

(1987) 04 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No's. 63 and 1758 of 1986

Krishnakant Shivabhai Patel

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 29-04-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 276
General Clauses Act, 1897 — Section 3

Citation : (1987) 89 BOMLR 248

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Judgement

S.M. Daud, J.—Can a firm registered as a dealer under the Bombay Sales Tax Act, 1959, be taxed under entry No. 8, when each partner thereof is also obliged by entry No. 19 (both of Schedule I of Maharashtra Act No. XVI of 1975 PT Act) to pay the maximum amount of tax levied under that enactment?

2. The point formulated above along with certain incidental questions is the subject of cross petitions being decided by this judgment. To understand the controversy, it will be necessary to set out the background and it is thus- -

3. PT Act is a fiscal measure to raise additional resources for the working of the Employment Guarantee Scheme. Broadly speaking, it taxes certain categories of the gainfully employed within the limitations laid down by Article 276 of the Constitution. The charging provision is Section 3 read with Schedule 1. Until mid August 1985, a firm registered under the Partnership Act was liable to pay tax (professional tax) at rate Rs. 150/- per annum. This led to anomalies- so.felt the taxman - and to get over the same, Government introduced in the legislative assembly a bill bearing No. XXV of 1985. The Statement of Objects and Reasons which has a bearing on the crucial issue figuring before me recited-

Under the existing entry 19 in the Schedule I to the Act, firms registered under the Indian Partnership Act, 1932 (IX of 1932) and engaged in any profession, trade or calling are required to pay tax. But in many registered firms some of the

partners, who are not covered under any entry of the schedule to the Act, are otherwise not paying the tax. With a view to cover such partners of the firms under the Act, and thereby augmenting the State revenue from the profession tax, it is proposed to make every such partner, instead of a firm, liable to pay tax.

[Portion underlined is herein indicated in italics. -Ed.]

The bill was introduced in the legislature and the Finance Minister in his speech on that occasion said-

At present in terms of Serial No. 19 in Schedule I of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975, a profession tax of Rs. 150/-per annum is leviable on partnership firm registered under the Indian Partnership Act, 1932 and engaged in any profession., trade or callings, Instead of levying the profession tax on partnership firms, I propose to levy the profession tax at the rate of Rs, 250/- per annum on each of the partners of such firms. This measure is likely "to yield additional revenue of Rs. 15 crores during the current financial year.

[The portion underlined is herein indicated in italics. -Ed.]

The bill went through and entry No. 19 rendered each partner of a registered firm liable to pay professional tax at rate Rs. 250/- per annum. Entry No. 8 after certain changes rendered every dealer registered under the ST Act liable to pay tax at rate Rs. 250/- per annum. The Sales Tax Authorities which are vested with the powers to recover professional tax moved against registered dealers calling upon them to pay tax as per entry No. 8, although the dealer was a firm registered under the Partnership Act, each of whose partner may have already paid tax under entry No. 19. This was challenged in Appeal No. 55 of 1985 by the first four respondents of Writ Petition No. 1758 of 1986 before the Maharashtra Sales Tax Tribunal (Tribunal). The Tribunal, speaking through its President allowed the appeal on April 11, 1986. About three months prior thereto, a representative body of trading associations by itself and through its President, came to this Court vide Writ Petition No. 63 of 1986. In this petition, the constitutionality of the PT Act was challenged. The questions arising in both the petitions being common, they have been heard together and will be disposed of by this judgment.

4. Having heard counsel for the parties at great length, the issues that arise for consideration may be formulated thus: -

(i) Is entry No. 19 violative of Article 14?

(ii) Is the PT Act an infringement of Article 276?

(iii) Whether the Tribunal's verdict is erroneous?

These questions are discussed below. in the order set out above, though it may not be possible to prevent a certain degree of overlapping in regard to the second and third issues.

5. The equality clause - Article 14 - is said to be breached by entry No. 19 inasmuch as it discriminates between persons being partners of registered firms as against those who are partners of unregistered partnerships. Seemingly plausible this argument certainly is. A little more reflection and there comes to mind the question as to whether the equality clause compels theoretical parity at the expense of practicability. Fiscal measures, unless they are to be the counterparts of paper-tigers, should be easy of operation. They should be known to those liable to pay, as also those who have to exact the same. The administrator's difficulty in locating partners of unregistered firms is obvious. If persons choose to operate unregistered firms despite the many statutory disabilities imposed on such firms, they are not going to be in hurry to inform the enforcers of fiscal measures of their liability to pay any statutory imports. As it is, the administration is beset by many obfuscations. A measure to secure additional resources, unless clear, will turn into a guzzler of finance generated by other enactments. Thus viewed, the non-inclusion of partners of unregistered partnerships is eminently sensible. Courts do not expect legislative bodies to turn out letter-perfect, but impractical laws. Mr. Thakore for the Revenue points out to the Supreme Court decision in *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, :: *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, . Quoted with approval in that precedent, is, a passage which is a complete answer to the point canvassed by Mr. Joshi representing those whom I shall describe as "traders". The passage is from *Constitutional Law of United States* by Willis:

A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.

