

(1964) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 101 of 1964

Padam Singh

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 13-10-1964

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 4(3)

Citation : (1966) ILR (MP) 1005 : (1965) JLJ 376 : (1965) 10 MPLJ 252 :
(1964) MPLJ 208 : (1965) 16 STC 134

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : B.L. Seth, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Judgement

P.V. Dixit, C.J.

By this reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958 (hereinafter called "the Act"), the Board of Revenue has referred to this Court for its opinion the following questions which are said to be questions of law arising out of its order dated 26th October, 1962:

(1) Whether, in the circumstances of the case, the Tribunal was justified in determining the liability of the applicant to tax during the assessment period on the basis of the material available on record instead of remanding the case?

(2) Whether, on the facts and in the circumstances of the case, the applicant has been correctly held to be liable to tax during the assessment period on the basis of his quantum of purchases plus 20 per cent. thereon as profit?

The facts of the case, shortly stated, are these. The applicant deals in cloth. Since he was formerly an unregistered dealer, an enquiry was made about his business in Case No. 42 of 1955 and, by an order dated 10th April, 1957, recorded in that case, it was held that his liability to tax commenced on 18th December, 1952. Thereafter, proceedings were started for assessing to tax the

sales made by him during the period 1st January, 1954, to 14th November, 1955. His objection that the aforesaid sales were not liable to be taxed was not considered on the ground that his liability to pay tax had commenced on 18th December, 1952, as already decided on 10th April, 1957. By an order dated 16th January, 1958, he was required to pay Rs. 1,749 as tax on the sales made by him during the period. He filed two successive appeals to the Assistant Commissioner of Sales Tax and the Board of Revenue against that order and unsuccessfully raised the same objection. While the Assistant Commissioner did not consider it, the Board of Revenue took the view that the objection could be raised but that, since it could be decided on the material on record, it was unnecessary to remand the case. Being aggrieved, the applicant moved the Board of Revenue which has, as already indicated, made this reference.

It is clear from Sub-section (3) of Section 4 of the Central Provinces and Berar Sales Tax Act, 1947, and is also not disputed either, that, if the applicant's liability to pay tax commenced from 18th December, 1952, he continued to be so liable for the period 1st January 1954, to 14th November, 1955. The applicant disputed his liability to pay tax for that period because he challenged the conclusion that his liability to pay tax had commenced from 18th December, 1952. His main grievance was that he was not given an opportunity to show that he did not become liable to tax from that date. We asked the learned Counsel for the applicant whether he had account books or other material by which he could show that his liability to pay tax did not commence from that date and he frankly conceded before us that the applicant had placed before the taxing authorities whatever material was in his own possession, including that showing his total purchases made in the years 1949-50 to 1954-55. Even so, the counsel argued that he could call other businessmen to prove that his turnover of sales could not have exceeded the prescribed limits so as to make him liable to pay tax from 18th December, 1952. In a situation like this, the Board of Revenue was entitled and, we think, not unjustified in deciding the case on the material on record and in declining to remand the case. It had ample power so to do u/s 22(4) of the Central Provinces and Berar Sales Tax Act, 1947. Our answer to the first question is therefore in the affirmative.

The other question is also, we think, easily answered. As already stated, the applicant had not applied for registration and, if he was liable to pay tax under the Act, the taxing authority could, after giving him a reasonable opportunity of being heard, proceed to assess him to tax to the best of its judgment u/s 18(5) of the Act. The Board of Revenue affirmed the conclusion that his liability to pay tax commenced from 18th December, 1952, on the basis of the total purchases for the year 1952-53 which he had himself disclosed. To the figure of total purchases given for the year, the Board of Revenue added 20% as a flat rate of profit. The learned Counsel for the applicant has taken exception to this addition because, in his opinion, it is speculative. We do not agree. It is now well established that, where a dealer has not maintained any account of his sales, it is open to the taxing authority exercising its judgment reasonably and judicially to

compute the profit by applying a flat rate of a certain percentage to the admitted figure of total purchases. In this view, the answer to the second question also is in the affirmative. But the question at what rate the profit should have been calculated is essentially a question of fact depending upon the nature and extent of the business and the surrounding circumstances and does not raise any question of law: *Feroz Shah v. Income Tax Commissioner* [1933] 1 ITR 219 (P.C.).

In the result, we answer the two questions in the manner indicated above and direct that the applicant shall bear his own costs and pay those incurred by the department. Hearing fee Rs. 50.