
(1995) 01 MP CK 0012
In the Madhya Pradesh High Court
Case No : F.A. No. 53 of 1995 (J)

Hem Raj Sharma

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 33(4)(b)

Citation : (1996) 1 MPJR 109

Hon'ble Judges : U.L. Bhat, C.J.; S.B. Sakrikar, J

Bench : Division Bench

Advocate : Umesh Trivedi, for the Appellant;

Judgement

U.L. Bhat, C.J.

Appellant plaintiff, a partner of a defunct firm, filed a suit seeking declaration that the house building referred to in the plaint is his personal property and is not liable for attachment and sale for recovery of tax dues to the State from the firm and that the order dated 24.1.86 of the second defendant, Sales Tax Officer rejecting his objection to the attachment and proposed sale is illegal and void. The suit was opposed by the State relying on the provisions in section 33 (4) (b) of the M. P. General Sales Tax Act, 1958, for short, the Act, The trial Court upheld the defence and non-suited the plaintiff. Hence this appeal.

The plaintiff appellant was a partnership firm which was assessed for sales tax for the period from 1972-73 to 1979-80 to the extent of Rs. 1,51,780.00 In recovery proceedings, house in dispute was attached for purposes of sale. The attachment was objected to by the appellant on the basis that the house was his separate acquisition and was not a partnership asset. The trial Court, on the assumption that the building belonged exclusively to the plaintiff appellant, nevertheless held the attachment valid on the strength of the provisions of section 33 (4) (b) of the Act.

Learned counsel for the appellant placed very strong reliance on the definition of

"dealer" occurring in section 2 (d) of the Act. "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. The inclusive definition, inter alia, includes firm. Learned counsel also placed reliance on the decision of the Supreme Court in State of Punjab Vs. Jullunder Vegetables Syndicate, which has been relied on in a later decision in Commissioner of Sales Tax M. P. and others vs. Radhakishan and others A. I. R. 1979 S. C. 1588. The first decision was under the East Punjab Sales Tax Act, while the latter decision was under the Act under consideration in this case. Both the Acts contain a definition of "dealer" as including firm. In the former case, it was held that since firm was a legal entity, on dissolution it ceased to be a legal entity and there was no provision in the Act empowering the Assessing Authority to assess the dissolved firm for tax due before the dissolution, there cannot be any such assessment. In the latter case, it was held that in view of the inclusive definition of "dealer", it was only the firm which was liable and not the partner.

In the latter case, the Supreme Court had no occasion to consider the provisions in section 33 (4) (b) of the Act and in the former case, the question of liability of a partner did not arise for consideration. These decisions are, therefore, not helpful to us.

Section 33 of the Act deals with tax payable by transferee of business. When the ownership of the business of a dealer liable to pay tax is entirely transferred, the transferor and the transferee shall jointly and severally be liable to pay the tax together with penalty, if any, payable in respect of such business for any year or relatable to a part of any year and remaining unpaid at the time of the transfer and the transferee shall also be liable to pay the tax on the sales or purchases of goods effected by him with effect from the date of such transfer. Sub-section (4) reads thus :

(4). When a dealer is a firm or association of persons or a joint Hindu family and such firm, association or family, has discontinued business

(a) the tax payable under this Act by such firm, association or family for the period upto the date of such discontinuance, may be assessed and determined as if no such discontinuance had taken place: and

(b) every person (sic) was at the time of such discontinuance a partner of such firm or a member of such association or family shall, notwithstanding such discontinuance, be liable severally and jointly for the payment of the tax assessed as payable by such firm, association or family, whether such assessment is made prior to or after such discontinuance and, subject as aforesaid, the provisions of this Act shall apply as if every such person or partner were himself a dealer; Provided that when it is found that a change has occurred in the constitution of the firm or association or that such firm or association has transferred its business and the tax payable by a partner or a member as

aforesaid cannot be recovered from him, it may be recovered from the firm or association as reconstituted, or from the transferee :

Provided further that where tax is recovered from the firm or association or transferee as aforesaid, such firm or association or transferee shall be entitled to recover the same from the partner or member who was originally liable to pay the tax.

Explanation - The dissolution or reconstitution of a firm or association of persons or partition of a joint Hindu family shall be deemed to be discontinuation of business within the meaning of this sub-section.

Sub-section (4) makes it clear that where there is discontinuance of the firm, the tax payable by the firm upto the date of discontinuance may be assessed to and determined as if no such discontinuance had taken place and every person who was, at the time of discontinuance a partner, shall, notwithstanding such discontinuance, be liable severally and jointly for payment of the tax assessed as payable by such firm whether such assessment is made prior to or after the discontinuance. Subject to this, the provisions of the Act shall apply as if every such person or partner were himself a dealer.

Thus sub-section (4) casts liability on the partners of the firm which has discontinued the business in regard to tax due for the period prior to the discontinuance irrespective of the date of assessment. In the face of such clear statutory provision, the argument based on the definition of "dealer" cannot help the appellant. The lower Court was, therefore, justified in rejecting the claim of the appellant.

The appeal is accordingly dismissed.