In the instant case, the reasonableness of the measure is evident. It is not necessary to labour on this point and I, therefore, find that the challenge to entry No. 19 based upon Article 14, is of no substance.

6. As I understand the trader's submissions, Article 276 is said to be violated thus :

A. Entry No. 19 and 8 permitting the same person to be taxed beyond the outer limit of Rs. 250/- per annum.

B. Inclusion of partnerships in the professional tax net vide entry No. 8 when such firms are excluded from Article 276.

C. Having collected Rs. 150/- from a registered firm under unamended entry No. 19, the amendment of that entry, permits a fresh exaction of Rs. 250/- per partner. This takes the toll beyond the maximum of Rs. 250/- per year per person, and therefore, violates Article 276.

D. Amended entry No. 19 having come into force from August 16, 1985, the person liable to pay tax thereunder could not be made to pay more than the

proportion determinable period wise, i.e. amount worked out on a pro rata basis for the remainder of year 1985-86.

As I shall try to explain hereafter, there is no contravention of Article 276. The vice lies not in PT Act or any part thereof, conflicting with Article 276 but the strained gloss sought to be laid on it by the Revenue.

7. The questions formulated in the preceding paragraph can be better understood after a reproduction of the relevant provisions applicable:"-

Article 276(2)

The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum.

PT Act Preamble

Whereas it is expedient to provide for the levy and collection of a tax on professions, trades, callings and employments for the benefit of the State....

Section 2(e)

"person" means any person who is engaged in any profession, trade, calling or employment in the State of Maharashtra, and includes a Hindu undivided family, firm, company, corporation or other corporate body, any society, club or association, so engaged, but does not include any person who earns wages on a casual basis.

Section 2(k)

"year" means the financial year.

Section 3

(1) Subject to the provisions of Article 276 of the Constitution of India and of this Act, there shall be levied and collected a tax on professions, trades, callings and employments for the benefit of the State.

(2) Every person engaged in any profession trade, calling or employment and falling under one or the other of the classes mentioned in second column of Schedule 1 shall be liable to pay to the State Government the tax at the rate mentioned against the class of such persons in the third column of the said Schedule:

Provided that the tax so payable in respect of any one person shall not exceed two hundred and fifty rupees in any year.

Schedule I

8. Dealers registered under the Bombay Sales Tax Act, 1959. Rs. 250 per

annum. 19. Each partner of a firm registered under the Indian Partnership Act, 1932 which is engaged in any professions, Rs. 250 per annum. trades or callings.

Schedule II

Notwithstanding anything contained in this Schedule, where a person is covered by more than one entry in this Schedule the highest rate of tax specified under any of those entries shall be applicable in his case.

General Clauses Act, 1897 Section 3(42)

"persons" shall include any company or association or body of individuals whether incorporated or not.

8. The Revenue's position is that a firm is a person under the definitive Section 2(e). Until the amendment of entry No. 19, it was being taxed. In entry No. 19, a new entity has replaced it. Being a dealer registered under the 8th entry, it has become taxable under that entry, no matter that its partners are liable under entry No. 19. The persons taxed under the two entries are different entities. Therefore neither the outer limit of Rs. 250/- per annum nor the prohibition against double taxation on the same persons, are breached. This submission is countered by the traders' counsel by emphasising the non-existence of a firm in the eyes of law, except as a relationship to describe doing of business and sharing profits in jointness. The partners having been subjected to tax under entry 19, cannot be taxed afresh under entry 8. The distinction made between partners and a dealer is described as non-existent.

9. Precedents cited by learned Counsel throw some light on the stands taken. The general position in regard to partnerships when considered in tax cases is instructive.

10. In Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, :: Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others, case Krishna Iyer J. observed (at p. 295): -

A firm is not a legal person even though it has some attributes of personality. Partnership is a certain relation between persons, the product of an agreement to share the profits of a business. "Firm" is a collective noun, a compendious expression to designate an entity, not a person.

In another decision, more apposite to the present petitions, though posing the converse question see Munshi Ram and Others Vs. Municipal Committee, Chheharta, the problem was whether professional tax could be levied on partners when it was their collective, the firm, that was engaged in trading. Faced with a plea to answer this poser in the negative, the Court speaking through Sarkaria J. said more or less the same thing viz. that a firm did business through its partners and there was no illegality in rendering the latter liable to pay the tax. Mr. Thakore for the Revenue relies on K. Kelukutty's case (1985) 60 S.T. C 7 [Deputy Commr. of Sales Tax (Law) v. K. Kehtkutty] to support his contention

that there is no legal infirmity in a tax falling on a firm as also its individual partners, provided the enactment so lays down. The passage pressed into service is (at p. 12):-

What that implies is that for the purposes of assessment to tax the income of the partnership firm has to be assessed in the hands of the firm as a single unit, the firm itself being treated as an assessable entity separate and distinct from the partners constituting it. The firm is an assessable unit separate and distinct from the individual partners, who as individuals constitute assessable units separate and distinct from the firm.

