

(1957) 02 MP CK 0041

In the Madhya Pradesh High Court

Case No : C. Miscellaneous C. No. 92 of 1956

Govindram Ramprasad

APPELLANT

Vs

Sales Tax Assessing Authority

RESPONDENT

Date of Decision : 28-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Bharat Sales Tax Act, 1950 — Section 10

Citation : (1957) JLJ 431

Hon'ble Judges : Hidayatullah, C.J;Dixit, J

Bench : Division Bench

Advocate : S.D. Sanghi, for the Appellant; P.R. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition under Article 226 of the Constitution of India for a writ against the Sales Tax Department. The petitioner Messrs Govindram Ramprasad is a registered partnership firm carrying on the business of selling petroleum products and kerosene at Indore. In the year 1952-53, the petitioner purchased from the Bombay office of the Burmah Shell Oil Storage and Distributing Company of India Ltd., 5306 packed and sealed tins of kerosene. These tins were admittedly sold by the petitioner to its customers in the original packing. At first the Sales Tax Department did not include in the turnover of the petitioner the price realised from the sale of the tins because kerosene was not a taxable commodity within the meaning of the Act. Later, however, in 1956 a notice was served on the petitioner under S. 10 of the Madhya Bharat Sales Tax Act informing it that a certain portion of its turnover for the year 1952-53 had escaped assessment and that the assessment was to be revised. The petitioner thereupon produced its books for the inspection of the Department and on 29-3-1956 the case was heard. The petitioner averred that for a period of three months it heard nothing in the matter inspite of reminders issued by it. On 5-9-1956 it deposited some amount for a copy of the order which might have

been passed. A copy was issued to the petitioner on 6th September, 1956, purporting to be an order made on 29th March, 1956, and with that was sent a notice of demand for Rs. 259-1-6. The petitioner's case is that the tax on the so-called sale of the tins of kerosene (though kerosene was exempt) is not proper and it asks us to issue a writ or writs to prohibit the taxing authorities from levying the tax, It also asks that the assessment made on it be quashed.

2. The petitioner avers that the assessment order which is said to have been passed on 29th March, 1956, was not brought to its notice, The Department in its reply has said that the shop of the petitioner was found closed and the notice was affixed to the house of the petitioner on 31st March, 1956. Nothing much turns upon this except in one way. The petitioner does not contend that the order has been ante-dated or that it was not passed within three years' period of grace allowed under S. 10 of the Act. It contends that the assessment is not complete till the assessment order is brought to the notice of the assessee, It contends, therefore, that for the purposes of S, 10 not only the assessment order should be passed within the period indicated in that section, but it should be brought to the notice of the assessee also within the said period.

3. The petitioner contends that the sale which takes place is of kerosene, which is an exempted commodity, and the tin is merely a paking or a container for the delivery of kerosene to the purchaser. It submits that the petitioner receives these packed and sealed tins from the Head Office of the Burmah Shell and delivers them in the same state to the customers without doing anything or putting them in any other containers. It, therefore, contends that these tins are not liable to tax even though under the notification issued by the Government on 30th April, 1950, articles made of metals other than gold and silver are liable to sales tax. The petitioner lastly contends that on a proper construction of the relevant sections of the Act, the tax cannot be levied upon such containers and that the Department has erred in thinking that the containers divorced from the exempted commodity can be so taxed.

4. At the beginning of the case, a preliminary objection was raised by Shri Sharma appearing for the Department. He contended that the petitioner had not exhausted its remedies under the Act and had not filed any appeal or revision. He pointed out that the amendment requiring the deposit of the tax in matters of revision was made as late as 1950, and therefore, the petitioner could have filed a revision without any burden being thrown upon it as the petitioner contended it was necessary if it filed an appeal. It is common knowledge that revisions are not entertained without an appeal being filed where an appeal is open to a party. In the present case, an appeal could not be filed without the tax being deposited and we think that the petitioner is entitled to bring the matter before this Court for an adjudication whether the assessment made on him is proper or not. The present case, is therefore, covered by the decision of their Lordships of the Supreme Court in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*,

5. We, therefore, entertained the petition for consideration and overruled the objection made by the Department. The short question in this case is whether the tax is properly levied or not. It must be understood that we are dealing with a fiscal measure, and that in a fiscal measure there is no room for an intendment. The subject must be brought within the letter of the law if he is to be taxed, but if he cannot be, he must go free. There is also a rule that if there be any ambiguity, it is to be resolved in favour of the subject. Cases on the subject are numerous. It is not necessary to encumber this order with citation of them.

