

(1962) 08 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Sales Tax Reference No. 44 of 1960

Nathmal Tarachand

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 29-08-1962

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 15(5), 4(2)

Citation : (1963) RLW 23 : (1963) 14 STC 1000

Hon'ble Judges : J.S. Ranawat, C.J.; P.N. Shinghal, J

Bench : Division Bench

Advocate : Sumerchand Bhandari, for the Appellant; Rajnarain, Assistant Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

J.S. Ranawat, C.J.—This is a reference u/s 15(5) of the Rajasthan Sales Tax Act, 1954 (hereinafter in this judgment referred to as the Act). Messrs Nathmal Tarachand of Bikaner is a firm of registered dealers carrying on business in gold and silver bullion and ornaments. The annual turnover of the firm for the year 1955-56 was assessed by the Sales Tax Officer, Bikaner, on the 14th of June, 1956, and exemption from sales tax was allowed only for the period commencing from the 22nd of September, 1955, to the end of the year, and no exemption was allowed for the period before the 22nd of September, 1955. The accounts of the firm were maintained from Diwali to Diwali. It is not in dispute that the firm deposited a fee of Rs. 10 on the 1st of July, 1955, for grant of an exemption certificate under the notification issued by the State Government on the 14th of April, 1955. It is contended by the firm that an application for grant of exemption was made by it on the day on which the fee was deposited, but the department's contention is that the application was made only on the 22nd of September, 1955, and was allowed on the 29th of September and a certificate was issued on the 1st of October, 1955. The firm approached the Sales Tax Officer for grant of exemption for the whole of the year, but its request was rejected. No appeal was

filed from that order but the firm went in revision to the Commissioner of Sales Tax, which was rejected on the 21st of August, 1957. An application was then made to the Commissioner for stating the case u/s 15(1). That application was also rejected. The firm then moved this Court u/s 15(2) of the Act and a direction was issued by this Court on the nth of August, 1958, for stating the case and referring the following questions of law for determination :-

(1) Whether the grant of exemption certificate u/s 4(2) of the Rajasthan Sales Tax Act (Act No. XXIX of 1954) before the end of the accounting year 1955-56 operated for the entire business transacted in that year where the fee prescribed was not in relation to the turnover, but was a fixed annual sum, or whether such certificate was effective only from the date of the application.

(2) Whether the deposit of the fee for exemption certificate on the 1st of July, 1955, followed later by a written application for exemption being granted u/s 4(2) of the Act, made the application effective or operative from the 1st of July, 1955.

2. The Commissioner of Sales Tax has accordingly made this reference.

3. Mr. Sumerchand for Messrs Nathmal Tarachand has cited the decision of the Supreme Court in Mathra Prashad and Sons Vs. State of Punjab, and he has contended that the sales tax in Rajasthan being an annual tax, the exemption under the notification referred to above should be deemed to be effective for the whole year even though it was granted in the middle of the year on the 1st of October, 1955.

4. Mr. Rajnarain for the State has tried to distinguish the decision of the Supreme Court in Mathra Parshad's case¹ by saying that it was a case of the nature contemplated by Section 4(1) of the Act, there being an absolute exemption, whereas the exemption which was granted in the instant case was of a conditional nature and fell u/s 4(2) of the Act and consequently the rule laid down by the decision did not hold good in this case and that the exemption granted to the petitioner should therefore be deemed to have been allowed from the date of the grant of the certificate. He has also pointed out that the Punjab Sales Tax Act, which was considered in that case, does not recognise any year other than the financial year while the Rajasthan Sales Tax Act, on the other hand, allows an option to an assessee to follow the financial year, or any other year, according to the mode of accounting. He has thus argued that if the exemption is to be construed in the present case to be effective for the whole year, it would be difficult to say whether the year in this connection should mean the financial year or the accounting year of the assessee. He has further urged that where an exemption is claimed from payment of a tax, the law on the point should be construed strictly. He has cited in this connection the decision in Inder Singh v. Sales Tax Officer, Jodhpur 1961 R.L.W. 314. He has also contended that the assessee-firm may have charged the sales tax from its customers before making an application for the grant of exemption and that if it is allowed an

exemption for the whole year, it may pocket that amount of tax without making it over to the State.

5. In Mathra Parshad's case 1962 13 S.T.C. 180 the assessee was a firm of registered dealers which manufactured tobacco. Its sales were liable to sales tax under the Punjab Sales Tax Act. On the 27th of September, 1954, the State Government exempted those sales from the tax. The authorities assessed the firm to sales tax during the accounting year up to the 27th of September, 1954, and allowed exemption only from the 27th of September, 1954. When the case went up to the Supreme Court, their Lordships, by a majority judgment, held as follows:-

There is no doubt that the tax is a yearly tax. It was payable, in the first instance, by a dealer whose gross turnover during the financial year immediately preceding 1st May, 1949, was above the taxable quantum. The tax is to be levied on the taxable turnover of a dealer every year. The difference between gross turnover and taxable turnover is this, that to arrive at the taxable turnover of any period some deductions have to be made for the same period. This clearly shows that the tax is for a year. The method of collection allows collection of tax at intervals; in some cases, the tax is collected at the end of the year; in some others, the tax is collected quarterly and in still other cases, even monthly. If the exemption can be said to operate for that period for which the tax is payable according as it is annually, quarterly or monthly, the tax would be different for different persons. Those who are paying the tax annually would get exemption for the whole year; but those who are paying it quarterly or monthly would get benefit in the quarter or the month of the Notification but not for earlier quarters or months. It could not have been intended that the exemption was to operate differently in the case of dealers with different intervals of assessment.

