

(1956) 02 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1025 of 1954

Hiralal Barman and Others

APPELLANT

Vs

Sub-Divisional Officer, Hathras and Another

RESPONDENT

Date of Decision : 09-02-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 22

Uttar Pradesh Sales Tax Act, 1948 — Section 2, 3, 8

Citation : AIR 1956 All 428

Hon'ble Judges : Mootham, C.J.; Mehrotra, J.; Chaturvedi, J.; Agarwala, J

Bench : Full Bench

Advocate : S.C. Khare and D.D. Seth, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that

(1) a writ of certiorari be issued quashing the realisation proceedings before the Sub-Divisional Officer, Hathras, regarding the arrears of sales tax against Messrs Ramchand Spinning and Weaving Mills, Hathras, District Aligarh.

(2) that a writ of mandamus be issued directing the opposite party not to enforce the demand of sales tax by arrest of the applicants or attachment for sale of their personal properties.

(3) a writ of prohibition be issued directing the opposite parties to refrain from arresting the applicants or attaching or selling their personal properties in enforcement of demands of sales tax against. Messrs Ramchand Spinning and Weaving Mills, Hathras.

2. There is a registered partnership firm carrying on business under the name and style of Messrs Ramchand Spinning and Weaving Mills, Mursan Gate, Hathras, district Aligarh. The firm owns the mills and deals in cloth, arid yarn

after manufacturing the same. The partners of the Firm are Shri Hira Lal Barman, Jawaharlal, Rajendra Kumar, Virendra Kurnar and Manikchand, Shrimati Satyavati Devi and Shri Naridlal Barman.

The partnership Firm was running the mills. Returns for the sale of the goods for the year 1951-52 were submitted to the Sale Tax Officer, Hathras and a sum of Rs. 102386/- was the amount of tax levied against the Firm. Something was paid by the Firm. Returns for 1952-53 were also submitted In due time and thereafter the returns for 1953-54 were filed before the Sales Tax Officer.

It is alleged in the petition that the Mill worked for about four months in the year 1953 and in the year 1954 for fifteen days only. The sales tax was paid in part by the assesseees and the department according to the petitioner's case made a demand from the Firm for a further sum of Rs. 90000 /- and odd. The property of the Firm i. e., the mills itself was attached in the year 1952 but they were subsequently released on certain conditions.

In 1952 the personal property of the deponent namely the residential house was attached by the Sales Tax Department. The personal property of Shri Manikchand, another partner, was also attached. On 18-8-1954 the moveable properties in the Annapurna Kothi belonging to Sm. Annapurna Devi were attached under the process issued by opposite party 1. 30-9-1954 was the date fixed for sale of the liveable properties which were attached.

The warrant of arreast was also issued under the provisions of the Land Revenue Act by the Sub-Divisional Officer, Hathras, for the arreast of the petitioners 1 to 3 for realisation of the sales tax alleged to be due from the Firm. The order for the realisation of the amount by arrest was stayed by this Court on 28-9-1954. Counter-affidavit has been filed on behalf of the State of Uttar Pradesh by Shri Krishna Soti, Sales Tax Officer, Hathras.

In paragraph 3 of the counter-affidavit it is stated that the process for realisation of the sales tax dues on the firm of Messrs Ramchand Spinning and Weaving Mills relates to the year 1951-52 and 1952-53. There is still a balance of Rs. 60631/14/6 due from the Firm for the year 1951-52 and Rs. 36759/3/6 for the year 1952-53. In para 8 it is further stated that a large amount of Sales tax for the year 1949-50 was recoverable from the Firm, the payment of which had fallen into arrears.

The demands made by the Sales Tax Department relate only to the years 1951-52 and 1952-53. Against the order of attachment of the Mills, it is stated in the counter-affidavit that a representation was made by the petitioner as a result of Which the attachment was released on condition that payments should be made by fixed instalments within specified period and it was also recommended that there "were other properties Which could be sold and the mills should be released from attachment.

Out of these instalments agreed by the Mills to be paid, two instalments of Rs.

10,000/- each Were paid towards the arrears. The Sales Tax Department only issued a certificate of the sales tax for realisation of arrears and it is not for the Sales Tax Department to attach any property. It is admitted in para 19 of the counter-affidavit that the moveable property from the residence of Shri Hiralal Burman was attached on 18-8-1954 and certain objections were filed in regard to the attachment on behalf of. Sm. Annapurna Devi which were investigated and rejected by the Court on 27-9-1954.

It is stated that the orders of arrest have been issued in accordance with the provisions of the law. It is contended that registered partnership firm is an entity for the purpose of taxation and it is not open to the Department to realise arrears of tax due from the Firm from the personal property of the partners. It is further contended that there was no certificate u/s 145, Land Revenue Act determining the arrears of the sales tax and the name of the defaulters and as such the provisions of Section 146, Land Revenue Act did not apply and the entire proceedings were illegal.

