

**(1959) 07 MP CK 0010**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Case No. 234 of 1956**

Motilal Hazarimal

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision : 16-07-1959**

**Acts Referred:**

Central Provinces and Berar Sales Tax Act, 1947 — Section 2(c), 23(1)

**Citation :** (1960) 5 MPLJ 145 : (1960) 11 STC 316

**Hon'ble Judges :** G.P. Bhutt, C.J.; T.C. Shrivastava, J

**Bench :** Division Bench

**Advocate :** A.P. Sen and Ku. Rama Gupta, for the Appellant; M. Adhahari, Advocate-General, for the Respondent

## Judgement

G.P. Bhutt, C.J.

This is a reference by the Board of Revenue, Madhya Pradesh, u/s 23(1) of the C.P. and Berar Sales Tax Act, 1947. The questions which are referred to for judgment of this Court are the following:

- (1) Whether from the transactions in dispute and evidence on record the assessed is merely a del credere or financing commission agent and does not come under the definition of dealer in respect of charcoal sales?
- (2) Whether in the instant case the assessee can be deemed to have had dominion over the goods in question by virtue of his financing the purchasers and sellers and getting hold of the documents of title?

The questions involve the assessment of sales tax on the business carried on by Motilal Hazarimal of Narasingpur during the period 1st November, 1948, to 21st October, 1949. During the proceedings of assessment before the Sales Tax Officer the assessee made a reference to the Sales Tax Commissioner u/s 19(b) of the C.P. and Berar Sales Tax Act for determining the question whether certain transactions during the above period were sales or not. Those transactions related to financing the purchasers and sellers and taking commission and

interest from them, in respect of the coal business done by the assessee. The then Sales Tax Commissioner held that as the assessee merely lent money either to the buyers or the sellers, the transactions did not amount to sales as the property in the goods at no time vested in him. Subsequently, the Sales Tax Officer excluded those transactions from assessment,

The successor of the Sales Tax Commissioner who held that the transactions were not sales subsequently called upon the assessee to show cause u/s 22(5) of the C.P. and Berar Sales Tax Act why the assessment should not be set aside and a fresh assessment made according to law. He was of the opinion that because in respect of charcoal sales prior to 11th April, 1959, the assessee himself had filed a large number of declarations from Bombay merchants showing that they had purchased charcoal from him for household use, the matter required further careful enquiry. In that view he set aside the assessment and remanded the case to the Sales Tax Officer for a fresh assessment according to law.

The assessee impugned the above order in appeal before the Board of Revenue, which observed that the assessee could not be deemed to have dominion over the goods by virtue of his financing the purchasers and sellers and accordingly agreed with the previous Sales Tax Commissioner and quashed the order of his successor.

"Dealer" is defined in Section 2(c) of the C.P. and Berar Sales Tax Act as "any person who, whether as principal or agent, carries on in Madhya Pradesh the business of selling or supplying goods, whether for commission, remuneration or otherwise". The essence of this definition is that the dealer himself should be selling or supplying goods. "Sale" is defined in Section 2(g) as "any transfer of property in goods for cash or deferred payment, or other valuable consideration, including a transfer of property in goods made in course of the execution of a contract". Here, the Board of Revenue found from the assessee's account books that the transactions in question amounted merely to financing the buyers and sellers on an agreement to charge commission and interest and that none of those dealings were entered into by the assessee himself. On these facts the transactions were rightly held not to amount to sales, by a dealer within the meaning of the C.P. and Berar Sales Tax Act.

In view of the above, the answer to the first question is that from the transactions in dispute and evidence on record the assessee was merely a financing commission agent and was not a dealer in respect of the charcoal sales and the answer to the second question is in the negative.

Costs shall be paid by the State of Madhya Pradesh. Hearing fee Rs. 50.