6. On an examination of the Act in question, it is to be noticed that the charging section is a simple one. It lays the tax on the taxable turnover of a dealer. The difficulty in the interpretation of the Act arises because of numerous definitions which have to be inducted into the charging section to find out whether the tax is to be levied. It is here that the difference has arisen between the contending parties and they both claim that clause (q) of section 2 of the Act is the decisive factor. According to Mr. Sanghi, learned counsel appearing for the petitioner, clause (q) is to be read as a single unit and all the parts of it should be taken to refer to the words "sold" and "supplied" used therein. According to Shri Sharma, who appears for the Department, the two words "sold" and "supplied" have to be read separately and what follows "supplied" in the definition is meant to govern only "supplied" and not "sold".

7. It is convenient at this stage to quote the relevant clause. It reads:?

In this Act, unless there is anything repugnant in the subject or context.....

(q) "Turnover" means the aggregate amount for which goods are either sold or supplied for the payment received in respect of a contract by a dealer.....

We omit the proviso and the explanation because they do not have much bearing upon this matter, The question, therefore, is whether the underlined words following?"supplied" govern only "supplied" or also "sold". Mr. Sanghi in support of his contention that the words "for the payment received in respect of a contract" modify also the word "sold", refers to the Hindi version of the Act and also to the last three words "by a dealer" which he says inescapably point to a connection between the two words "sold" and "supplied",

8. This section is a copy of other sections in other Acts. Unfortunately it does not entirely reproduce the sections existing in other Acts. The difference which we have noticed is in the utilisation of a double conjunction ?"either" "or". Now the word "either" may be a pronoun or a conjunction or an adverb. When it is used with the word "or" it is used as a conjunction. In 54 CLR 445 (Currie Vs. Glen and others), Starke J. observed at page 453 that the word "either" is not a technical word. It is a distributive word and may mean one of two or each of two depending upon the subject-matter and the context. The learned Judge gave numerous examples of how "either" is used. In the Webster's dictionary it is said that when the words "either" and "or" are used they indicate a choice between

one thing or another. According to the Webster's dictionary they are then being used as a conjunction, and examples are given like "Either he goes or I do"; "Either in late spring or early summer". From these examples it is deduced in the dictionary that there is choice between the one or the other of the things mentioned. They are not conjunctively placed so as to be read together. They are to be read as alternatives from which the choice or a selection must be made.

9. Reading the section in the light of these observations, it is quite clear that the words "either" "or" are not used in any technical sense. They are used to denote two states of affairs in which a turnover would be found. Referring to the definition, therefore, "turnover" means the aggregate amount for which goods are either sold or supplied. It would be clear from this that there is either to be a sale of the goods or the goods have to be supplied. The short question is whether the phrase "for the payment received in respect of a contract" can legitimately be taken to qualify the word "sold". Now these matters have sometimes to be decided on rules of grammar. Their Lordships of the Privy Council in 18 IA 121 (*Itrawaddy Flotilla Company Ltd. Vs. Bugwandas*) indicated that it is a common rule that the qualifying words should be confined to the subject which immediately precedes them, A test here is to try to read into this clause the definitions of such words as one finds in the statute and for which a definition exists. Shri Sharma attempted to show that if one inducts into the definition the grammatical variation of the word "sale" in place of the word "sold" and then reads the clause, we are considering, it makes no sense. We are entirely of the same opinion. An explanation of the definition of "turnover" in the light of the definitions contained in S. 2 clearly shows that the word "sold" is not qualified by the words "for the payment received in respect of a contract" though it is qualified by the words "by a dealer". Shri Sanghi said that at best there is a doubt and we should, therefore, go to the Hindi version. The Hindi version which is not the authoritative version undoubtedly reverses the order in which the words are used. On a reading of Hindi version it is plain that the words "supplied for the payment received in respect of a contract" or their equivalent are meant to cover not only "sold" but also "supplied". Mr. Sanghi referred to an observation in Crawford's "Statutory Construction" at page 350 (S. 202) where it is said that if there be two versions of a statute in two different languages one version can be used to interpret the other. The cases on which this observation is based have, unfortunately, not been brought to our notice. It is, however, common knowledge that in Canada statutes are passed both in English and in French and there are cases of their Lordships of the Privy Council in which assistance of one version is taken to interpret the other version. This has also been done in connection with the cases from some of the Middle East countries where a statute is to be found both in French and in Arabic. However, those cases cannot be an authority for using the same doctrine in our country where the Constitution under Articles 348 and 349 has clearly provided that where laws are passed in an Indian language and are translated into English, the authoritative version shall be the English. No doubt if there was any ambiguity,