3. It is contended by the Standing Counsel who represents the opposite party that a partnership is not a person in law. It has no juridical existence and the assessment of tax in effect is against the partners who constitute the firm. It is therefore open to the department to realise the arrears of the sales tax due from the firm from the personal property of the partners.

Reliance has been placed by the petitioners on the definition of the word, "dealer" in the Sales Tax Act. Section 2 (c) of the Act defines a dealer as any person or association of persons carrying on the business of buying or selling and supplying goods in the United Provinces whether for commission, remuneration or otherwise and it includes any firm or Hindu joint family and any society, club or association which sells or supplies goods to its members but it does not include any department of the State Government or the Indian Union.

Section 3 of the Act provides that subject to the provisions of the Act every dealer shall pay on turnover in each assessment year a tax at three pies a rupee. Section 8 lays down that

"the tax assessed under this Act shall be paid in such manner and in such instalments, if any, and within such time, not being less than fifteen days from the date of service of the notice of assessment, as may be specified in the notice. In default of such payment, the whole of the amount then remaining due may be recovered as if it were an arrear of land revenue."

4. Reliance has been placed by the Standing Counsel on the unreported decision of this Court. in -- " Jagat Behari Tandon Vs. Sales Tax Officer, Etawah and Another, . In that case one Firm Bansgopal Amarnath was constituted in the year 1948 and it used to deal in bullion and ornaments. The petitioner Jagat Behari Tandon was a partner in this firm owning one-third share and the other two-thirds were owned by Amarnath and Kedarnath.

On 16-7-1950, Amarnath left the firm and the other two partners became owners of this firm in proportion of their half share. The firm was assessed to sales tax by an order dated 19-7-1952. The reconstituted firm of the two partners was, known as Bansgopal Amarnath and this firm was also dissolved on 18-4-1952 but the assessment was made on this firm for the year 1951-52 "on 17-3-1953. The tax was not paid and the case was sent to the Collector for realising the amount as arrears of land revenue.

AN appeal was filed against the second assessment order before the Sales Tax Judge (Appeals). On the papers being received by the Collector, notice was issued in the name of the firm which was served on the petitioner, Jagat Behari Lal, and certain objections were filed by him to the assessment and the recovery of the tax.

On these facts the writ of certiorari was claimed for quashing the assessment orders, dated 19-7-1952 and 17-3-1953. A writ of mandamus was also claimed directing the respondent 1, the Sales Tax Officer, to withdraw the certificate u/s 8 of the Act.

5. Two points were urged in that case. It was firstly contended that an assessment order could not be passed against the firm after it had been dissolved and secondly that the previous partners of the firm could not be proceeded against for the recovery of the taxes after the dissolution of the firm. It was decided in that case that after the discontinuance of the firm the partners of the firm could be taxed and also the tax imposed on the dissolved firm could be recovered from the partners.

The facts of that case are distinguishable from the present case. In the present case the firm which has been assessed to the sales tax is in existence. The property belonging to that firm is still available for realisation of the arrears of tax.

6. The Standing Counsel, however has placed reliance on that case as an authority for the proposition that a firm is not a legal entity and when a firm is assessed to the sales tax it is really the partners who are assessed to tax and the arrears therefore could be realised from the personal property of the partners. To my mind the firm is included in the word "dealer", as defined in the Act.

It was, therefore, open to the Sales Tax authorities to assess the sales tax on the firm on the turnover of its business. Section 3 of the Act is the charging section and Section 7 of the Act provides the method by which the amount of tax is to be determined. It provides that

"every dealer whose turnover in the previous year is Rs. 12,000/- or more in a year shall submit such return or returns of his turnover of the previous year within sixty days of the commencement of the assessment year in such form and verified in such manner as may be prescribed."

7. In the present case when the firm was assessed to sales tax it must have

been on the basis of the return submitted by the firm as a dealer and the amount of sales tax was determined on the said return submitted by the firm. Section 8, as I have already quoted, provides that the tax assessed under the Act is to be paid by the assessee and, in case "of his failure to do so, a notice is to be given to him. In case of default the arrears are to be recovered as land revenue, The tax in the present case was assessed on the firm.

The notice of demand must have been given to the firm and the default was, in fact, committed by the firm. Under those circumstances, the fact that the definition of "dealer" can as well include a partner does not necessarily mean that the firm is not liable, as such, to pay the tax. The defaulter in the present case is the firm as the notice was served on the firm and it cannot be said that the arrears could be realised by attachment and sale of the private property of the partners.

8. As I have to differ from the opinion ex-pressed by my brother Chaturvedi J., in the case referred to above, it is desirable that this point should be decided by a Bench.

9. I would, therefore, direct that the papers of this case be laid before the Hon"ble the Chief Justice for constitution of a Bench.

