

(1962) 11 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Case No. 40 of 1961

Ram Sahai

APPELLANT

Vs

Commissioner S.T.

RESPONDENT

Date of Decision : 13-11-1962

Acts Referred:

Constitution of India, 1950 — Article 245
Uttar Pradesh Sales Tax Act, 1948 — Section 2, 24, 24(2), 3, 3A(1)
Uttar Pradesh Sales Tax Rules, 1948 — Rule 44

Citation : AIR 1964 All 176 : (1963) 14 STC 275

Hon'ble Judges : M.C. Desai, C.J.; R.S. Pathak, J

Bench : Division Bench

Advocate : S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Judgement

Desai, C.J.—This is 3 reference made by the Judge (Revisions) at the instance of the assessee u/s 11(1) of the O.P. Sales Tax Act. The question referred is:

1. Whether Rule 44(f) of the U. P. Sales Tax Rules applies only to the transfer of business as a whole;

(a) in the case of multi-point goods,

(b) and in the case of single point goods,

(c) when transfer is made by a person who is not liable to pay tax?

2. It appears from the statement of the case that the assessee was a dealer in cloth liable to tax at a single point. The question is of assessment to sales tax for the year 1955-56. The assessee closed the business on 28-11-1955 and sold the entire business together with the stock in trade for the lump sum of Rs. 72,477/-/6. Though what was sold included some cloth, it is not known what was the price for which that cloth was sold because the business and the stock in trade were sold together for one sum. The assessee is admittedly a person liable to pay sales tax. It submitted returns showing gross turnover of Rs.

2,36,432/14/9, which amount included a turnover of about Rs. 7,000/- on account of sale of cloth purchased in U. P. Therefore, the net turnover on which it was liable to pay tax was, according to the returns, Rs. 2,29,5/9/12/6.

During the assessment proceedings the Sales Tax Officer did not accept the figure of the gross turnover and estimated, according to his best judgment, at Rs. 2,60,000/-. This amount included RS. 72,000/- and odd on account of sale of the business but he assessed the assessee on Rs. 2,60,000/- without excluding the sale proceeds of the business from the turnover. On appeal the Judge (Appeals) reduced the amount of the gross turnover from Rs. 2,60,000/- to Rs. 2,00,000/-. He further held that sale proceeds of the business should not be induced in the turnover on which tax was payable. But he fixed the amount of the turnover on which tax was liable at Rs. 2,00,000/- instead of at RS. 1,87,000/- and odd. Why he deducted only Rs. 60,000/- and not Rs. 72,000/- and odd is not known.

The assessee submitted itself to the order passed by the Judge (Appeals) but the Commissioner of Sales Tax filed an application u/s 10 for revision of the order of the Judge (Appeals). The Judge (Revisions) held that the amount of the sale proceeds of the business was not to be excluded in the turnover on which tax was payable and, therefore, added back Rs. 60,000/- which had been excluded by the Judge (appeals). In the result he restored the order of the Sales Tax Officer and assessed the assessee to tax at Rs. 2,60,000/-. Then at the instance of the assessee he referred the question to this Court.

3. Section 3(i) of the Act lays down that,

"Subject to the provisions of this Act, every dealer shall for each assessment year, pay a tax at the rate of three pies per rupee on his turnover of such year, which shall be determined in such manner as may be prescribed." "Turnover" is defined in Section 2(h) to mean the aggregate amount for which goods are supplied or distributed by way of sale. "Goods" means, vide Section 2(d), every kind of moveable property. Business is admittedly not a moveable property and, is, therefore, not goods and proceeds of sale of a business are not turnover and no tax is payable on them u/s 3(i) itself, Section 3-A(1) lays down that:

"Notwithstanding anything contained in Section 3, the State Government may, by notification in the Official Gazette, declare that the turnover in respect of any goods shall not be liable to tax except at such single point in the series of sales by successive dealers as the State Government may specify."

The effect of this provision is that though some goods may be sold by several successive dealers the sale by only one of them will be liable to tax and which of them will be liable is left to be prescribed by the State Government. The cloth in which the assessee dealt was liable to be taxed by only one out of several successive dealers and it is not in dispute that it was the assessee who was liable to pay tax on its sale. The sale proceeds of the cloth were, therefore, included in the turnover within the meaning of Section 3.

