
(1995) 09 MP CK 0048
In the Madhya Pradesh High Court
Case No : M.C.C. No. 454 of 1986

Mohan Singh and Sons

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 —
Section 11, 3, 3(1), 7, 7(1)

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Niyam, 1976 — Rule 7

Citation : (1996) 1 MPJR 417 : (1996) 41 MPLJ 422 : (1996) MPLJ 422

Hon'ble Judges : U.L. Bhatt, C.J.; Vijay Kumar Agrawal, J; S.K. Dubey, J

Bench : Full Bench

Advocate : B.L. Nema, for the Appellant; Sanjay Seth, Government Advocate,
for the Respondent

Judgement

U.L. Bhat, C.J.

Similar questions arise for consideration in these references u/s 44(1) of the M. P. General Sales Tax Act, 1958 (for short the Act). The questions arising in each of these cases are as follows :-

(i) M.C.C. No. 454/86 :

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in maintaining that entry tax can be imposed as the dealer had not been able to prove that the goods purchased were other than local goods?"

(ii) M.C.C. No. 509/86 :

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is not entitled to claim that no entry tax should be levied on him under clause (iv) to the first proviso of Section 3(1) of Entry Tax Act?"

"(ii) Whether on the facts and in the circumstances of the case, the Tribunal was

justified in holding that the burden was upon the assessee to prove that entry tax had been levied on such goods in the hands of the selling registered dealers where no seal required by Section 7(1) of Entry Tax Act was affixed on the sales bills?" (iii) M.C.C. No. 520/86 :

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is not entitled to claim that no entry tax should be levied on him under clause (iv) to the first proviso of Section 3(1) of Entry Tax Act?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the burden was upon the assessee to prove that entry tax had been levied on such goods in the hands of the selling registered dealers where no seal required by Section 7(1) of Entry Tax Act was affixed on the sales bills?" (iv) M.C.C. No. 557/86 :

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is not entitled to claim that no entry tax should be levied on him under clause (iv) to the first proviso of Section 3(1) of the Entry Tax Act?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the burden was upon the assessee to prove that entry tax had been levied on such goods in the hands of the selling registered dealers where no seal required by Section 7(1) of Entry Tax Act was affixed on the sales bills?"

Respondents are dealers registered under the M. P. General Sales Tax Act, 1958 dealing in grams, poha, rice and broken pulses etc. They were assessed a entry tax for the respective years under consideration, in respect of these goods overruling their contentions that they had purchased these goods from registered dealers, that they were not local goods in the hands of their selling dealers and liability for entry tax had already been incurred and, therefore, they are not liable to pay entry tax. The decision was affirmed by the appellate authority and the Tribunal in M.C.C. No. 454/86. In the other three cases, the Appellate Authority confirmed the order of the Assessing Authority, but the Tribunal set aside the order and remanded the cases for fresh determination with an opportunity to the assessee to prove that entry tax had been paid on the goods. The references are at the instance of the assesseees.

It is the contention of the assesseees that selling registered dealer who sells local goods, i.e. goods not brought from outside the local area is bound to issue a bill containing a rubber stamp endorsement to the effect that the goods are local goods and entry tax has not been paid and in these cases, the selling dealer has not affixed any such rubber stamp endorsement and, therefore, it must follow that the goods have been brought from outside the local area and the taxable event had already occurred with liability in the selling registered dealer or his seller to pay entry tax and, therefore, the assesseees have no liability to pay entry

tax again.

The Division Bench which heard the case at one stage, noticed that earlier decisions of this Court took a view in favour of the assessee, but a different view has been taken in a later case by a Division Bench at Gwalior. It was on account of this difference of opinion that the cases have been placed before the Full Bench.

Section 3 of the M. P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976, (for short, Entry Tax Act), deals with incidence of taxation. We are in this case concerned with the goods specified in Schedule II to the Act. Entry tax will be levied u/s 3 on the entry in the course of business of a dealer, or goods specified in Schedule II into each local area for consumption, use or sale therein. Such tax shall be paid by every dealer liable to tax under the Sales Tax Act who has effected entry of such goods. Sub-section (1) has several provisos. The relevant proviso is (iv). According to this proviso, no tax under sub-section (1) shall be levied in respect of goods specified in Schedule II other than local goods purchased from registered dealer on which entry tax is payable or paid by the selling registered dealer. This is the proviso as it stands after the Amending Act No. 24 of 1982. According to the proviso, as it stood before the amendment no tax shall be levied in respect of goods specified in Schedule II other than local goods which are purchased from registered dealers. We are in this case concerned by the proviso as it stood prior to its amendment by Act No. 24 of 1982.

