
(1969) 04 AHC CK 0003
In the Allahabad High Court
Case No : Sales Tax Reference No. 297 of 1967

Suraj Pd. Gauri Shanker

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 04-04-1969

Acts Referred:

Income Tax Act, 1961 — Section 160, 161, 162, 163, 164

Citation : (1969) 24 STC 356

Hon'ble Judges : R.L. Gulati, J;J. Sahai, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bharatji Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as the Act), the Additional Revising Authority, Sales Tax, Varanasi, has submitted this reference for the opinion of this court on the following question of law :

Whether on the facts and in the circumstances of the case, the assessee acting as commission agent was liable to pay sales tax in the years 1960-61 and 1961-62 on the turnover of khandsari sugar manufactured by his principals?

2. The statement of the case is a consolidated one relating to two assessment years, viz., 1960-61 and 1961-62 and the question of law set out above is common to both the assessment years.

3. M/s. Suraj Prasad Gauri Shanker of Varanasi (hereinafter referred to as the "assessee") carries on the business of commission agency and is also a dealer in oil-seeds and kirana. In respect of the assessment years in question a dispute arose between him and the Sales Tax Officer as to the former's liability to pay sales tax on the turnover of khandsari sugar sold by him as commission agent on behalf of his principals, who manufacture khandsari sugar in Uttar Pradesh. The assessee's contention was that under Notification No. S.T.1365/X-990-1956,

dated 1st April, 1960, the turnover of khandsari sugar manufactured inside the State was liable to tax, as from 1st April, 1960, only at the point of sale by the manufacturer, and that he, not being a manufacturer, was not liable to pay any sales tax. This contention of the assessee was not accepted by the Sales Tax Officer and has also been rejected both by the Judge (Appeals) and the Judge (Revisions) before whom he went in appeal and revision respectively. The Revising Authority, as stated above, has at the instance of the assessee submitted this reference to this court.

4. The notification of 1st April, 1960, referred to above so far as it is material for our purpose reads thus :

In exercise of the powers conferred by Section 3-A of the U.P. Sales Tax Act, 1948 (U.P. Act No. 15 of 1948), as amended from time to time, the Governor of Uttar Pradesh is pleased to-

supersede, with effect from April 1, 1960, all the previous notifications so far as they relate to the goods mentioned in column 2 of the Schedule hereto and the rates of sales tax given in such notifications, and declare that, with effect from April 1, 1960, the turnover in respect of the goods mentioned in column 2 of the Schedule hereto shall be liable to tax only at the point of sale specified in column 4 thereof and under the circumstances specified in column 3 thereof.

2. The Governor is further pleased to declare that as from April 1, 1960, the rate of tax in respect of the turnover of individual goods mentioned in the aforesaid column 2 shall be as mentioned against each goods in column 5 of the Schedule hereto :

Schedule -----	SI.	Name
of goods. Circumstances Point of Rate of No. under which to sale. tax. be taxed.		
-----	1	2 3 4 5
-----	*	* * * *

40.Khandsari sugar on (a) If imported (a) Sale by 2 paise which additional excise from outside importer. per duty is not leviable Uttar Pradesh. rupee. under the Additional (b) If manufac- (b) Sale by Duties of Excise (Goods tured in Uttar manufacturer. of Special Importance) Pradesh. do." Act, 1957, or if leviable, it has specifically been exempted from such levy.

5. It appears to be the common case of the parties that khandsari sugar sold by the assessee was not liable to additional excise duty and its turnover was, therefore, liable to sales tax in accordance with that notification.

6. Admittedly, the assessee is not the manufacturer of khandsari sugar sold by him during the two years involved in this reference. He is merely a commission agent and has sold the khandsari sugar on behalf of certain manufacturers. The notification which limits the levy of tax in respect of khandsari sugar manufactured inside the State only to the point of sale by the manufacturer, would not apply in terms to the assessee. But he has been held liable by all the

sales tax authorities. The question arises as to whether he is liable under any other provision of the Act.

7. Section 3 is the charging section of the Act. Under that section every dealer has to pay for each assessment year, tax at the rate specified therein on his turnover of the said year. A dealer has been defined by Section 2(c) to mean :

Any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh, whether for commission, remuneration or otherwise.

8. According to the explanation appended to that provision:

a factor, a broker, a commission agent or arhati...who carries on the business of buying and selling goods on behalf of his principals or through whom the goods are sold or purchased, shall be deemed to be a dealer for the purposes of this Act.

9. Section 2(i) defines "turnover" in the following terms:

turnover means the aggregate amount for which goods...are sold...either directly or through another on his account or on account of others....

10. From a reading of the provisions set out above the scheme of the Act. appears to be to tax a person who carries on the business of buying or selling goods on the aggregate of the sales effected by him during an assessment year, either directly or indirectly, which means that the sales effected by a person through a commission agent would also be treated to be a part of his turnover upon which he would be liable to pay tax. A person who carries on the business of buying and selling goods on commission is also treated to be a dealer and he would also be liable to tax on the sales effected by him on behalf of his principals. His liability, however, is neither vicarious nor co-extensive with the liability of his principals. The sales effected by him as a commission agent are treated to be a part of the turnover of his own business; so that in respect of the turnover comprising sales effected through a commission agent, the principal and the commission agent would both be liable. This might amount to double taxation. But we are not concerned in the instant case with that question as the same has neither been argued nor referred to us.