Section 4 lays down that no tax shall be payable on the sale of (1) water, milk, salt etc., (2) and other goods which the State Government may by notification in the official Gazette exempt and (3) any goods by any person or class of persons which may be exempted by the State Government. The effect of Sections 3-A and 4 is to prohibit proceeds of sale of certain goods from being taxed even though they are turnovers. The general provision in Section 3 that a dealer shall pay a tax on his turnover, is subject to these provisions, i.e. he is not required to pay a tax on the turnover in respect of the sales mentioned in them. u/s 24 of the Act the State Government have the power to make rules to carry out the purposes of the Act and in particular providing for all matters expressly required or allowed by the Act to be preserved. Among the rules made by the State Government in exercise of this power is Rule 44, the material portion of which is as follows:

"The tax u/s 3 shall be computed on the net turnover. In determining the net turnover the amount specified below, shall be deducted if they are included in the gross turnover:

(d) all amounts for which goods exempted u/s 4(1) (a) of the Act are sole;;

(e) all sale proceeds of goods covered by an exemption, certificate u/s 4(1) (b) on condition that;

(f) all amounts realised by a dealer on account of the sale of his business as a whole; and

(g) all amounts realised by the sale of goods notified u/s 3-A except when.. . ."

4. The provision in Section 3 imposing a liability on a dealer to pay a sales Tax on his turnover is subject to the provisions of the Act, i.e. provisions of Sections 3-A, 4, etc. which exempt payment of sales tax on certain turnovers. The sale proceeds are turnovers (because they are all proceeds of sale of goods) but for certain reasons no sales tax is to be paid on them. In respect of these turnovers there is no question of anything to be determined and, therefore, no question of the State Government's prescribing the manner in which anything might be determined. In other words, they being exempted from the payment of sales tax by the Act itself, the State Government have to do nothing in respect of them. The words "pay a tax at the rate of.....on his turnover of such year, which shall be determined in such manner as may be prescribed" mean that it is the turnover, and not the tax, that is to be determined in the prescribed manner. The word "which" refers to "turnover" and not "tax".

The rates at which proceeds of sale of different goods are to be taxed are laid down in the Act itself and if an assessee's turnover is known the amount of the tax to be paid by him can be worked out by applying the rates to the turnover. Section 7 casts upon a Sales Tax Officer the duty of determining the amount of an assessee's turnover and, the rates to be applied being known, all that remains to be done to find out the amount of the tax is to apply the rates. No

rules are required to be made for this remaining step and the rules contemplated by Section 3 must be rules prescribing the manner in which the amount of the turnover is to be determined. The State Government have, therefore, no power to make a rule dealing with the question which sale proceeds are to be included in a turnover and which not; the legislature itself has provided for this. It has defined "turnover" and has enacted Sections 3-A, 4 etc., laying down which sale proceeds are not to be included in a turnover. Through Section 4 the Legislature has itself exempted proceeds of sale of certain goods from being included in a turnover and has empowered the State Government to prescribe which of other goods are to be exempted from the tax and whether goods they intend to be exempted from the tax would be exempted by means of a notification issued by them. Consequently they do not have to make a rule exempting them from the tax; the notification issued by them is sufficient authority.

What amounts to a turnover or what is to be included, or not to be included, in a turnover is one matter and how the amount of a turnover is to be determined or worked out, another matter. It is the latter matter, and not the former that is entrusted to the State Government me Legislature having itself determined what should be included and what should not be included in a turnover and having empowered separately the state Government to exempt certain goods from the tax would not have called upon the State Government to make rules laying down what sale proceeds should be included, and what should not be included, in a turnover, providing that the tax shall, or shall not, be levied on goods is essentially a legislative function and cannot be validly delegated to the State Government. What can be delegated is the prescribing of the manner in which the assessment is done. Deciding that proceeds of sale of certain goods shall be included, or shall not be included, in a turnover was not within the rule-making power of the State Government, what they could do was only to make rules prescribing the manner in which the turnover, on which according to the Act the tax is payable, should be determined or worked out. The rules have to be procedural rules laying down the process of determining the amount of the turnover.

