
(1968) 05 DEL CK 0015

In the Delhi High Court

Case No : Sales Tax Reference Appeal No. 2D of 1959

Pooran Chand

APPELLANT

Vs

Union Territory of Delhi

RESPONDENT

Date of Decision : 15-05-1968

Acts Referred:

Citation : (1968) 4 DLT 590

Hon'ble Judges : Om Prakash, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : D.S. Randhawa, Satya Pal and B. Kirpal, for the Appellant;

Judgement

Hardayal Hardy and Om Parkash, JJ.

(1) These are two references made to us u/s 21 of the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi and they raise a rather interesting question as to the interpretation of clauses la) and (b) of Subsection (5) o.f Section 4 of the Act.

(2) The facts are brief and simple. The firm Puran Chand Gain Prakash deals in Zari,Gto etc-. Which is partly manufactured by it and certain other allied goods which it resells after buying them from other dealers. The turn-over of the firm, Therefore, consists of sale proceeds of goods manufactured by it as well as of the goods purchased and re-sold by it. The firms contention in the revision petitions filed before the Chief Commissioner of Delhi against its assessment for the years 1955 56 and 1956-57 was that as it was a manufacturer of goods for sale it was not liable to pay any tax until its turn over from the sale proceeds of goods manufactured by it exceeded Rs. 10,000/. On the other hand, the view taken by the Chief Commissioner who upheld the orders made by the assessing authorities below was that for the purpose of computing the gross turn over, in the case of dealers who partly manufacture or import good and partly re-sell goods purchased by them from others, the figures of sales under both these beads have to be added together in order to arrive at the taxable quantum under the

Act. The dealer relied upon a decision of Nagpur High Court in Ayoahyaprasad Suklal v. The Commissioner, and on another judgment of Madhya Pradesh High Court in Mahbir Prasad v. B. S. Gupta Sales Tax Officer, Indore, for the view contrary to that taken by the Chief Commissioner. But since there was no decision of the Punjab High Court which had then jurisdiction over Delhi and the question was one of importance the following question was referred to the High Court by the Chief Commissioner's order dated the 1st June; 1959 :

"WHETHER in computing, u/s 4 (2) of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, the gross turn-over of the applicant-dealer, who is also a manufacturer and has exceeded the taxable quantum, should all the sales of the applicant-dealer be included in the gross turnover, or only sales of goods manufactured by him?" (3) Much of the importance of the question would, however appear to have since been lost as the precise question arising in these two references has meanwhile been answered by a Bench of the Punjab High Court at Delhi consisting of A.N. Grover J, (as his Lordship then was) and S K. Kapur J. in Shre Kexal Kishan Om Parkash v. The State where the two decisions of the High Courts of Nagpur and Madhya Pradesh have been approved by their Lordships.

(4) In view of this decision, ordinarily we would not have considered it necessary to go into the question over again; but since the counsel for the State has assailed the correctness of the Bench decision in the above mentioned case and has also endeavored to distinguish the two cases relied upon therein with a view to induce us to refer the matter to a larger Bench, we have felt it necessary to examine the question untrammelled by authorities.

(5) Counsel for the State has also contended that the question as referred to us can admit of only one answer and that is in favor of the revenue .According to Mr. Kirpal the question postulates that the gross turn-over of the dealer in this case exceeds the taxable quantum. That being so the only answer to the question can be that the dealer is liable to pay tax u/s 4 (2) of the Act.

(6) We regret we cannot accept the construction which Mr. Kirpal seeks to put on the question. It is true that the question is not happily worded. But its meaning seems to us to be quite plain. The record of the case clearly shows that the gross turn-over of the dealer for each year, in respect of all the goods did not exceed Rs. 30 000 and its turnover in respect of manufactured goods also did not go beyond the limit of Rs. 10,000/". On these facts the question that the dealer wanted the Chief Commissioner to refer u/s 21(1) of the Act was as follows: -

"WHETHER the taxable quantum in the case of a dealer who is partly a manufacturer and partly purchasing and selling goods locally should be Rs, 10,000.00 on sale of manufactured goods alone or aggregate of sale of manufactured goods as well as sale of goods locally purchased." If there is some looseness of language in framing the question that cannot hide the real meaning of the question which both sides fully understood and intended to be referred to

this court. Had the case been a; Mr. Kirpal suggested, there would have been no room for a controversy nor (or any reference .

