
(1965) 05 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Sales Tax Reference No. 3-D of 1958

Shri Kewal Kishan Om Parkash

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 11-05-1965

Acts Referred:

Citation : (1966) 1 ILR (P&H) 60 : (1966) 18 STC 402

Hon'ble Judges : S.K. Kapur, J;A.N. Grover, J

Bench : Division Bench

Advocate : Yogeshwar Dayal, for the Appellant; S.N. Shankar, Central Government Counsel, for the Respondent

Judgement

S.K. Kapur, J.—This reference made to this Court by the Chief Commissioner of Delhi u/s 21 of the Bengal Finance (Sales Tax) Act, 1941, arises in the following circumstances. The firm Kewal Kishan Om Parkash (hereafter referred to as the assessee) is a dealer in cloth. During the assessment year 1954-55 its total turnover was Rs. 15,836-4-0. In this year the assessee paid Rs. 10-4-0 as stitching charges to a tailor for stitching some quilts, mattresses and petticoats. From this it was deduced that the assessee sold stitched garments and quilts as well of a very nominal value. It was contended on behalf of the assessee before the authorities that since its turnover with respect to goods manufactured or produced for sale was less than Rs. 10,000, Clause (a) of Sub-section (5) of Section 4 was not applicable to the assessee and it could be taxed only under Clause (c) of Sub-section (5) of Section 4, as it then stood, if its turnover was Rs. 30,000 or more. The Chief Commissioner took the view that since the assessee's turnover included the sale proceeds, though of a very small amount, of manufactured goods also the assessee was liable to tax under Clause (a) of Sub-section (5) of Section 4. In other words, he held that where the turnover of an assessee is comprised partly of manufactured goods, he would be liable to tax if his total turnover is more than Rs. 10,000 even if the turnover with respect to the manufactured goods is very much lesser. The Chief Commissioner, however,

referred to this Court the question of law as to whether in the present case the dealer's turnover should be determined under Clause (a) or (c) of Sub-section (5) of Section 4 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi.

2. Mr. Yogeshwar Dayal, the learned counsel for the assessee, contends that Clause (a) of Sub-section (5) of Section 4 is applicable only if the turnover with respect to the goods imported for sale into the State of Delhi or manufactured or produced for sale is Rs. 10,000 or more. According to the learned counsel since in this case the turnover of manufactured goods was less than Rs. 10,000, Clause (a) of Sub-section (5) of Section 4 was not applicable and the assessee could be taxed under Clause (c) only if the turnover was more than Rs. 30,000. Section 4(1) and (5), as it stood at the relevant time, was as under:-

4. (1) With effect from such date as the Chief Commissioner may, by notification in the Official Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified.

(5) 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 produces any goods for sale, 10,000 rupees ; or

(b) in relation to particular classes of dealers not falling within Clause (a), such sum as may be prescribed ; or

(c) in relation to any other dealer, 30,000 rupees.

3. Mr. S.N. Shankar, the learned counsel for the State, on the other hand, contends that even where a small part of sale proceeds is represented by manufactured goods then Clause (a) of Sub-section (5) is applicable and if the total sale proceeds are more than Rs. 10,000 comprising both of manufactured goods or other goods the turnover becomes taxable.

4. We are in agreement with the submission of Mr. Yogeshwar Dayal. Under Sub-section (1) of Section 4 only such dealers whose gross turnover exceeds the taxable quantum are liable to pay sales tax. From the definition of the expression "taxable quantum" in Sub-section (5) of Section 4 it is clear that Clause (a) would apply only if the taxable quantum with respect to the goods imported or manufactured or produced for sale is Rs. 10,000 or more. Where turnover with respect to such goods is less than Rs. 10,000 then Clause (c) of Sub-section (5) of Section 4 would be applicable. This view is in accord with the decision of the Nagpur High Court in Ayodhyaprasad Suklal v. The Crown [1951] 2 S.T.C. 44, and of the judgment of the Madhya Pradesh High Court in Mahabir Prasad v. B.S. Gupta, Sales Tax Officer, Indore, and Anr. [1957] 8 S.T.C. 429. Sub-section (5) of Section 4 creates three classes of dealers for the purposes of taxation-(1) those

whose business mainly is to import, manufacture or produce goods for sale and in their case the taxable quantum with respect to such sales is fixed at Rs. 10,000 ; (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. 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. Mr. Shankar seeks to distinguish the Nagpur decision on the ground that the word "gross" in Sub-section (1) of Section 4 does not appear in the corresponding provision in the Nagpur Act. That, in our view, makes no difference. Taxable quantum having been defined the definition has to be incorporated in Sub-section (1) of Section 4. When so incorporated the presence of the word "gross" in the earlier part of this section will make no difference. In this view our answer to the question referred is that the taxable turnover in this case had to be determined under Clause (c) of Sub-section (5) of Section 4. In the circumstances, however, there will be no order as to costs.

A.N. Grover, J.

5. I agree.