resort could be had to extraneous aid which might have included the Hindi version, but, in our opinion, the matter is so plain and the grammar and the sense of the thing so clear that it is not necessary to go to the Hindi version at all. When one contrasts the definition of "sale" with the definition of "contract", it is quite clear that the latter part of the definition of "turnover", i.e., the nine words following "supplied" are meant to qualify "supplied" only. It would be encumbering this order to try to induct into that definition all the definitions which the words used indicate. Any person can re-write the clause in an expanded form and will see that it leads to no other conclusion. There being no ambiguity, there is no need to go to extraneous evidence or the consideration of any other text, We accordingly are of the opinion that the words "either" and "or" are indicative of two separate sets of circumstances, namely, (i) the outright sale of goods; and (ii) the supply of goods towards the completion of a contract for work such as the definition of the word "contract" envisages.

10. It is most remarkable that both the lawyers referred in the course of their arguments to the two cases of Gannon Dunkerley C. (Madras) Ltd. Vs. The State of Madras (1955) 5 S.T.C. 216 and Pandit Banarsidas Vs. State of Madhya Pradesh (1955) 6 S.T.C. 93. Those two cases did not cover this point at all. There the question was whether a contract for building was composed of labour and materials and whether in the case of materials a Sales-tax could be levied. In the Madras case it was held that in an entire building contract the supply of material could not be divorced from labour and Sales-tax levied on the materials. In Pandit Banarsi Das's case it was held that the supply of material could be divorced from the labour and Sale-tax could be levied. This is not the point which arises here where we are not concerned with labour plus material, but two separate commodities, namely, the tins plus an exempted commodity kerosene packed in them.

11. This brings to the main consideration in the case. It is obvious that when goods are sold, sales-tax can be levied. The entry in the Constitution places the tax on the sale of goods and what is to be shown is that there were goods in existence and there was a completed contract of sale in respect of those goods. Now a contract of sale in respect of goods postulates existence of goods which can be delivered and also price which has to be paid for them. The question, therefore, boils down to this: whether in the transaction which is effected for selling kerosene in sealed tins, there can be said to be a sale of the tins as such.

12. After all, an exemption in a taxing measure cannot be carried further than the exemption itself indicates. If the exemption is in respect of kerosene that exemption cannot be stretched to cover the container. This clearly shows that unless. It can be shown that there is no sale of the tins as such, there can be a tax on the tin. The evidence in the case is that when kerosene is sold in bulk it is charged Rs. 1/9/- per four gallons less than when it is sold in a tin. A purchaser who buys kerosene in bulk knows that he is not paying for anything other than the kerosene he buys. When a person buys kerosene in a tin, he knows also that

he is not only paying for the kerosene but also for the tin. There may not be an agreement or an open negotiation as to the price of the tin. There is an implied agreement for the price of the tin. The person who buys and the person who sells are ad idem on the passing of property in the tin and the price of the tins has to be added to the price of kerosene. In these circumstances when the exemption is given only for the kerosene, the exemption cannot by any reasonable method be stretched to cover a commodity for which the exemption was not meant. This has been laid down in a number of cases in the Courts in India and a brief reference to them at this stage is desirable.

13. The earliest case on the point is reported in (1951) 2 S.T.C. 1 (Varasuki and Co. Vs. The Province of Madras). In that case salt was being packed in bags and the bags were sold, there being an intention to charge a price for the bags as well. It was held that even if salt was exempted from sales tax, the sale of gunny bags was liable to taxation. That case was followed, though not with specific mention, in another Assam case reported in (1953) 4 S.T.C. 129 (Mohanlal Jogani Rice & Atta Mills Vs. State of Assam). There the commodity which was exempted was rice and the gunny bags which were supplied for consideration were held to be liable to tax. Similar are two cases from Andhra? (1956) 7 S.T.C. 26 (A.S. Krishna & Co. Ltd. Guntur vs. State of Andhra) in which packing material was held to be taxable, and (1956) 7 S.T.C. 486 (B.V. Hanumantha Rao Vs. The State of Andhra) in which palmyra fibre was packed and the packing material was held liable to tax. A similar view has been taken by the Madhya Pradesh High Court in 1957 J.L.J. 101 (Jaikishan Gopikishan Vs. Commissioner of Sales Tax, Madhya Bharat), There bales were made of cotton and the hessian and iron hoops, which were supplied for a price, were taken to be taxable to sales tax.