(7) The provision in the Act which creates a liability to pay tax is section 4. In this case we are concerned with sub-section (2) which reads as under:-

"(2)Every dealer to whom sub section (1) docs not apply, shall if his gross turnover calculated from the commencement of any year exceeds the taxable quantum at any time within such year be liable to pay tax under this Act, on the expiry of two months from the date on which such gross turnover first exceeds the taxable quantum on all sales effected after such expiry" (8) There is no definition of the word gross turnover in the Act. but the word turnover is defined in clause (i) of section 2 and it reads

"(I)"turnover " used in relation to any period means the aggregate of the sale price or parts of sale prices receivable, or if a dealer so elects, actually received by the dealer during such period after deducting the amounts, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period." (9) The word "dealer" in so far as the definition is material for the purpose of this case is also defined in the Act. It means any person who carries on the business of selling goods in Delhi and includes the Government. The expression "taxable quantum" is defined in subsection (51 of section 4 It reads thus: -

"IN this Act, the expression "taxable quantum" means.- (a) in relation to any dealer who imports for sale any goods into the State of Delhi or manufactures or produce any goods for sale, ten thousand rupees (b) in relation to any other dealer, thirty thousand rupees." Before the amendment of the Act in 1956 which came into force on 1st December, 1956 the present clause (b) was clause (e) in the old Act which also had another clause (b) which read as under:-

"(B)in relation to particular class of dealers not falling within clause (a) "such slim as may be prescribed; or" By the amendment Act of 1936 the old clause (b) was deleted and the old clause (e) was numbered as (b)" (10) Reading section 4(2) in the light of the definition of the expression" taxable quantum" the position would appear to be that when the sales made by a manufacturer or importer of goods for sale exceed Rs. 10,000.00 in any year he would become liable to pay tax. The question is whether the sales contemplated in such a case are those of manufactured or imported goods alone or whether they would also include sales made up partly of manufactured or imported goods and partly of goods obtained otherwise. To put the problem in concrete form let us take the following illustrations:-

(A)A dealer sells manufactured or imported goods of the value of 10,000.00; such a dealer will not be liable to pay any tax as his sales do not exceed the limit of Rs. 10,000/ prescribed under clause (a) of subsection (i). (b) A dealer sells only those goods which he obtains locally of the value of Rs.30,000.00 such a dealer will also not be liable to pay tax as his sales do not exceed the limit of Rs.

30,000.00 prescribed by clause (b) of sub-section (5). (e) Another dealer sells manufactured or imported goods of the value of Rs. 10,000.00. He also sells goods locally obtained by him of the value of Rs. 10,000.00. His gross or total turnover of both kinds of goods Therefore exceeds Rs. 20,000.00. Will he be liable to pay tax because his total sales exceed Rs. 10,000.00? Under section 5 of the Act the tax is assessed on that part of a dealer's gross turn-over during any period which remains after making certain deductions. u/s 4 the goods sold by a manufacturer or importer though of the value of Rs. 10,000.00 are not assessable to tax. But sub-section (5) of section 4 as interpreted by the revenue would render the manufacturer or importer in illustration (e) above liable to pay tax because his total sales of manufactured or imported goods and the goods locally obtained by him work out to a figure of Rs. 20,01.00 although his sales of manufactured or imported goods are of the value of Rs. 10,000.00 only, and yet the dealer in illustration (b) who sells locally obtained goods of the value of Rs. 10,000.00 would not be liable to pay any tax.

(11) It seems to us that a result so absurd as that could not have been intended by the legislature. The argument on behalf of the revenue is that classification in sub section (5) is according to the activity of the dealer and not according to the quantum of that particular activity. For example," it is urged, clause (a) of sub-section (5), does not lay down that the quantity of manufactured or imported goods should be of any prescribed minimum value. All that is required is to ascertain that a dealer is a manufacturer or importer of goods for sale, then no matter what the quantity manufactured or imported by him, is, as soon as his gross turn-over i.e. the sale proceeds of the goods sold by him whether they consist wholly or partly of manufactured or imported goods, exceed Rupees ten thousand, then he must get himself registered and his tax liability will start with in two months The emphasis according to the counsel for the State is on the character of the dealer and not on the minimum quantity of the goods sold by him as is section defines the expression "taxable turn-over" in relation to the dealer who as defined in the Act, is a person who carries on the business of selling goods, and not in relation to the minimum quantity of goods of a certain category sold by him. The test according to the learned counsel, is thus qualitative and not quantitative.