11. The fact, however, remains that in respect of a particular transaction of sale effected by a commission agent the principal and the commission agent would simultaneously be liable to tax. The Legislature appears to have realised such a situation and has added the following provision by way of explanation to Section 3 :

Explanation.--Where tax is payable and has been so paid by the commission agent on any turnover on behalf of his principal, the principal shall not be liable to pay the tax in respect of the same turnover.

12. This explanation, no doubt, would be available to a principal to avoid his liability where he can show that on his sales effected through a commission

agent, the commission agent has already paid the tax. But no such protection has been afforded to the commission agent who cannot escape his liability by showing that the tax has been paid by his principal. Therefore, if we were to be guided by the charging section and the definitions reproduced above, the levy of tax upon the assessee could not be challenged.

13. The question, however, arises as to what is the effect of the notification of 1st April, 1960. That notification, in our opinion, has materially altered the situation. Under that notification khandsari sugar manufactured inside the State is liable to tax only at one point, viz., its sale by the manufacturer. The sale by the manufacturer may be direct or through a commission agent and in either case he alone would be liable. In respect, of the commodities not covered by the notification the department may have the option to impose tax either on the principal or on the commission agent or on both. But in the case of commodities comprised in the notification the department has no such choice. The tax must be imposed on the manufacturer or not at all.

14. The learned Standing Counsel contends that in the case of sales through a commission agent, it is the commission agent alone who can be taxed because there is no sale as between the principal and the commission agent and the commission agent effects the first sale. We cannot accept this contention. A principal is as much a dealer as a commission agent. The sale effected by a dealer through a commission agent would be a part of his turnover. The explanation to Section 3 which is aimed at avoiding double taxation itself suggests that a principal and a commission agent are both liable simultaneously.

15. It was then contended by the learned Standing Counsel that the principal and the commission agent both being dealers liable to pay tax it was legitimate for the department to have chosen the commission agent for the sake of convenience. There would have been a good deal of force in this contention if appropriate provisions would have been made in the Act to levy and collect tax on a commission agent in his representative capacity. The device of levying upon and collecting tax from the agents or other representatives of certain class of assesseees is often resorted to in taxing statutes. In the Income Tax Act, 1961, such a device is embodied in Chapter XV. Sections 160 to 166 in that Chapter deal with representative assesseees. Under those provisions tax is levied upon and recovered from an agent of a non-resident assessee, from the guardian or manager of a minor, lunatic or idiot, from Court of Wards, Administrator-General, Official Trustee, receiver or manager appointed by a court and from a trustee appointed under a trust. They are all called representative assesseees and tax is levied and collected from them in respect of the income received by them on behalf of persons whom they represent. But the liability of such representative assesseees is vicarious and is always coextensive with the liability of the persons whom they represent (Section 161). A provision has been made enabling representative assesseees to recover tax paid by them from the persons on whose behalf it is paid (Section 162), and finally an option is reserved in favour of the

department to make a direct assessment upon the assessee concerned leaving aside the representative assessee.

16. The learned Standing Counsel has not been able to point out any corresponding or analogous provision in the U.P. Sales Tax Act. The position of a commission agent under the U.P. Sales Tax Act is not that of a representative assessee. He is an assessee because of his own liability as a person carrying on the business of buying or selling goods on commission. His liability is, therefore, distinct and apart from the liability of a principal and is personal. It is not correct, therefore, to say that tax has been imposed upon the assessee in the instant case on behalf of his principals with a view merely to facilitating its collection. The tax has been imposed upon the assessee by way of his personal liability arising from his own business. Such a tax in the case of khandsari sugar manufactured inside the State can be imposed upon the manufacturer alone.

17. The view taken by the sales tax authorities that the assessee is liable because the sales effected by, him of khandsari sugar are the first sales is obviously untenable. The notification of 1st April, 1960, seeks to tax not the first sale but the sale by the manufacturer, though in majority of cases, such a sale would be the first sale. To take an illustration, suppose khandsari sugar is pledged with a bank by its manufacturer and it becomes necessary for the bank, in order to realise its debt, to sell the sugar. Such a sale indeed would be the first sale but would not be taxable in the hands of the bank because the bank cannot be said to be its manufacturer.

18. The decision of the Andhra Pradesh High Court in *The State of Andhra Pradesh v. T. R. Somaraju* [1965] 16 S.T.C. 177. relied upon by the learned Standing Counsel is distinguishable. In that case jaggery was liable to sales tax only at the stage of first sale in the State. Under the notification with which we are concerned, the sale of khandsari sugar is liable to tax not at the point of first sale, but at the point of sale by the manufacturer.

19. We, therefore, answer the question in the negative, in favour of the assessee and against the Commissioner of Sales Tax. The assessee is entitled to his costs which we assess at Rs. 100.