(2009) 11 MP CK 0061

In the Madhya Pradesh High Court

Case No : Sales Tax Reference No. 28 of 2000

Sales Tax Commissioner APPELLANT

Vs

Pannalal Narendra Kumar RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 2, 3, 44

Citation : (2010) ILR (MP) 725

Hon'ble Judges : Ramesh Surajmal Garg, J;P.K Jaiswal, J

Bench : Division Bench

Judgement

R.S. Garg, J.—The Respondent an Assessee had challenged the order passed by Additional Assistant Commissioner, Sales Tax Jabalpur passed on 31.10.1985 in Case No. 78/82-83 Pravesh Kar (Entry Tax) wherein the Petitioner was held liable to pay tax. The appeal No. l8/JBP/4/E/85-Pravesh Kar for the period 28.10.1981 to 15.11.1982 was dismissed therefore, the Respondent/Assessee filed further Appeal No. l44-PBR/87 before the Board of Revenue. The Board of Revenue was pleased to allow the appeal vide order dated 8.8.1989. Thereafter, the revenue made an application u/s 44 of the M.P. General Sales Tax Act for making a reference to the High Court. After hearing the parties the learned Member, Board of Revenue was pleased to refer the matter to the High Court for answering the following question:

Whether under the fact and the circumstances of the case the Board of Revenue was justified in holding that the Aadhatiya was not liable to pay entry tax in respect of the goods entered by him into the local area as agent of the Principal

2. In the present matter undisputedly certain goods were sent by a third party which were received by the Assessee as Aadhatiya of said person. The goods were sent by the outside dealer and the same were received for being sold in the market area by the Assessee. The question which cropped up before the revenue authorities was whether the Assessee who was working as an Aadhatiya was liable to pay tax. Though the Assessing Officer and the First Appellate Authority

came to the conclusion that the Assessee who sold the goods in his aadhat was liable to tax but the Board of Revenue held that the Assessee was simply an Aadhatiya, therefore, he was not liable to pay the tax. The Board was also of the opinion that Assessee did not cause entry of the goods in the local area but, in fact the goods were entered into the local area by the Principal by sending the goods. The Board of Revenue ultimately held that the Assessee was not liable to pay any tax.

3. Shri Rahul Jain, learned Deputy Advocate General for the Petitioner submitted that the Entry-Tax Act if is read with Madhya Pradesh General Sales Tax Act then Section 2(d) of M.P. General Sales Tax Act would come into operation and would define a dealer. According to him a commission agent called by whatever name ''Kachha Aadhatiya'', ''Pakka Aadhatiya'', agent, commission agent etc. would be taken to be a dealer for purposes of Section 2(d) and as on his say the goods are allowed to enter in local, area, it could not be argued by the Assessee that he is not liable to pay tax.

4. Shri Shrivastava, learned Senior Counsel for the Respondent, submitted that a fair understanding in the dealing between the Principal and the Aadhatiya would show that the Principal had sent the goods for being sold in the market or in the Aadhat of Aadhatiya and as the property in the goods continues to be with the Principal and as the Principal causes the entry of the goods in the local area, the commission agent-cum-aadhatiya cannot be held liable to pay the tax.

5. The Entry Tax Act says that, all the expressions other than expression ''goods'' and ''sale'', which are used, but are not defined in the Entry Tax Act and are rather defined in the Sales Tax Act shall have the same meaning assigned to them in the M.P. General Sales Tax Act. Section 2(d) of the M.P. General Sales Tax Act defines a "dealer" as under:

Section 2(d):

Dealer means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration and includes -

(i). a local authority, a company, an undivided Hindu family or any society (including a co-operative society), club, firm or association which carries on such business:

(ii). a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplies or distributes goods to members;

(iii) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on business of buying, selling, supplying or distributing goods on behalf of any principal.

A perusal of the definition would make it clear that a dealer would include any person who carries on the business of buying, selling, supplying or distribution of goods directly or otherwise, a local authority, a company an undivided Hindu family etc, a commission agent, a broker, del credere agent an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal.

6. The word Aadhatiya has not been defined either in the M.P. General Sales Tax Act or under the Entry Tax Act or under the Sale of Goods Act or under the Contract Act. The word Aadhatiya is used as a colloquial word to mean a person who receives goods either on bis own behalf or on behalf of the principal, sells the same in the market on basis of certain commission. An Aadhatiya may sell or even purchase the goods under the instructions of the Principal.

7. The old trading system had two types of the Aadhatiyas viz. ''Kachha Aadhatiya'' and ''Pakka Aadhatiya''. ''Kachha Aadhatiya'' was. a person who was to abide by all the instructions issued by the Principal and he was not entitled to take any decision on his own behalf. If the Principal said that the goods have to be sold at a particular rate then he was obliged not to charge a penny more than what the Master/Principal directed. Such ''Kachha Aadhatiya in fact was a clearing agent and was not holding property in the goods. A ''Pakka Aadhatiya in the old trading system was to receive the goods, keep with him and under the instructions of the Principal was to dispose of the same but he could dispose of the goods on his own terms. ''Pakka Aadhatiya'' in fact agrees with the Principal that he would pay a particular amount for the consignment. Once there is an agreement between the ''Pakka Aadhatiya'' and the Principal that a particular amount has to be paid by the ''Pakka Aadhatiya'' to the Principal then the sale is complete and the property in the goods passes in favour of the ''Pakka Aadhatiya''.

8. In the present matter it is not known to us that the Assessee was a ''Kachha Aadhatiya'' or a ''Pakka Aadhatiya. The word ''Aadhat is a Hindi word which means a commission received by a dealer or a commission agent in the business of grains. The word ''Aadhat" does not mean anything less than or more than a commission.

9. ''Kachha Aadhatiya'' so also the ''Pakka Aadhatiya'' are entitled to commission, they have to act under the directions of the Principal but ''Kachha Aadhatiya'' cannot do anything beyond what the master has said. Unless an ''Aadhatiya'' (agent or the commission agent) agrees to receive the goods in the market area, the Principal would not be entitled to send the goods to anybody. In every case where an agent, commission agent, Aadhatiya called by any name agrees that the goods be sent to him then he receives the goods in his personal capacity and he causes entry of the goods into the local area. To say that an Aadhatiya is something different from a commission agent or has a different identity would be a jugglery of the words simply to prove that such a person is not liable to tax.

10. In the present matter it is also to be seen in the light of Section 3 that when a person in his capacity as a dealer in the course of his business purchases goods from a person or a dealer other than a registered dealer who has effected entry of such goods into a local area prior to such purchase, the entry tax shall be paid by the dealer who has purchased such goods.

11. Be that as it may, we have no hesitation in holding that an Aadhatiya is nothing but a commission agent and he causes entry of the goods in the local area and he is liable to be taxed. The question referred to us is answered in favour of the Revenue and we hold that the Board of Revenue was not justified in holding that the agent/Aadhatiya was not liable to pay entry tax in respect of the goods entered by him in the local area as agent of the Principal. Let the department proceed in accordance with law.