(1986) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Second Appeal No. 105 of 1978

Hiralal APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 04-12-1986

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 33A

Citation : (1987) 67 STC 82

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : G.M. Chaphekar and S.S. Samvatsar, for the Appellant; V.K. Dubey, Deputy Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.—This second appeal arises out of the judgment and decree dated 23rd November, 1977, passed by the VIIth Additional District Judge, Indore, in Civil 1st Appeal No. 36-A of 1976.

2. Undisputed facts are that house No. 3, situated on Warehouse Road, Indore was owned by Chandrabai, who was one of the partners of M/s. Hind Union Traders. From 1st February, 1965, she became the sole owner and proprietor of M/s. Hind Union Traders. Plaintiff-appellant purchased the suit house for Rs. 9,000 by a registered sale deed No. 1130, dated 22nd May, 1971, and filed the suit on the ground that the house was wrongly attached and sold by the respondent-State in recovery proceedings in respect of recovery of Rs. 18,810 against M/s. Hind Union Traders. He, therefore, prayed for a declaratory decree that he was the sole owner of the house and the same was not liable to be attached or sold in sales tax recovery proceedings.

3. The trial court dismissed the suit and the first appellate court dismissed the appeal preferred by the plaintiff-appellant.

4. One of the substantial questions of law on which this appeal was admitted is

"whether the courts below have correctly appreciated the scope of the provisions of Section 33-A of the M. P. General Sales Tax Act and the proviso thereto", and "whether the transfer made after completion of the assessment for a particular year and before attachment to recover the sales tax as assessed would be hit by Section 33-A of the M. P. General Sales Tax Act".

5. Shri Chaphekar, learned counsel appearing for the appellant, submitted that both the courts below have failed to correctly interpret Section 33-A of the M. P. General Sales Tax Act, 1958 (for short, "the Act"). Section 33-A of the Act reads as follows :

Section 33-A. Transfer to defraud Revenue void.-Where, during the pendency of any proceeding under this Act, any dealer created a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer, whatsoever, of any of his assets in favour of any other person with the intention to defraud the Revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of the said proceedings :

Provided that such charge or transfer shall not be void if made, for valuable consideration and without notice of the pendency of the proceedings under this Act.

6. It is a well-settled principle that a taxing statute is to be strictly construed. Viscount Simon quoted with approval a passage from Rowlatt, J., expressing the principle in the following words : "In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." The Supreme Court in Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., has said, "In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

7. Section 33-A of the Act has, therefore, to be interpreted in the light of the aforesaid principles. The section postulates (a) pendency of any proceeding under the Act; (b) dealer creating a charge on or parts with possession by way of sale, mortgage, exchange or any other mode of transfer of any of his assets in favour of any other person; (c) with the intention to defraud the Revenue and on fulfilment of the aforesaid conditions, such charge or transfer is (i) rendered void, (ii) as against any claim in respect of any tax or any other sum; (d) payable by the dealer as a result of completion of the said proceedings. It will thus be seen that any charge created or transfer made is treated as void under this section only to the extent and as against any claim of any tax or any other sum,

which has been further qualified as "payable by the dealer as a result of completion of the said proceedings". What follows, therefore, is the sum must be payable as a result of completion of the said proceedings, i.e., pending proceedings, during which a dealer has created the charge on assets or transferred the same.

8. The first question, which should, therefore, be answered is, whether any proceedings were pending, as contemplated by Section 33-A of the Act, on the date of sale, i.e., 22nd May, 1971.

9. Shri Chaphekar, learned counsel for the appellant, submitted that proceedings as contemplated by Section 33-A of the Act are proceedings of assessment and penalty, as is clear from the words "...sum payable by the dealer as a result of completion of the said proceedings". It is in this light that Shri Chaphekar submitted that a notice of demand is not covered by the term "proceeding" inasmuch as the sum demanded has already been decided and determined as a sum payable by the dealer in an earlier proceeding, which cannot be said to be pending with a notice of demand is issued.

10. Shri Dube, learned Deputy Government Advocate, appearing for the respondent-State referred to exhibit D/2, which is a notice of demand dated 23rd October, 1970, for the period 1st April, 1968 to 31st March, 1969. But this sum had already become payable on completion of proceedings relating to the year 1968-69. On the date when transfer of the house by sale was made, i.e., 22nd May, 1971, no such proceeding can be said to be pending. The other documents, such as exhibits D/4, D/6, D/6 and D/7, referred to by the learned counsel, are all dated 16th November, 1971 and apparently subsequent to the date of sale. They are, therefore, of no avail to the respondents. A demand which had already arisen as a result of completion of a prior proceeding, cannot be said to be pending proceeding for the purposes of Section 33-A of the Act. The words at the end of the section are significant and meaningful.

11. Shri Chaphekar also referred to the proviso of this section, but the question does not arise, as it cannot be said that the transfer of house was during the pendency of any proceeding.

12. The lower appellate court has referred to exhibits D/3, D/4, D/6, D/6, D/7 and D/7 and the total recoveries thus amounted to Rs. 18,834.64 recoverable from the assessee. The court has further referred to exhibit D/1, which was served on Chandrabai, the assessee, on 31st October, 1970. The sum demanded vide exhibit D/2 cannot be said to be a sum payable by the dealer as a result of completion of the proceedings pending at the time of transfer of the house.

12A. For the foregoing reasons, this appeal deserves to be allowed and is accordingly allowed. The judgments and decrees of the two courts below are set aside and the plaintiff ''s suit decreed. However, in the circumstances, there shall be no order as to costs.