"Local area" means an area comprising the limits of a local authority. "Local goods in relation to a local area" means goods of local origin as distinct from goods which enter into that local area. The persons from whom the assessee has purchased goods are registered dealers in the same local area in which the assessee operates.

Revenue took the stand that these goods are local goods and when the assessee removed the goods from the local area from where they purchased the goods, to place outside the local area which is another local area, taxable event occurred and the assessee is liable. It is the assessee's contention that the goods are not local goods in the hands of the registered dealer from whom they purchased in the local area, that the registered dealer purchased goods from outside the local area and caused entry to be made into this local area and the taxable event occurred when the goods were in the hands of the selling registered dealer and he is liable to pay entry tax. Since the liability for entry tax had already been incurred movement of the goods from this local area to another local area caused by the assessee, does not result in a taxable event, since entry tax is a single point tax. They further contend that if the goods were local goods in the hands of selling registered dealer, he would have affixed the rubber stamp endorsement in the bills as required by Section 7 of the Act and Rule 7 of the Rules and the fact that he did not affix the endorsement clearly indicates that the goods were not local goods and must necessarily have been brought into this

local area from another local area.

Section 7 reads thus :

"Section 7. Registered dealers to issue bill etc. stating that goods sold are local goods. - (1) Every registered dealer who, in the course of his business, manufactures, produces or grows any goods specified in Schedule II in a local area in such manner that the goods become local goods in relation to that local area, shall, on the sale of such local goods to any other registered dealer, issue to them a bill, invoice or cash memo specifically stating in such manner as may be prescribed, that the goods being sold are local goods in relation to such local area and that no entry tax has been paid on such goods.

(2) Where the goods mentioned in sub-section (1) are purchased and sold in the course of their business by a chain of registered dealers, the selling registered dealer shall issue a bill or invoice or cash memo, containing the statement referred to in sub-section (1) :

Provided that where the goods are purchased by a registered dealer who effects the entry of such goods into a local area other than the local area in relation to which such goods are local goods, it shall not be necessary for him to make the statement referred to in sub-section (1).

(3) Every registered dealer referred to in sub-sections (1) and (2) shall maintain a separate account of purchases and consumption, use or sale of local goods and separate bill books and invoice for the sales of local goods effected by him in the same local area in relation to which the goods are local goods.

(4) (Omitted)

(5) Where a registered dealer referred to in sub-section (1) or sub-section (2) has, in the course of his business, sold local goods to other registered dealers and has failed to make the statement referred to in sub-section (1), it shall be presumed that he has facilitated the evasion of entry tax on the local goods so sold and accordingly he shall be liable to pay penalty equal to ten times the amount of entry tax payable on such goods as if they were not goods of local origin.

(6) Where any registered dealer referred to in sub-section (2), in the course of his business, has sold local goods purchased by him to other registered dealers and a bill, cash memo or invoice is not issued by him as required by sub-section (2), it shall be presumed that he has facilitated the evasion of entry tax on the local goods so sold and he shall be liable to pay a penalty equal to ten times the amount of entry tax payable on such goods as if they were not goods of local origin."

The provision deals with "local goods." Goods specified in Schedule II which are manufactured, produced or grown in the local area are local goods, as distinct from goods which enter into that local area. A registered dealer shall, when he

sells local goods to any other registered dealer, issue a bill, invoice or cash memo. The document shall specifically state by way of rubber stamp endorsement that the goods being sold are local goods in relation to local area and no entry tax has been paid on such goods. This requirement applies to all registered dealers who may be allowed to be part of a chain of registered dealers transacting in the goods. A registered dealer who causes entry of goods into a local area from another local area is not to make the statement referred to in sub-section (1). The registered dealer referred to in sub-section (1) of Section 7 is required to maintain separate account of purchases, consumption, use or sale of such local goods in the local area. Where a registered dealer who is required to make a statement that the goods are local goods and no entry tax has been paid on the goods, fails to make such a statement, it shall be presumed that he had facilitated evasion of entry on the local goods so sold and accordingly he shall be liable to pay penalty equal to ten times the amount of entry tax payable on such goods as if they were not goods of local origin. The provision regarding penalty has been struck down by this Court as arbitrary. Rule 7 of the Rules prescribes the manner in which the bills are to be prepared and maintained.

When the selling registered dealer in a local area who affects sale of goods in the local area and issues a bill without the endorsement as required by Section 7 to the effect that the goods are local goods and no entry tax has been paid, what is the legal consequence of the absence of the endorsement and on whom is the burden?

