

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 286

Citation : (1973) 18 MPLJ 381 : (1973) 31 STC 575

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

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; M.V. Tamaskar, Deputy Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Bhavé, J.

The assessee used to deal in oil-seeds. In the assessment proceedings for the year 1963-64 he raised an objection that the provisions in the M.P. General Sales Tax Act, 1958, regarding the levy of sales tax on oil-seeds are repugnant to Section 15 of the Central Sales Tax Act and, as such, are void and illegal and that no sales tax on oil-seeds can be recovered from him. The objection was overruled by the assessing authority on the ground that it had no jurisdiction to decide the vires of the Act under which it was constituted. The assessee has, therefore, filed the present petition with a prayer that the assessment proceedings be quashed.

Article 286(3) of the Constitution provides :

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other

incidents of the tax as Parliament may by law specify.

Sections 14 and 15 of the Central Sales Tax Act deal with the matters covered in Article 286(3) of the Constitution. Section 14 of the Central Sales Tax Act declares certain goods, including oil-seeds, as of special importance in inter-State trade or commerce. Section 15 then provides:

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent. of the sale or purchase price thereof and such tax shall not be levied at more than one stage;

(b)....

The effect of this provision is that the State law cannot impose a sale or purchase tax on the sales inside the State at a rate higher than 2 per cent. of the sale or purchase price and that it cannot be levied at more than one stage.

The contention of the petitioner is that though the M.P. General Sales Tax Act provides for levy on oil-seeds at 2 per cent. only, there is no provision in the Act or the Rules made thereunder as to at what stage the tax is to be levied and so long as that is not specifically done either in the Act itself or in the Rules framed thereunder, no sales tax can be recovered. The contention of the respondents is that there is such a provision. They rely on Section 2(r).

Section 6 of the M.P. General Sales Tax Act, as it originally stood, provided:

The tax payable by a dealer under this Act shall be levied on his taxable turnover relating to goods specified in Schedule II, at the rate and at the point mentioned in the corresponding entry in columns 3 and 4 respectively, of the said Schedule.

The relevant entry regarding oil-seeds was to the following effect:

Schedule II Part III

S. No.	Description of goods.	Rate of tax.	Points of levy.	(1)	(2)	(3)	(4)
6.	Oil-seeds, that is to 2 per cent. On the point say, seeds yielding of sale by a dealer non-volatile oils used direct to a consu- for human consumption mer or to a manufacturer , or in industry, (purchas- or in the manufacture ing for use in the of varnishes, soaps, manufacture of and the like or goods for sale) or in lubrication and to those dealers volatile oils used who have no regis- chiefly in medicines, tration certificate perfumes, cosmetics under this Act. and the like.						

Thus, u/s 6, as it originally stood, with Schedule II, both the conditions regarding the tax not being more than 2 per cent. of the sale price and the stage at which the tax was to be recovered were specified.

Section 6 and Schedule II were, however, amended in 1962. The amended Section 6 now reads :

6. The tax payable by a dealer under this Act shall be levied on his taxable turnover relating to goods specified in Schedule II, at the rate mentioned in corresponding entry in Column (3) of the said Schedule.

Schedule II was also amended under which Column (4) specifying the point at which the tax was to be recovered was altogether omitted. Similarly, all the declared goods were regrouped in Part I of the Second Schedule and a common rate of 2 per cent. was prescribed for those goods. The apparent effect of this amendment is that there is no longer any mention as to the stage at which the tax is to be levied.

Along with the amendment of Section 6 and the Second Schedule, Section 2(r), which defines "taxable turnover", was also amended. Section 2(r) reads as under:

2. (r) "Taxable turnover" in relation to any period means that part of a dealer's turnover for such period which remains after deducting therefrom-

(i) the sale price of goods declared tax-free u/s 10 or Section 12 ;

(ii) the sale price of goods other than those mentioned in Sub-clauses (i) and (iv) of this clause, which have been purchased otherwise than in the course of inter-State trade or commerce from a registered dealer;

(iii) all such other deductions as may be prescribed;

(iv) 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.

Relying on Sub-clause (iv) of Section 2(r) it is submitted on behalf of the State that so far as the declared goods are concerned, the stage at which the sales tax can be recovered has been specifically prescribed.