(The question was referred to a Division Bench Consisting of Mootham C. J. and Agarwala J. whose judgment was delivered by)

Mootham, C.J.

10. The first and third petitioners are partners in a firm carrying on business as manufacturers of and dealers in cloth and yarn under the firm name of Messrs. Ramchand Spinning and Weaving Mills. The firm has been assessed to sales tax on its turnover, and part of that tax not having been paid the Sales Tax authorities are seeking to recover the balance due from the petitioners. A learned single Judge has accordingly referred to this Bench the question whether arrears of sales tax due from a partnership firm can be recovered from the partners individually.

11. The argument for the petitioners is that for the purposes of the Sales Tax Act a firm is a legal entity distinct from its members, and that sales tax assessed on the firm can be recovered, and recovered" only, from the assets of the firm.

12. Now Section 3 of the Act which is the charging section provides that, subject to the provisions of the Act, every dealer shall in each assessment year pay tax at the rate of three pies in a rupee on his turnover of the previous year; and "dealer" is defined in Section 2, Clause (c) as meaning "any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh and includes any firm

13. There is therefore no doubt that under the Sales Tax Act, as under the Income Tax Act, a firm is a separate unit of assessment, but it does not follow

from the fact that a firm is capable of being assessed that it is a legal entity for all the purposes of the Act. As Leach, C. J., said in -- The Commissioner of Income Tax Vs. The National Cycle Importing Company, by Proprietor Amritlal Bhaichand Shaw,

"It is quite true that a firm for purposes of assessment to Income Tax in some cases is regarded as a unit, but that does not mean that in all cases a firm must be looked upon as a juridical person".

In that case the question which the Court had to consider was whether the Commissioner of Income Tax was right in the opinion which he had formed that a firm "cannot be found" within the meaning of Section 26(2), Indian Income Tax Act when it has been dissolved. The Commissioner had dissociated the partners in the firm from the firm itself, but this in the opinion of the Court was going too far.

14. Under the Indian Partnership Act, 1932, a firm has no legal existence; its members are called individually partners and collectively a firm; and u/s 25 of that Act (read with the definition of "act of the firm" in Section .2) every partner is liable severally and jointly with all the other partners for the liabilities of the firm incurred while he is a partner.

We think, therefore, that unless there can be found in the Sales Tax Act itself some provision which shows that it was the intention of the Legislature that tax due from a firm can be recovered only from the assets of the firm the ordinary rule should prevail.

We can find no such provision, and it is, we think, of some significance that Section 8, which states the manner in which tax may be recovered does not say that it shall be recovered only from the assessee. All that that section says is that in default of payment the whole of the amount then remaining due shall be recoverable as arrears of land revenue.

15. We, therefore, answer the question which has been referred to us in the affirmative and direct that the petition be restored to the list of the learned single Judge for final hearing at an early date.

(After the question was answered by the Division Bench (Moothan C. J. and Agarwala J.), the case was finally disposed of by)

Chaturvedi, J.

16. This is a petition under Article 226 of the Constitution.

17. It does not appear to be necessary to enter into the facts of the case in any detail. Suffice it to say that large arrears of sales tax were due from petitioner's Firm known as M/s. Ram Chand Spinning and Weaving Mills, Mursan Gate, Hathras, District Aligarh. Petitioners 1 and 3 are admittedly partners of that Firm.

Three points have been urged by the learned counsel for the petitioners. His first

submission is that a tax due from a Firm cannot be recovered, personally from the partner's of the Firm. This point was referred by Mehrotra J. for decision by a Bench. The Bench has now decided the point against the petitioners. I am bound by that decision and no more need be said about this point.

18. The second point is that the provisions for arrest of the defaulters from whom amounts are due which can be recovered as arrears of land revenue are inconsistent with the provisions of Arts 14 and 22 of the Constitution. This point has been answered against the petitioners in a decision of the Supreme Court.

19. The third point argued is that some of the attached property belongs to petitioner 2 Sm. Anpurna Devi. Averments to this effect are made in para 11 of the affidavit filed along with the petition. But it appears from the counter-affidavit that Sm. Anpurna Devi filed objections for the release of the property and the same were considered and decided against Sm. Anpurna Devi on 27-9-1954.

On the strength of the affidavit filed in the present petition, it cannot be held that the said property belongs to Sm. Anpurna Devi. If she is so advised, she may bring a regular suit for the release of the property and it would be for the Court before which the suit is brought to decide Whether the suit is maintainable and whether Sm. Anpurna Devi has made out her case and is entitled to the relief prayed for by her. On the evidence that is before me in these proceedings, I am unable to hold that Sm. Anpurna Devi has succeeded in proving that any item of the attached property belongs to her.

20. The petition is dismissed with costs and in view of the fact that a number of hearings have taken place, I assess the costs at a sum of Rs. 200/-.