These observations have to be read in the context of the Kerala General Sales Tax Act, 1963. That they were so limited is made clear by the lines following the preceding quotation and which read thus (at p. 12):-

It is on that basis that the provisions of the tax law are structured into a scheme providing for the assessment of partnership income. We do not think the principle goes beyond the purposes of the scheme. It does not confer a corporate personality on the firm. Beyond the area, within which that principle operates, the general law, that is to say, the partnership law holds undisputed domain.

11. This brings me to the submission that professional tax is a tax on professions, trades or callings. A person having juristic existence can be taxed once under it. Yet if the contention of the Revenue were to be accepted, partners of a registered firm would be taxed doubly, because their collective was registered under the ST Act. This premise of the argument cannot be accepted in the face of the contrary laid down in *Munshi Ram v. Municipal Committee Chheharta* (supra) where upon a construction of a provision similar to Section 3 P.T. Act the Court said -

Thus, in order to be authorised a tax.... First, must be a tax on "persons" and Second such persons must be practising any profession, trade or calling.

12. Mr. Joshi points to the Statement of Objects and Reasons and the Finance Minister's speech to buttress his contention that in amending entry No. 19 the legislature was releasing the registered firms from the tax net. The expected reply is that these are impermissible keys to an understanding of the legislative will, where the language is clear as it is said to be in the instant case. Nothing much turns upon the Statement and speech for the only conclusion flowing there from is the obvious one viz. that to augment the revenues of the State, the incidence of tax would be on partners of a registered firm instead of the firm as before. From this it is not possible to hold that firms were absolved from liability under any item if it did apply to them. The key to an unravelling of the tangle has to be sought elsewhere. The constant refrain of Article 276 and Section 3 of the Act is a prohibition to levy more than Rs. 250/- per annum, upon any one person. Item II of Schedule I makes it clear that a person is likely to be within the reach of more than one of the 20 specifications in the Schedule. Such a person is not to be taxed more than once. The solution provided is to render him

liable to pay the highest prescribed under the different entries. How do we apply this to a registered firm? In the eyes of law the registered firm has no existence. That it is recognised as a person in the definition, does not give it an existence distinct and apart from the partners constituting it. Under amended entry No. 19 a registered firm was being taxed. Therefore in including such a firm in the definition, the legislature was doing no more than avoiding disputations in regard to the taxability of an entity not having a juristic existence. The aim of the entry was the collective made up of partners. The change did no more than effect a difference in the mode and quantum payable by the partners where they paid a lesser amount as one unit in the name adopted for their joint venture, the amendment made them (i) pay tax at a higher rate, and (ii) as separate units. Significantly, the Revenue never tried to reach the registered firm of unamended entry No. 19, under entry 8, on the plea that there was a difference between registrations under the Partnership and ST Acts, the registered entities being different persons, and therefore, both being liable: In principle, there is no reason why the same restraint should not be shown between the entities of entry 8 and amended entry 19. This would be in conformity with Article 276(2), Section 3 and most important Item II of the Schedule. The Tribunal did not therefore err in repelling the Revenue's contention.

13. The minor questions surviving have now to be dealt with. Firstly, for what part of the year 1985-86, are the partners of a registered firm liable to pay the tax? Mr. Joshi says that the amendment having come into force from August 16, 1985, those rendered liable thereunder, are to pay only for the remainder of that financial year. Next, learned Counsel submits that the tax paid by the registered firm will have to be given credit for when recovering the tax payable by partners. Needless to say that Mr. Thakore disputes these propositions. The first contention is partly based on the theory of the professional tax being a tax on professions, trades etc. As pointed out earlier, the tax is on (i) persons and (ii) such persons being those in a profession etc. etc. Therefore the duration of the trade would not be the yard-stick for computing the quantum payable as tax. Next, support is sought to be drawn from entry No. 1 in Schedule I to show that the duration of the employment is the measuring rod vis-a-vis the quantum payable as tax. Entry No. 1 deals with a special class of employment where the recipients are monthly rated, and, the liability to recover tax payable by them is cast on their employers. That is not the position of the self-employed, whether they be in a profession, trade or calling etc. At the same time, the second contention of Mr. Joshi will have to be accepted. Tax - if paid - for the year 1985-86 by a registered firm prior to August 16, 1985, there being a provision for advance payment of tax, is not to disappear as a gift into the State coffers. It will have to be given credit for when ascertaining and recovering tax from each partner of a registered firm for 1985-86. To the extent of the advance paid, there will be a reduction in the tax payable, so that no partner is made to pay more than Rs. 250/-, and, this to be computed by inclusion of the sum paid for the firm, as also that payable on each partner's account.

14. Before concluding I record that the traders do not press for a refund of tax in excess recovered from them vis-a-vis what be legally due. Recording a negative answer to the question posed at the commencement of this piece, and, further reiterating the answers given to the minor questions, I pass the following order: -

ORDER

15. Rule in W.P. No. 1758 of 1986 discharged and that in W.P. No. 63 of 1986 made partly absolute. Costs as incurred.