

(1965) 09 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1541 of 1965

Pawansut Bangle Stores

APPELLANT

Vs

Assistant Sales Tax Officer and Another

RESPONDENT

Date of Decision : 27-09-1965

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 9

Citation : (1966) 18 STC 87

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : B.L. Gupta and Ashoke Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The petitioner, which is a partnership firm, deals in glass bangles. Some of the bangles purchased by it from the manufacturers are sold in the same condition, while others are, according to the petitioner, painted with liquid gold, and then sold. The petitioner was assessed to sales tax under the Central Sales Tax Act for the assessment year 1960-61. On 20th February, 1965, it was served with a notice stating that a part of the turnover for that assessment year had escaped assessment and it was asked to furnish a return of its entire turnover and to produce its account books. On 23rd March, 1965, the petitioner was required to furnish a list specifying the several purchases of liquid gold from two concerns, M/s. Madan Mohan Dammamal (Private) Ltd., and M/s. Kunjilal Hardayal, both of Firozabad. The list was furnished by the petitioner. On 23rd March, 1965, the petitioner was also informed by the Sales Tax Officer that the assessment on escaped turnover was proposed under the Central Sales Tax Act and not under the U.P. Sales Tax Act. Despite this information, the petitioner wrote on 8th April, 1965, to the Sales Tax Officer enquiring whether the notice dated 20th February, 1965, was issued under the U.P. Sales Tax Act or the Central Sales Tax Act and what was the turnover on which it was proposed to be

assessed pursuant to the notice. The Sales Tax Officer, it is said, orally informed the petitioner that the turnover had escaped assessment under the Central Sales Tax Act. The petitioner then filed the instant petition for certiorari for the quashing of the notice dated 20th February, 1965.

2. By Notification No. St-1365/X-990-1956 dated 1st April, 1960, the State Government has specified that the turnover of glass bangles shall be liable to tax at a single point; where the glass bangles are imported from a manufacturer outside U.P., the point of tax will be the sale by the importer, and where the glass bangles are manufactured within U.P., the point of tax will be the sale by the manufacturer. This, as will be presently shown, is material for the purpose of considering whether the petitioner is liable to be assessed in respect of glass bangles purchased by it and then subjected to a process which results, according to the respondents, in an article which is commercially different from the article purchased.

3. Four contentions have been raised on behalf of the petitioner. It is urged that the impugned notice is invalid because *ex facie* it appears to be a notice under the U.P. Sales Tax Act and, therefore, cannot serve as a notice for initiating reassessment proceedings by virtue of the Central Sales Tax Act. The second submission is that the petitioner is not liable to the assessment of Central sales tax because of Section 8. The third contention is that the levy cannot be justified by reference to Section 9 of the Central Sales Tax Act. And, finally it is urged that the glass bangles sold by the petitioner are the very same articles purchased by it from the manufacturer and no part of the glass bangles sold can be said to have been manufactured by the petitioner.

4. I shall deal with the last contention first. The submission of the petitioner is that the notification refers to a class of goods, namely glass bangles, and it cannot be said that what is sold by the petitioner does not fall in this class. The submission is that inasmuch as what was purchased by the petitioner belonged to that class and what was sold by it also belonged to that class, it cannot be said that the petitioner is liable to sales tax. It seems to me that this submission proceeds upon a misconception of the real question which arises here. The question here is whether the petitioner can be said to have manufactured the article sold by it. If it has, it is liable to sales tax by virtue of the notification, the article having been manufactured in Uttar Pradesh and its turnover being liable to tax at the point of sale by the manufacturer. It is quite conceivable that an article belonging to any of the classes of goods enumerated in the notification may by a subsequent process be manufactured into another article, the latter article, however, still belonging to the same class as the original article. I may take as an example, the item "motor lubricants" at serial No. 15 of the notification. Engine oil is a motor lubricant. It may be imported from outside Uttar Pradesh, and its sale by the importer will attract sales tax. The purchaser of the engine oil may put it through various chemical processes resulting in its conversion into a fluid employed for a different purpose in the lubrication of a

motor car part and commercially recognised as a different article. In that event, the fluid so manufactured, although still falling in the class of "motor lubricants" will yet be liable to sales tax when sold. It is not the class of goods which matters, it is the specific article sold. There may be two specific articles, one derived by manufacture from the other, and yet both may belong to the same class. If the first article has been imported from outside its sale will attract sales tax at the point of sale by the importer. If the second article has been manufactured from the first article in Uttar Pradesh, its sale will attract sales tax at the point of sale by the manufacturer.

5. Reliance was placed by the petitioner upon *Commissioner of Sales Tax v. Chaman Das Jhanwar* Sales Tax Reference No. 77 of 1959, decided by Desai, C.J., and K.B. Asthana, J., on March 25, 1963. That decision, in my judgment, has no bearing upon the present case. The only question raised in that case was whether a certain article fell within the description "cloth manufactured by mills" mentioned in the notification which confined the levy to a single point or whether it, after undergoing the process of printing, ceased to be of that description. If it continued to enjoy that description it was liable to be assessed at six pies per rupee and if it ceased to fall under the description the rate of sales tax was three pies per rupee. The Court was merely concerned with determining whether the cloth manufactured by the mills and printed thereafter ceased to be "cloth manufactured by mills". It was not concerned with the question whether the printed cloth could be said to be a commercially different commodity from the original article. Whether it was the original cloth or the printed cloth, both would be said to fall under the class "cloth manufactured by mills", and that is why the Court observed :

If it was cloth manufactured by mills before it was printed upon, it did not cease to be cloth manufactured by mills after the printing.

