

(1958) 07 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 190 of 1957

Lalji

APPELLANT

Vs

The Assistant Commissioner, Sales Tax

RESPONDENT

Date of Decision : 08-07-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Partnership Act, 1932 — Section 63

Citation : (1958) JLJ 820 : (1959) 4 MPLJ 17 : (1958) 9 STC 571

Hon'ble Judges : M. Hidayatullah, C.J;G.P. Bhutt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

This petition under Article 226 of the Constitution is directed against the assessments of sales tax for the years 1949-50, 1950-51, 1951-52 and the notices of demand for recovery of the arrears thereof,

The petitioner Lalji, Gendlal Patni and Chandratan entered into a partnership in or about April, 1947, for carrying on business of manufacturing utensils, brass-wares etc. under the name and style "Bharat Metal Industries", Raipur. Chandratan retired from the partnership on 22nd April, 1952. Subsequently by a notice served on the petitioner, Gendlal dissolved the partnership on or about 13th September, 1952, and gave notice of dissolution to the Registrar of Firms u/s 63(1) of the Indian Partnership Act. He also instituted Civil Suit No. 25-A of 1952 on 28th October, 1952, in the Court of Additional District Judge, Raipur, against the petitioner and Chandratan for dissolution of the partnership and for rendition of accounts. A receiver was appointed by the Court on 8th December, 1956, who was declared entitled to enter into possession of the property of the firm and its assets for winding up the business.

The Assistant Commissioner, Sales Tax, Raipur (respondent) made the following assessments of sales tax on the turnover of the firm :

1st August, 1949, to 31st July, 1950 ... Rs. 13,870 0 0 1st August, 1950, to 31st July, 1951 ... Rs. 15,220 10 0 1st August, 1951, to 31st July, 1952 ... Rs. 15,312 8 0

These orders were passed respectively on 31st May, 1956, 6th May, 1957, and 9th August, 1957. The assessee was shown therein as "Shri Lalji Ghelabhai Partner, Bharat Metal Industries, Sadar Bazar, Raipur". Notices of demand for the amounts of the tax were also issued to the assessee under the same name. These assessments and the notices of demand are impugned in this petition on the ground that after the dissolution of the partnership, the tax could not be assessed or levied on the firm. Reliance is placed upon *Jagat Behari Tandon v. Sales Tax Officer, Etawah* [1957] 8 S.T.C. 459.

A dealer, as defined in the C.P. and Berar Sales Tax Act, 1947, includes a firm and a partnership : see Section 2(c). The firm "Bharat Metal Industries" was registered as a dealer u/s 8 of the Act. It was, therefore, this firm which could be assessed to sales tax during the periods mentioned above, when it carried on its business as a partnership and was not dissolved. Although the orders of assessments mention the name of the petitioner as the assessee, it is evident that the real assessee was the firm "Bharat Metal Industries" of which he was described as a partner. The department did not contest before us that the assessments were made against the firm and not against its partners. It is no doubt true that the subsequent two orders of assessments were made after the firm is said to have been dissolved. For purposes of the sales tax, however, a registered dealer continues to be liable to assessment so long as any change effected in the name or nature of the business is not intimated to the prescribed authority u/s 17. The authority that is prescribed under Rule 12 of the C.P. and Berar Sales Tax Rules, 1947, is the appropriate Sales Tax Officer. Admittedly no intimation of the dissolution of the firm was sent to him at any time. It is no doubt true that in reply to the notices of demand issued by the respondent, the petitioner disclosed that the firm was dissolved but that did not affect the power of the taxing authorities to assess the tax on the firm as a registered dealer in the absence of any action by the petitioner u/s 17. This is in accord with the view that was taken in *Deputy Commissioner of Commercial Taxes v. Bakthavalsalam Naidu* [1955] 6 S.T.C. 657 with which, in view of the provisions of the C.P. and Berar Sales Tax Act, we are in respectful agreement. The assessments of sales tax during the periods in question are not, therefore, open to challenge.

Since the department could only assess the firm, the arrears of tax are, in the first instance, recoverable from its assets. Until the assets are realised or cannot be found, the action of the taxing authorities to try to realise the amounts of tax from the partners personally is premature. The department is accordingly directed to realise the arrears of tax initially from the assets of the partnership, whether they may be in the hands of the Court, the receiver, or any of the partners or any other person on their behalf. We leave undecided the question whether the partners would be personally liable for the balance, if any, remaining

due. The parties concerned can take up that matter when the occasion for its determination arises.

Subject to the above direction, the petition is dismissed but in the circumstances of the case, there shall be no order as to costs. The outstanding amount of the security shall be returned to the petitioner.