A division Bench of this court, in *Ranomal Ramesh Kumar v. State of M. P. and Ors.* 1984 MPLJ 585, considered the question elaborately and repelled the contention that the purchasing dealer (Assessee) had to establish further that the goods in the hands of selling dealer were not of local origin. The selling registered dealer had to be presumed to have prepared the bill in accordance with law and if the goods were local goods, it was the duty cast on him to affix the rubber stamp as required under Rule 7 and as rubber stamp had not been affixed, it was not open to the selling dealer to turn round and say that the goods were of local origin. The purchasing dealer, therefore, was not expected to establish anything further when he had produced the bill which showed that the goods were not of local origin. It was observed that the burden of proof provided in Section 11 that the dealer has not effected entry of any goods specified in Schedule II into a local area for consumption, use or sale therein, shall be on the dealer. The burden of proving that a dealer is entitled to deduction in respect of purchase value of local goods for the purpose of "computation" of taxable purchase value is on the dealer. The burden of proving that the dealer is entitled to any other deduction in computing the taxable quantum is also on the dealer. The Court held that this burden which rests on the dealer is discharged by producing a bill which does not contain rubber stamp endorsement of the nature required to be affixed by the selling dealer u/s 7, as absence of the stamp is prima facie proof of the fact that the goods sold by the selling dealer were not of local origin and, therefore, had incurred liability to entry tax in the hands of the

selling dealer. The Court also noticed that discharging the burden of proof may depend on facts of each case. This decision was followed in *Commissioner of Sales Tax M.P. v. Gyanchand Chandmal* (1986) 19 VK.N. 356, and *Bombay Cloth Syndicate v. Commissioner of Sales Tax, M.P.* (1988) 21 V.K.N. 230.

A Division Bench at Gwalior, in M.C.C. No. 291/86, *Commissioner of Sales Tax M.P. v. Garg Dall Mill, Lashkar* (1995) 28 V.K.N. 65 has taken a contrary view without referring to the earlier decisions of the Court. The question referred in that case read as follows :

"Whether under the facts and circumstances of the case, the Board was justified in holding that Entry Tax is not leviable on the purchases of goods enumerated in Schedule II of the M. P. Entry Tax Act, 1976, from a registered dealer in respect of whom such goods are local goods, when purchased by another dealer of another local area?".

The Bench answered the question in the negative holding that entry tax is leviable on the "purchase of goods" specified in Schedule II from registered dealer in respect of whom such goods are local goods purchased by another dealer of another local area. We have carefully gone through the order in this case.

The taxable event under the Act is entry of goods into a local area. Purchase of goods in a local area is not the taxable event. Where local goods are purchased by the assessee from a registered dealer, there is no taxable event and no entry tax is leviable. It is when a registered dealer moves the goods from the local area from where he effects purchase to another local area that the taxable event occurs and he is liable to pay entry tax. Whether the purchasing dealer is carrying on business in the same local area or another local area is not relevant. This has been made clear over a decade ago by this Court in *Jethani Cloth Stores Bilaspur v. Assistant Sales Tax Officer Bilaspur and Ors.* (1982) 15 V.K.N. 280. The Division Bench in M.C.C. No. 291/86, also summarised the proviso (iv) to Section 3(1) as stating that no entry tax is payable in respect of Schedule II goods other than local goods purchased from registered dealer if such tax has already been paid by the registered dealer; ignoring that even under amended proviso, the condition is "on which entry tax is payable or paid" by the selling registered dealer. The emphasis is not only on actual payment, but also on the liability to pay.

There is some degree of confusion in regard to the scheme of provisions of the Entry Tax Act. Clarity requires that basic principles of entry tax law are kept in mind. Entry Tax is a tax on entry of goods into a local area for consumption, use or sale in the course of business of a dealer of Schedule II goods. Entry Tax is a single point tax, i.e. once entry tax has been paid or liability incurred on the entry of Schedule II goods into a local area, entry tax is not leviable thereafter, though the goods are moved from that local area into another local area and so on successively. Entry tax is not tax on sale or purchase of goods which is

provided by the General Sales Tax Act. That an assessee deals with Schedule II goods is not sufficient to make him liable to pay entry tax. He is liable only if he causes entry of the goods into a local area for consumption, use or sale therein. Where the assessee purchases local goods in the same local area from a manufacturer, purchaser or grower, the goods are local goods with reference to that local area and before the purchase made by the assessee, there would have been no question of causing entry of goods into this local area and before the assessee moves the goods from that local area into another local area for consumption, use or sale therein, no taxable event has occurred and the selling registered dealer would not be liable to pay any entry tax. If, on the other hand, the goods are not local goods with reference to that local area, the selling registered dealer must necessarily have purchased the same from another dealer in the same local area or must have purchased the same from outside the local area, i.e. in another local area and must have caused entry of goods into this local area. In the former case, the seller of the selling registered dealer would have purchased from outside the local area and caused entry into the local area and would have incurred liability. In the latter case, the taxable event would have occurred in the hands of the selling dealer and he would have incurred liability to pay entry tax. That being so, the assessee, i.e. the purchasing registered dealer, when he moves the same goods from this local area into another local area, is not liable to pay entry tax. The purpose of proviso (iv) of Section 3(1) is clear. Where goods are not local goods, it protects the purchasing registered dealer, i.e. the assessee, from payment of entry tax; this is because goods were brought from another local area into this area, giving rise to taxable event with liability to pay entry tax vesting in the selling registered dealer. The proviso underlines the nature of the entry tax as single point tax. Conversely, the proviso indicates that where goods sold by the selling registered dealer to the assessee are local goods, entry tax would not have been payable by the selling registered dealer and, therefore, where the goods are moved from that local area to another local area by the assessee, entry tax would be payable.