It is submitted that under the M.P. General Sales Tax Act, tax is payable by only a registered dealer. The effect of Sub-clause (iv) of Section 2(r) is that the registered dealer, unless he sells the goods to another registered dealer, pays the tax. The chain of registered dealer selling the goods to another registered dealer can, of course, continue. But at the point where the dealer sells the goods to a consumer or to an unregistered dealer, the tax becomes exigible. On this reasoning it was submitted that it was not correct to say that the stage at which the tax became exigible was not prescribed under the Act.

Shri Chaphekar, the learned counsel for the petitioner, urged that similar argument was raised before the Supreme Court in *Bhawani Cotton Mills Ltd. Vs. State of Punjab* and *Another*, and was repelled by his Lordship Vaidialingam, J., who delivered the majority judgment. In the Punjab case, the question was

about purchase tax on cotton. It was held by their Lordships of the Supreme Court:

In the case of commodities, like cotton, which come under the category of "declared goods", tax can be levied only at a single point, as is made clear by Section 15(a) of the Central Act and, in our opinion, there can be no legal liability for payment of tax accruing, until and unless the Act or the Rules framed thereunder, prescribe a single point for taxation. For the matter of that, even in the final return to be sent by a dealer under the Act, the dealer will have to show in the taxable turnover all purchases of cotton effected by him during the accounting year. We have already referred to the fact that, along with the returns, the tax payable on the basis of those returns will have to be paid. At that stage, the question naturally arises, as to whether there is anywhere in the Act or the Rules any provision, by which the person, sending the return, will be able to know that the tax, in respect of the declared goods purchased by him, have already been paid by another dealer and that the value of the purchases effected by him, need not be shown in his return. He cannot take an off-hand chance in this matter, because there are very heavy penalties imposed on a dealer, for failure to include in the returns sent by him, any transactions in respect of which he is liable to pay tax.

The argument of the counsel for the State of Punjab that if a dealer wanted to claim exemption under Sub-clause (vi) of Section 5(2)(a), Rule 27-A provided for his getting a declaration from the dealer to whom the goods were resold, in which case the dealer was absolved from liability to pay tax, was not accepted. Their Lordships observed:

We have gone through the various statements contained in the said rule, as well as the forms, to which it refers, but they are not decisive, either way. There will also be cases where a non-registered dealer may have intervened and even if such dealer intervened, it is clear that u/s 15(a) of the Central Act the tax cannot be levied at more than one stage. There is no machinery by which a dealer can ascertain whether his vendor of the declared goods has paid the tax already. Even otherwise, it will be seen that if a dealer, A, sells the declared goods to B, six months after the close of the year (B being a registered dealer), A becomes liable to purchase tax. But, if B sells the identical declared goods, again, after the period mentioned in Sub-clause (vi), he will also be liable to pay purchase tax. That means, in respect of the same item of declared goods, more than one person is made liable to pay tax and the tax is also levied at more than one stage. That is not permissible u/s 15(a) of the Central Act. If goods are resold to a non-registered dealer, within the period, Sub-clause (vi) will not help the original purchaser. We may also point out, at this stage, that Sub-clause (vi) of Section 5(2)(a) negatives the assumption that the normal rule, under the Act, in respect of declared goods, is to levy the tax on the first purchaser. (pages 1622-23)

From these observations of their Lordships of the Supreme Court it is clear that

their Lordships were not satisfied that from the provisions of the Punjab Act it could be positively ascertained that the purchase tax became exigible only at one stage and that the same goods were not subjected to purchase tax twice. In this view of the matter, in that particular case it was held that the provisions of the Punjab Act were violative of Section 15(a) of the Central Sales Tax Act. It must be noted that it is not the decision of their Lordships that unless the Act in so many words provides that the tax on declared goods should be recovered at 2 per cent. or 3 per cent. and that it should be recovered at a specified stage, the Act becomes unenforceable. From the decision of their Lordships in that case it is clear that if from the provisions of the Punjab Act their Lordships would have been satisfied that the tax was exigible only at one point, the imposition of the tax would have been upheld. The decision relied on by Shri Chaphekar is, therefore, not decisive of the matter. In each case it will have to be determined, on the interpretation of the provisions of that particular Act, whether the provisions of Section 15(a) of the Central Act were violated or not. Shri Chaphekar, however, urged that under Clause (iv) of Section 2(r), the possibility of an unregistered dealer selling the goods to another registered dealer and he, in his turn, being made liable to pay sales tax cannot be ruled out. In our opinion, the vires of an Act cannot be determined on the basis of some imaginary and hypothetical cases which are inconsistent with practical experience. Under Clause (iv) of Section 2(r) when a registered dealer sells the goods to the consumer or to an unregistered dealer, he knows that he becomes liable for paying the sales tax. The element of tax would, therefore, be added by the registered dealer in his sale price. Now, a dealer, who is unregistered, unless he sells the goods to another registered dealer, at a loss, he will have to sell them at a higher price than at which the registered dealer would have purchased from another registered dealer. The possibility of the goods being purchased by registered dealers from unregistered dealers is altogether remote, at least in the case of trading communities. In the case of the Punjab Act their Lordships had found, as a fact, that if the goods were not sold for a certain period, both the registered dealers could be made liable to purchase tax. That appears to be the main ground for holding that the Punjab Act was ultra vires of the provisions of Section 15(a) of the Central Sales Tax Act. That is not the case here.

