
(1975) 08 MP CK 0019
In the Madhya Pradesh High Court
Case No : M.C.C. No. 346 of 1973

R.M.E. Works

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 26-08-1975

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 39(2)

Citation : (1976) 38 STC 306

Hon'ble Judges : P.K. Tare, C.J.; S.S. Sharma, J

Bench : Division Bench

Judgement

P.K. Tare, C.J.—This order shall govern the disposal of Misc. Civil Case No. 347 of 1973, Misc. Civil Case No. 348 of 1973, Misc. Civil Case No. 349 of 1973 and Misc. Civil Case No. 350 of 1973 also.

2. These are references u/s 44(1) of the M. P. General Sales Tax Act, 1958, wherein the following questions have been referred to this court for our opinion. In Misc. Civil Case No. 347 of 1973, Misc. Civil Case No. 348 of 1973, Misc. Civil Case No. 349 of 1973 and Misc. Civil Case No. 346 of 1973, the following two questions have been referred :

(1) On the facts and in the circumstances of the case, in view of the Tribunal's finding that the tractors sold by the assessee were designed and manufactured for agricultural purposes, but were used by the purchaser for non-agricultural purposes also though only in a small fraction of cases of the total sales whether the Tribunal was justified in holding that the tractors sold by the assessee were not entitled to be treated as agricultural machinery and thus excluded from entry 44 of Part II of Schedule II to the M. P. General Sales Tax Act, 1958 ?

(2) Whether the period of limitation for revision proceedings u/s 39(2) of the M. P. General Sales Tax Act, 1958, runs against the assessee up to the date of issue of the notice by the Commissioner or up to the date when the notice is served on the assessee?

In Misc. Civil Case No. 350 of 1973 (Modi Brothers, Gandhi Road, Gwalior v. Commissioner of Sales Tax), only the first question mentioned above has been referred to this court.

3. The present references arise on the following facts. The petitioner in each case carries on the business of selling tractors. The Sales Tax Officer assessed the petitioner to sales tax holding that the tractors were liable to be taxed under entry 44 of Part II of Schedule II to the M. P. General Sales Tax Act, 1958. On the other hand, the assessee's contention was that these were farm tractors and they were exempt from sales tax by virtue of the exception provided by the said entry. For the sake of convenience, we may reproduce the said entry, which is as follows :

Entry 44. All machineries or machines worked by electricity, diesel or petrol and spare parts and accessories thereof, excepting agricultural machinery and implements and parts thereof.

The said item was taxed at different rates at different points of time. We need not go into those details. The assessee claimed exemption from sales tax by contending .that the tractors sold were farm tractors and were sold to the agriculturists for agricultural purposes and, therefore, were agricultural machinery. However, that contention was negatived by the taxing authorities. Even so the Board of Revenue found it as a fact that most of the tractors had been sold to the agriculturists for agricultural purposes although in a few cases the tractors had been sold to non-agriculturists for non-agricultural purposes. This sale to non-agriculturists weighed with the taxing authorities to hold that the tractors as a class, unless they be farm tractors could not be covered by the exception mentioned in entry 44 of Part II of Schedule II to the M. P. General Sales Tax Act, 1958. The Board of Revenue relied on the two earlier decisions of this court, namely, Agrawal Brothers v. Commissioner of Sales Tax, M. P. [1965] 16 S.T.C. 860 and Commissioner of Sales Tax, M. P. v. R. M. E. Works, Raipur (1969) II V K N 333. Presently we shall deal with this aspect a little later.

4. Before considering the main question, we may dispose of the second question referred by the Board of Revenue to this court regarding limitation for exercising revisional powers u/s 39(2) of the M. P. General Sales Tax Act, 1958. Section 39(2) of the Act is as follows :

39. (2) The Commissioner may of his own motion or on information received call for and examine the record of any proceeding under this Act if he considers that any order passed therein by any person appointed u/s 3 to assist him is erroneous in so far as it is prejudicial to the interests of the revenue, he may after giving the dealer or person an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment:

Provided that no proceedings shall be initiated under this sub-section after the expiry of three years from the date of the order sought to be revised :

Provided further that the Commissioner shall not revise any order under this sub-section where a second appeal against such order is pending or such appeal has been decided on the merits.

In the present case, we are concerned with the first proviso.

5. This question would, in our opinion, stand concluded by the pronouncement of a Division Bench of the Nagpur High Court in *Firm Sheo-narayan Matadin v. Sales Tax Officer, Raipur* (1969) II V KN 333. In that case, it was held that if the Commissioner issues a notice within three years from the date when the order of assessment was passed the exercise of revisional powers by the Sales Tax Commissioner would be within limitation as per Section 11(5) of the C. P. and Berar Sales Tax Act, 1947, as amended by the C. P. and Berar Sales Tax (Amendment) Act (No. 20 of 1953). It was the assessee's contention that the relevant date should be considered to be the date of service of notice on the assessee. We do not find any substance in the said contention and the learned counsel for the petitioners very fairly conceded that the view, as expressed in the said case of *Firm Sheonarayan Matadin v. Sales Tax Officer, Raipur* [1956] 7 S.T.C. 623. is the correct view. Under the circumstances we would answer the second question as follows :

(2) That the period of limitation for revision proceedings under section 39(2) of the M.P. General Sales Tax Act, 1958, runs against the assessee up to the date of issue of the notice by the Commissioner and not up to the date when the notice is served on the assessee.

This would finally dispose of the second question.

6. As regards the first question, which is the main question, we find that three different Division Benches of this Court have expressed a view, which, according to us, would need further examination. Two of these cases are reported cases, namely, *Agrawal Brothers Vs. The Commissioner of Sales Tax*, and the other is *Commissioner of Sales Tax, M. P. v. R. M. E. Works, Raipur* (1969) II VKN 333. The third case is an unreported case, namely, *Commissioner of Sales Tax, M.P. v. Pathak Agricultural Machinery Corporation, Jabalpur*, Misc. Civil Case No. 55 of 1966 decided on 22nd November, 1966 (Madhya Pradesh High Court). In the said cases, it is more or less assumed that tractors are of three kinds, i. e., farm tractors, industrial tractors and highway tractors, and it was held that farm tractors alone could be considered to be agricultural machinery, which would fall within the ambit of the exception mentioned in entry 44 of Part II of Schedule II to the M. P. General Sales Tax Act, 1958.

7. There is no material on record to show that structurally these three kinds of tractors are manufactured for different purposes. It was probably the different use, which persuaded the said Division Benches to classify the tractors into three

different kinds. We may observe that tractors are generally manufactured and their use may depend on the owners. Some tractors may be used exclusively for agricultural purposes, while others may be used for highway purposes as vehicles for carrying of goods and the third use might be for industrial purposes as well. But, structurally, there is no basic difference between these three kinds of tractors and this classification would only be referable to the use of the tractors for a particular purpose.

8. In this view of the matter, it is necessary to further examine whether tractors as a class fall within the ambit of the main entry, which is taxable or they fall within the ambit of the exception mentioned in the said entry. In our opinion, if tractors cannot be classified into different kinds because of any structural difference in manufacture, the only classification would be according to the different use. This aspect was not considered by the said Division Benches. We, therefore, feel that this aspect needs a further consideration and, therefore, we refer the present cases to a Full Bench, which will consider and decide all matters in relation to the first question referred to this court by the Board of Revenue. The record of the cases be placed before the Chief Justice for constitution of a Full Bench.