The question next arises for consideration is the burden of proof in this regard. Undoubtedly according to Section 11 of the Act, the initial burden is on the assessee to prove that the assessee did not effect entry of Schedule II goods into local area for consumption, use or sale therein, or that he is entitled to deduction in respect of purchase value of such goods. The Legislature has envisaged the difficulties and complications arising in the working of the Act which provides for entry tax. When goods enter a local area, there is no knowing the place of origin of the goods and whether taxable event had occurred already. Goods may be brought into local area openly with necessary declarations and payment of entry tax. There may also be attempts to cause entry of goods in the local area clandestinely without paying entry tax. The purchasing registered dealer has no way of proving that the goods had already incurred liability to pay entry tax. That is why the Legislature enacted Section 7 providing a convenient device to protect honest dealers as well as the Revenue. Goods in the hands of selling registered

dealer may fall into 3 categories, namely : (i) local goods (ii) goods brought from outside the local area after paying entry tax; and (iii) goods purchased from another registered dealer in the local area who would have paid entry tax while bringing the goods into the local area. The registered dealer who caused entry of goods into this local area might not have incurred liability to pay entry tax since the goods might have moved from one local area to another even before and tax liability had already been incurred. The Legislative scheme is to ensure that where an assessee a registered dealer deals with non-local goods purchased from registered dealer, he is not liable to pay entry tax when he moves the goods into another local area. The device is to compel the selling registered dealer in case of transaction relating to local goods to affix a rubber stamp endorsement to the effect that goods were local goods and entry tax has not been paid on such goods. This would help the Revenue also to fix liability on the dealer legally liable for the tax.

Whenever goods are sought to be moved from one local area to another, prima facie entry tax is liable to be paid by registered dealer who causes the entry. If he seeks exemption from deduction, it is for him to show. that the taxable event had not occurred or that the goods had already moved from one local area into another and thereby enabling an inference that taxable event had occurred with liability in another registered dealer to pay tax. That burden can be discharged by the purchasing registered dealer by producing the bill he receives from the selling registered dealer which does not contain the rubber stamp endorsement as required by Section 7 of the Act and Rule 7 of the Rules to the effect that the goods are local goods and entry tax has not been paid. By not affixing the rubber stamp endorsement on the bill, the selling registered dealer makes an implied representation that taxable event had already occurred with liability already created either in him or in a registered dealer who dealt with the goods previously and that application of proviso (iv) to Section 7(1) is invited. Absence of rubber stamp endorsement on the bill is entitled to some weight and it can be said that by producing such a bill, the assessee has discharged the burden on him.

Absence of rubber stamp endorsement cannot, of course, be conclusive. There may be a variety of reasons why the rubber stamp has not been affixed. One is that the goods are really not local goods and tax had been paid or tax liability had been incurred. Another is that seal had not been affixed on account of negligence or carelessness. The assessee certainly can take advantage of the prima facie import of absence of rubber stamp. It is then for the Revenue to collect materials to indicate that the goods had not subjected entry into the local area and taxable event had not occurred earlier and that absence of rubber stamp is not deliberate and is accidental or negligent.

We are respectfully of the opinion that the decision in C.S.T. M.P. v. Garg Dall Mill Lashkar (1995) 28 V.K.N. 65 did not consider the earlier decisions of the Court and does not lay down the correct law. The decision in Ranomal Ramesh Kumar

v. State of M.P. and Ors. 1984 MPLJ 585 lays down the law correctly.

For the reasons indicated above, we hold that the question referred to in M.C.C. No. 454/86 and the first question referred to in other three cases have to be answered in the negative and the second question referred to in these three cases had to be answered in the negative, i.e. in favour of the assessee and against the Revenue. The Authorities were not right in ignoring the evidentiary value of the non-affixture of the rubber stamp endorsement on the bills as required u/s 7 of the Act. In the face of such non-affixture, the burden is on the Revenue to show that the goods are local goods of which the assessee caused entry to be made into another local area.