The exemption thus must operate either from the date of the Notification or from the commencement of the financial year. Here, the nature of the tax, as disclosed in Sections 4 and 5, is decisive. In Section 5, the tax is made leviable "on the taxable turnover every year of a dealer". The divisions of the year and the taxable turnover into different parts are to make easy the collection of tax, and form part of the machinery sections. If the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever it comes in, in the year for which the tax is payable, would exempt sales of those goods throughout the year, unless the Act said that the Notification was not to have this effect, or the Notification fixed the date for the commencement of the exemption. In the present case, the Notification did not fix the date from which the exemption was to operate, probably because the Act omitted to make such provision, enabling the State to do so, and the exemption must, therefore, operate for the whole year, during which it was granted.

6. It follows from this decision that if the notification by which an exemption is granted, fixes a date for the coming into force of the exemption, the exemption will be admissible from such date, or if there is a provision in that regard in the

Act itself, that would settle the matter, and in cases where the notification and the Act are both silent, and where the tax is annual, the exemption, even though it may be granted at any time in the year, shall be deemed to be operative for the whole year.

7. In the instant case, the notification by which the exemption was granted is silent about the date of commencement of the exemption. Rule 12 of the Rajasthan Sales Tax Rules, 1955, deals with the point of the duration of the exemption certificate and is as follows :-

The exemption certificate granted under Rule 10 or Rule 11 shall remain valid only till the expiry of the assessment year in respect of which it is granted. A fresh certificate shall be obtained for each subsequent year, for which the application shall be made within 30 days of the commencement of such year, and the provisions of Rule 10 shall apply, with necessary modifications, to all such applications.

8. The assessment year has been defined in Section 2(c) of the Act to be the year commencing on the 1st day of April. The rule only prescribes the point of termination of the exemption certificate. It does not, however, say anything about its commencement. It also gives a limitation of 30 days for making an application for the grant of an exemption certificate for a subsequent year. This rule proceeds on the assumption that the duration of an exemption certificate shall be for the assessment year. It is not disputed that the sales tax, in Rajasthan, is an annual tax and is assessed on the annual turnover u/s 10 of the Act. Taxable turnover has been defined in Section 2(s) as the aggregate amount of the proceeds of the sale of goods in a year after deducting therefrom such items as have been mentioned in the definition. The turnover which is liable to sales tax is thus annual. In Section 10 of the Act, it has further been provided that "the assessment and determination of tax due for any year, shall be made after the returns for all the periods of that year have become due." These provisions make it evident that the sales tax in Rajasthan is an annual tax. The decision in Mathra Prashad and Sons Vs. State of Punjab, lends further support to the conclusion to which we have already arrived on the basis of the language of Rule 12 and we think it can safely be laid down that under the Rajasthan Sales Tax Act and the Rules the intention of the legislation is to allow the benefit of the exemption certificate for the whole of the assessment year even though it may have been issued at any time during the course of such year. The form of exemption certificate prescribed in the rules does not make any mention about the date of its commencement and it merely specifies the date up to which such certificate is to remain valid. Had the intention of the law been to allow exemption for a portion of the assessment year, we would have expected a mention of the date of commencement of the certificate in it as well in the form. This also strengthens the view we have taken.

9. As no time limit was prescribed for an application for the grant of an exemption certificate for the year 1955 an application therefore could be made at

any time during the year. The date of an application for the grant of a certificate of exemption or of payment of the requisite fee cannot, under these circumstances, be said to limit the period of the exemption so as to restrict it to the remaining part of the assessment year and the contention of the learned counsel for the State that the decision in Mathra Prashad and Sons Vs. State of Punjab, should be distinguished on the basis of the provisions of Section 4(2) of the Act, in this view of the matter, is devoid of force.

10. The second argument of Mr. Rajnarain is also without basis for exemption under Rule 10 is expressly contemplated for an assessment year and has no application to an accounting year (vide Rule 12). There can thus be no misgiving about the year during which the exemption is to be operative. The accounting year may or may not coincide with the assessment year, but in no case can the exemption be construed to be operative with reference to the accounting year. The provision about the assessment year and the accounting year in the Act cannot therefore distinguish the decision of the Supreme Court in Mathra Prashad and Sons Vs. State of Punjab,

11. The answer to question No. (1) is therefore as follows :-

The grant of an exemption certificate u/s 4(2) of the Rajasthan Sales Tax Act, 1954, before the end of the accounting year 1955-56 operated for the entire business transacted in that year where the fee prescribed was not in relation to the turnover but was fixed annual sum, and not from the date of the application.

12. In view of the answer to the first question, the second question does not arise.

13. The reference is answered accordingly. A copy of the judgment may be sent to the Commissioner of Sales Tax as required by Section 15(5) of the Act. The asscssee shall be allowed costs against the State for these proceedings at the rate of Rs. 80 for each day of hearing.