6. In the instant case the question to be decided is whether the article sold by the petitioner, after the process applied by it, is different from the article purchased by it, even though both may broadly be described as glass bangles. Whether an article is converted by manufacture into a different article depends upon several criteria, and one of the essential tests is whether in a commercial sense the original article has ceased to exist and a new article has taken its place. Reference may be made to the decision of this Court in *Badri Prasad Prabha Shanker v. Sales Tax Commissioner* [1963] 14 S.T.C. 208 where the meaning of the word "manufacture" has been discussed. The question whether the original article has been converted into a commercially different article is a question essentially of fact and one which appropriately falls for consideration before the Sales Tax Officer. It is in the assessment proceedings before the Sales Tax Officer that evidence may be led for the purpose of showing whether the article sold by the petitioner is not commercially different from the article purchased by it.

7. The Legislature specifically constituted the Sales Tax Officer as the assessing

authority and the question whether the petitioner is liable to be assessed upon the turnover of the glass bangles in question can more appropriately be decided by the Sales Tax Officer. In the circumstances I am not inclined to consider the submission of the petitioner that he cannot be said to be a manufacturer of the glass bangles sold by him. It is pointed out that the contents of paragraphs 11 and 15 of the counter-affidavit indicate that even according to the Sales Tax Officer, the petitioner is not liable to assessment under the U.P. Sales Tax Act and cannot, therefore, be said to be a manufacturer of the glass bangles sold by him. I am unable to draw the conclusion suggested by the petitioner. Paragraph 11 merely sets out what is stated in the notice and paragraph 15 expressly states that glass bangles sold by the petitioner are different from those purchased by him.

8. Whether or not the petitioner manufactures the glass bangles sold by him will determine the question whether Section 8(2A) and Section 9 of the Central Sales Tax Act come into play. The decision of that question must await the decision whether the petitioner is or is not the manufacturer of the glass bangles which he sells. Furthermore, the only relief sought in the instant petition is the quashing of the notice, and the validity of the notice cannot be questioned on the ground that the petitioner is not liable to sales tax. Section 21 of the U.P. Sales Tax Act, which, it is not disputed, can be invoked for the purpose of assessing the escaped turnover liable to Central sales tax, merely requires the Sales Tax Officer to have reason to believe that the whole or part of the turnover has escaped assessment. Whether the turnover has actually escaped in fact or in law is not a consideration which determines the validity of the notice. So long as the Sales Tax Officer has reason to believe that the turnover or part of it has escaped assessment, he has jurisdiction to issue the notice. He must bona fide have reason for that belief, and there must be material upon which he comes to that belief. He must act reasonably and without arbitrariness. But that is not to say that it is only when he rightly comes to the conclusion that the turnover or part of it has escaped assessment that he can issue the notice. The belief that the turnover or part of it has escaped assessment may turn out to be erroneous, and may be discovered to be so during the assessment proceedings which follow, but if there was material before him which could reasonably lead him to that belief it cannot be said that the notice is invalid. The submission on behalf of the petitioner that no sales tax can be assessed against the petitioner by reason of Section 8(2A) and Section 9 of the Central Sales Tax Act belongs to the domain of the assessment proceeding now pending before the Sales Tax Officer. Accordingly, the contention raised on the basis of the provisions of Section 8(2A) and Section 9 of the Central Sales Tax Act need not be considered upon this petition.

9. The last contention which remains to be considered is whether the notice is invalid. It is said that the notice does not on the face of it disclose that it has been issued in connection with the proposed assessment of sales tax due under the Central Sales Tax Act, and that the subsequent intimation by the Sales Tax

Officer to the petitioner that it has been issued in connection with such assessment cannot validate the notice. Whether a notice, such as this, is invalid will depend on whether it succeeds in the purpose for which it is issued. The notice is intended to inform the assessee of the proposed action by the assessing authority and also to inform him clearly as to what is required of him. If the assessee has no difficulty in understanding the purpose of the notice its validity cannot successfully be impugned. In *The State of Orissa and Another Vs. Chakobhai Ghelabhai and Company*, the Supreme Court was called upon to consider the validity of a notice issued in Form No. VI. It was a combined form for the purposes of Sections 11 and 12 of the Orissa Sales Tax Act, and accordingly contained certain recitals some of which pertained to Section 11 and others to Section 12. The notice was intended to be u/s 12(5), but the recitals pertaining to the requirements of Section 11 were not scored out. The Supreme Court observed that the omission to score out the unnecessary words did not make the notice bad in law, because there was no difficulty in the assessee understanding from the contents of the notice that it was one u/s 12(5). In the instant case, the notice specifically stated that the Sales Tax Officer had reason to believe that a part of the turnover of the petitioner had escaped assessment for the year 1960-61. The petitioner, it is admitted, had never been assessed for this year under the U.P. Sales Tax Act. Having regard to that statement in the notice, the petitioner could not bona fide believe that the notice was issued for the purpose of assessing turnover under the U.P. Sales Tax Act. Under the U.P. Sales Tax Act, the entire turnover, if at all, would have escaped assessment and not part of the turnover. The statement in the notice, therefore, clearly pointed to the conclusion that it was issued in connection with the assessment under the Central Sales Tax Act. The notice, it is true, mentioned at the top that it was u/s 21 of the U.P. Sales Tax Act, but it cannot be forgotten that, it is because of Section 21 of that Act, the escaped turnover liable to be taxed under the Central Sales Tax Act can be got at. The decision in *In Re: Kajori Mal Kalyan Mal of General Ganj*, cited on behalf of the petitioner has no bearing on the case. There, the notice u/s 22(2) which afforded the assessee less time in filing his return than the statutory minimum of 30 days was illegal ab initio and consequently it was held that a subsequent extension of time would not cure the defect in the notice.

10. The petition fails and is dismissed with costs.