On behalf of the State, we were referred to a decision of the Rajasthan High Court in Walkar Anjaria and Sons Private Ltd. and Others Vs. State of Rajasthan and Others, , wherein reliance was placed by the assessee on the decision of their Lordships of the Supreme Court in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, . The contention was repelled on the ground that so far as the Rajasthan Act was concerned, the stage at which the tax became exigible was discernible from the provisions of the Act and that the Bhawani Cotton Mills case was not applicable. In Radhakrishna and Co. Vs. State of Andhra Pradesh and Another, , the question was whether the provisions of the Andhra Pradesh General Sales Tax Act, 1957, were violative of Section 15(a) of the Central Sales Tax Act, 1956. On consideration of the provisions of the Act it was held in that

case that the Legislature had intended to fix only a single point of levy on groundnuts having regard to the class of dealers who are likely to deal with those goods; and that the Legislature assumed that when groundnuts are purchased by a miller, he does so only for crushing and when a dealer purchases groundnuts it is only for resale and, accordingly, made a distinction between a miller and a dealer in item 6 of Schedule III to the Andhra Pradesh Act. It was further held that in the case of a miller it is the first miller alone that will be liable to tax even though he sells the goods again as a dealer without crushing it into oil. The argument based on the possibility of the other miller being taxed again and hence the provisions being in violation of Section 15 of the Central Sales Tax Act was negatived. The same matter came for consideration before the Supreme Court in *Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others*, . Their Lordships observed :

...the turnover relating to the purchases with which we are concerned in these appeals became charged with the liability to pay tax as soon as those purchases were made by the assessee-millers. To restate the position, whenever a miller purchases groundnut, the turnover relating to that purchase becomes exigible to tax subject to such exemptions as may be given under the Act. This means that as soon as a first miller purchases groundnut, the turnover relating to that purchase-the question of exemption apart-becomes liable to tax. This is also the view taken by the High Court.

It was urged on behalf of the assessee that if we place that interpretation then even the turnovers relating to subsequent purchases of the same groundnut made by the other millers would become exigible to tax despite the fact that only a single point purchase tax is leviable under the Act. It was further urged that we should not read into item 6 of the Third Schedule the word "first" before the word "miller" under column 2 thereof. We see no merit; in these contentions. Quite clearly in view of Section 14 and Section 15 of the Central Sales Tax Act and Section 6 of the Act, purchase of groundnut can be taxed only at one stage. Once a particular quantity of groundnut has been subjected to payment of tax, the State's power to tax in respect of those goods gets exhausted and any further dealing in those goods cannot be brought to tax. This is clear from the scheme of the Act. There was no need for the Legislature to say "when purchased by first miller" in column 2 of item 6 of the Third Schedule, because from the language employed therein, it is clear that the first purchase becomes exigible to tax and in view of Section 6 of the Act, the subsequent purchases of the same goods cannot be subjected to tax. Therefore there is no question of adding any word into that item, as contended by Mr. M.C. Chagla on behalf of the assessees. (pages 652-653)

The situation so far as the M.P. General Sales Tax Act is concerned is, in no way, different. Clause (iv) of Section 2(r) makes it clear that as soon as a registered dealer sells the goods to a consumer or an unregistered dealer, the tax becomes exigible and it cannot be recovered on subsequent transactions as the State

loses its authority to impose such a tax.

Having considered carefully all the provisions of the M.P. General Sales Tax Act and the decisions cited above, we do not find any lacuna in the provisions of the State Act and, in our opinion, the contention of Shri Chaphekar that the tax cannot be recovered because no stage has been prescribed under the Act cannot be sustained.

For the abovesaid reasons, the petition fails and is dismissed with costs. Hearing fee Rs. 100. The balance, if any, of the security deposit, after deducting costs, shall be refunded to the petitioner.