(12) There is an obvious fallacy in this argument. A dealer who sells only manufactured or imported goods is no doubt a dealer in relation to whom the "taxable quantum" is fixed by reference to goods of the value of Rupees ten thousand and his case is covered by clause (a). But what about a dealer who sells not only manufactured or imported goods but also goods locally obtained by him ? By what process of reasoning can the qualitative test laid down in clause (a) be applied to him so as to give him the character of the dealer envisaged in that clause or to characterise the activity of such a dealer as one falling under that clause? To the extent that he deals in manufactured or imported goods he is admittedly a dealer within that clause; but to the extent that he sells goods locally obtained by him he is certainly not a dealer within that clause. He is thus

both within and outside that clause according to the nature of the goods sold by him. Fixation of "taxable quantum" is Therefore with reference to the nature of the goods for which a quantative basis has been laid down in sub section (5). If the dealer sells manufactured or imported goods only and the quantity exceeds Rupees ten thousand in value he is a dealer within clause (a). If on the other hand he does not deal exclusively in manufactured or imported goods but deals partly in manufactured or imported goods and partly in goods locally obtained by him he is outside clause (a) but is covered by clause (b). In the case of such a dealer the quantitative basis is of sale of goods of the value of Rupees thirty thousand.

(13) But since the basis of classification is quantitative and not qualitative, a dealer who deals partly in manufactured imported goods and partly in other goods will still fall within clause (a) if his sale of manufactured or imported goods exceeds Rupees ten thousand even though his total sales may not exceed Rupees thirty thousand.

(14) Viewed in this light the passage in the Division Bench judgment to which exception has been taken by the counsel for the State would appear to us to jay down the law correctly although to clarify the position further it may be added that the dealers in two clauses (a) and (b) of sub-section (5, do not fall within water- tight compartments and the classification is not mutually exclusive. The Bench observed :-

"SUB-SECTION (5) of Section 4 creates three classes of dealers for the purpose of taxation (1) those whose business mainly is to import, manufactured or produce good"; for sale and in their case the taxable quantum with respect to such sales is fixed at Rs 10,000.00; (2) particular class of dealers not falling within above, the taxable quantum is left to be determined by rules; and (3) other dealers whose taxable quantum is fixed at Rs. 30.000.00. The tax is attracted only if in the first class of cases taxable quantum with respect to goods imported. manufactured or produced exceeds Rs. 10,000/ . That to our mind appears to be the plain construction of the section" (15) It will be noticed that the second class of dealers has since. been abolished and there are only two classes now. Mr. Kirpal's objection to the use of the word "mainly" in the case of first class of dealers, as being not warranted by the language of clause (a) of sub. section (5) appears to us to be well-founded; but the addition of that word by the learned judges does not detract in any way from the correctness of the proposition of law laid down by them.

(16) We are also not :impressed by Mr. Kirpal's argument based on the use of the word "gross" in sub-section (2) of section 4. The contention urged by the learned counsel is that the use of the word is deliberate in order to permit clubbing together of sales of all kinds of goods for the purpose of determining the "taxable quantum". We do not think so. The words "gross turn-over"" have no greater significance than the word "turnover" as defined in clause (i) of section 2 except that they have been used in contra distinction to the words

"taxable turn-over" in the Act which as is obvious is the main concern of the Act.

(17) Having regard to the plain language of the provision in the Bengal Finance (Sales Tax) Act, 1941 which we are asked to construe, it does not seem necessary to refer to the two decisions of Nagpur High Court and the High Court of Madhya Pradesh on which reliance was played by the learned judges of the Punjab High Court In the case of Kewal Krishan Om Parkash v. The State.

(18) In this view our answer to the question referred is that for the purpose of computing u/s 4(2) the gross turn-over of a dealer who is also a manufacturer, the taxable quantum of Rs. 10,000.00 is in respect of sale of manufactured goods only or in the alternative if the sale of manufactured goods does not exceed Rs. 10,000.00 but the sale of manufactured goods as well as those goods which the dealer obtains locally, the taxable quantum is Rs. 30,000.00.

(19) Having regard to the nature of the question raised in the case, we do not consider it necessary to make any order as to costs.