Section 7 has only imposed upon a Sales Tax Officer the duty of determining an assessee's turnover; how he shall proceed to determine it, i.e. the manner of determining it is left to be prescribed by the State Government. Consequently the rules prescribing the manner of determining a turnover should have nothing to do with goods exempted from the tax or with the turnover of such goods. Yet we find that Rule 44 of the rules made by the state Government, which is the only rule that can be said to prescribe the manner of determining a turnover, mixes up three matters, (1) of notifying goods to be exempted from the tax in exercise of the power conferred by Section 4(1) (a), (2) of specifying goods proceeds of sale of which are not to be included in a turnover under the provisions of the Act itself and (3) of "deducting" proceeds of some sales from a turnover. The first two matters should not have been included in the rule at an and the state Government should have avoided duplication and redundancy and

the resulting complications. Laying down that proceeds of sale of exempted goods or exempted proceeds of sale should not be included in a turnover is by no means prescribing the manner of determining the turnover on which tax is leviable. The amount of the turnover on which the tax is leviable is to be determined and not the turnover on which it is not leviable. There would be no sense in requiring the State Government to make rules prescribing the manner of determining a turnover on which the tax is not leviable at an. In determining the assessee's turnover in the Instant case we must completely disregard those portions of Rule 44 which were beyond the rule-making power of the State Government and confine ourselves only to those provisions which lay down the procedure of determining the amount of the taxable turnover.

5. Since a business is not goods, proceeds of the sale of a business do not amount to turnover on which sales tax may be payable. It is not understood why the State Government still included Clause (f) in Rule 44; even without it a turnover would not have included proceeds of sale of the business. If a dealer carrying on a business in certain goods sells the entire business, he has not to rely upon this clause and plead that the proceeds of the sale are to be "deducted" from the turnover for purposes of taxation; they are not to be included in the turnover at all. The heading of Rule 44 is deductions from turnover; this means that whatever is to be Deducted is a turnover. One cannot deduct from a turnover something which is not a turnover. Therefore, to say that proceeds of the sale of the dealer's entire business are to be deducted from its turnover is meaningless; they are, not to be included in the turnover because they never came within its meaning.

6. Even otherwise, in interpreting Clause (f), one should not be guided at all by the contents of other clauses, such as (d), (e) and (g), which deal with proceeds of sale on which no tax is payable at all under the Act itself. The various provisions of the Act exempting turnovers are independent of one another and no two of them are mutually exclusive. The question referred to us does not make much sense; when the business which the dealer is carrying on is itself sold, it is not goods and there cannot arise any question of its being multiple point goods or single point goods. This question can arise only in respect of proceeds of sale of goods.

7. Sections 3 and 3-A deal with levy of sales tax at a single point or at multiple point of a series of sales by successive dealers. They do not at all deal with sale of THE business itself. The question whether proceeds on sale of the business are to be taxed or not has no connection whatsoever with them.

8. In any case, Clause (f) of Rule 44 lays down a general rule admitting of no exceptions that proceeds of sale of the business are to be deducted from the turnover.

9. It was contended that when a dealer sells his business there may be some stock-in-trade which is sold along with the goodwill and that there is no reason

why proceeds of the sale of the stock-in-trade should not be included in his turnover even though proceeds of the sale of the goodwill are excluded. It may be accepted that when a business is sold along with stock-in-trade, that is, the goods remaining unsold, proceeds of the sale of the latter should be included in the turnover, in the present case though the assessee has sold some stock-in-trade along with its business, the amount of the proceeds of the sale of it is not shown separately from the amount of the proceeds of the sale of the goodwill etc., and it is not possible to say that a particular portion of the proceeds of the sale of the business should be included in the turnover.

10. Our reply to the question is that proceeds of the sale of the business sold by the assessee are not to be included in the turnover over which tax is payable u/s 3 of the U.P. Sales Tax Act and that no question of goods being single point goods or multiple point goods can possibly arise. Further Rule 44(f) is of general application and applies in all cases regardless of the question of goods being single point goods or multiple point goods. We direct that copies of this judgment shall be sent under the seal of the Court and the signature of the Registrar to the Judge (Revisions) sales Tax and the Commissioner of Sales Tax, U. P., as required by Section 11 (6). We further direct that the commissioner of sales tax will get his costs of this reference, which we fix at Rs. 100/-.