14. In our opinion, the matter has been sufficiently gone into in the cases above referred to and others to which specific reference need not be made. In all these cases emphasis is laid on one proposition only, and that is whether there was the sale of the container for a price or not. It may be that when one buys shoes and the dealer packs them in a card-board box for carriage, the box is given free and there is no tax on the box. There may not in such a case be a sale of the card-board container. But where the container itself is priced and sold and its price is added to the price of the commodity it contains, there can be no manner of doubt that there is a sale of the container. In such event, unless there be an exemption of the container.....along with the commodity it contains, the tax cannot be avoided.

15. It was admitted before us that if there be a sale of the container and the container is priced separately and sold, then the tax can be levied. We are of the opinion that in the present context of facts there is a sale of the tins because the price for bulk kerosene is Rs. 1-9-0 less for each four gallons than the same quantity contained in the tins. The fact that the purchaser buys kerosene in tins is indicative of only one conclusion that he is out not only to purchase kerosene

but also the tins in which it is packed.

16. It was contended that there are numerous articles in wrappers and containers but no tax is levied on the containers. Reference was made to medicinal products to ink bottles, and to tins of biscuits and oval tins. It may be that on a strict construction of the statute, these containers can also be taxed. Why they are not taxed is because some of these commodities are not sold loose or in bulk. It is to be noticed that biscuits of the same kind can be obtained in paper cartons as in tins and there is a difference in the price. It is obvious that the man who purchases biscuits in the tins is prepared to pay a larger price because he thinks that the biscuits are better preserved in tins than in cartons. If a question ever arose, and there was an exemption of biscuits, the same argument which has been applied by us to kerosene tins would also hold good. We do not say that in all the circumstances the reasoning which we have laid down would be found applicable. Each case will have to be decided on its own facts with advertence to the kind of packing material, the commodity exempted and the customs of the trade. In the present case, the facts are quite plain and the conclusion irresistible.

17. Learned counsel for the petitioner referred to two cases from the Madras High Court reported in *Williams Tacks and Co. Ltd., Madras Vs. The State of Madras*, (William Jacks and Co. Ltd., Madras vs. The State of Madras) and (1956) 7 S.T.C. 327 (*William Jacks and Co. Ltd., vs. The State of Madras*). There an attempt was made to tax electric motors separately from the unit in which they were incorporated on the ground that electric motors were liable to tax at a higher rate. Sometimes the identity of a part which is incorporated or which is utilised is so merged with the rest of the things that it is useless to try to break it into its component parts for the purposes of tax. If motor cars were exempted, the exemption would cover not only the motor cars as such but also all that goes to make a motor car such as tyres, batteries upholstery etc. What has to be seen in each instance is how far the exemption goes and whether on a proper interpretation of conflicting entries the matter can be brought under one entry or another. If a unit like an electric shaver is to be taxed, it cannot be said that the motor inside it be taxed at a higher rate and the outer case at another rate. But this is not true of kerosene tins. Kerosene can be sold to one without the container and the container to another without impairing the utility of either. In the case of electric shaver you cannot take the motor out without changing the article. Distinction has thus to be made between those commodities in which there are various articles joined together, each performing an integral function to produce a particular result or a finished product, and commodities sold in tins in which there is no connection between the commodity and the container except to make for convenience for carriage or transport. We do not think that the Madras cases have any bearing on this matter and can easily be distinguished. As to the argument that assessment was not completed within three years, we say that it was. The collection of the tax after assessment is not a part of assessment as such.

18. For the reasons stated above, we think that this petition should fail. It is dismissed. In view of the fact that the Department was remiss in not charging the tax in the first instance and also in not serving the order betimes or replying to the notices sent by the petitioner, we think that the costs of this petition should be borne as incurred.