

(1985) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 493 of 1981

Sushil Kumar Sharad Kumar

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 13-08-1985

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 39(2), 8(1), 8(2)

Citation : (1986) ILR (MP) 605 : (1986) 31 MPLJ 314 : (1986) MPLJ 314 :
(1985) 60 STC 184

Hon'ble Judges : K.K. Adhikari, J;J.S. Verma, J

Bench : Division Bench

Advocate : B.L. Nema, for the Appellant; S.L. Saxena, D.A.G., for the Respondent

Judgement

This judgment shall also dispose of Misc. Civil Case No. 494 of 1981.

This reference is made by the Tribunal at the instance of the dealer u/s 44(1) of the M. P. General Sales Tax Act, 1958, to answer the following questions of law, namely :

(a) Whether on the facts and in the circumstances of the case, the proceedings u/s 39(2) of the Act were lawful ?

(b) Whether on the facts and in the circumstances of the case, the reading and interpretation of the declaration contained in form XII-A was proper and correct and the levy of additional tax in the form of penalty u/s 8(2) of the Act was lawful and justified ?

The dealer, M/s. Sushil Kumar Sharad Kumar of Rewa, deals in paper, strawboard, binding cloth and exercise books. The relevant periods of assessment are 7th October, 1966 to 31st March, 1967 and 1st April, 1967 to 31st October, 1967 which have given rise to these two references. The dealer purchased paper from the Orient Paper Mills in this State of M. P. at concessional rate in accordance with section 8(1) of the Act, giving the declaration in form XII-

A. The paper was then sent to the dealers at Allahabad in the State of Uttar Pradesh for manufacture of exercise books, which were then brought back to the State of Madhya Pradesh and sold within the State of M. P. The assessing authority completed assessments for both these periods, accepting the dealer's claim for payment of tax at the concessional rate in accordance with Section 8(1) of the Act.

The Additional Commissioner of Sales Tax reopened this assessment u/s 39(2) of the Act in revision. He took the view that on these facts, the dealer was not entitled to pay tax at the concessional rate and, therefore, a case for imposition of penalty u/s 8(2) of the Act had arisen. The Additional Commissioner accordingly imposed a penalty of Rs. 9,110 for the first period of assessment and Rs. 12,460 for the second period, in addition to the demand of additional tax of Rs. 360 for the latter period. The Additional Commissioner's order imposing the penalty u/s 8(2) of the Act is dated 24 March, 1976.

The dealer appealed to the Tribunal (Board of Revenue), which has rejected the appeal on merits. However, the quantum of penalty has been reduced only to the difference in the amount of tax payable according to the full rate and the concessional rate. The Tribunal took this view on account of the fact that no mala fide intention could be attributed to the dealer for the misuse of the declaration made in form XII-A. Aggrieved by the decision of the Tribunal, upholding imposition of penalty on merits, the dealer applied for a reference to this Court u/s 44(1) of the Act, which has been granted resulting in the aforesaid questions of law coming up for decision by this Court.

The material facts on the basis of which these questions have to be answered are these. The raw material, i.e., paper, for manufacture of exercise books was purchased by the dealer within the State of Madhya Pradesh, giving the requisite declaration in form XII-A, on the basis of which he was allowed to pay tax at the concessional rate in accordance with Section 8(1) of the Act. The paper was then sent by the dealer to its head office in Allahabad, within the State of Uttar Pradesh for the manufacture of exercise books and those exercise books were then brought back to the State of Madhya Pradesh, where they were sold. Admittedly, the sale of the manufactured goods, i.e., exercise books, was within the State of M. P. where the raw material, i.e., paper, was purchased on the declaration given in form XII-A getting the benefit of the concessional rate of tax u/s 8(1) of the Act. However, the manufacture of the exercise books was not within the State of M. P. but was done at Allahabad in the State of U. P. The question really is whether the fact that the exercise books were manufactured out of the raw material, i.e., paper, at Allahabad in U. P. and not at any place within the State of M. P. even though purchase of the raw material and sale of the manufactured goods was within the State of M. P., results in breach of the declaration given by the dealer in form XII-A and it also takes out the dealer's case from the ambit of Sub-section (1) of Section 8 of the Act.

Section 8 of the Act, as it stood at the relevant time, is as under :

Section 8. Rate of tax for raw material.--(1) Notwithstanding anything contained in Section 6 or Section 7, but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture of other goods for sale in the State of Madhya Pradesh or in the course of inter-State trade or commerce shall be one per cent of the sale or purchase of such raw material.

(2) Where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified in the said sub-section, such dealer shall be liable to pay as penalty an amount not less than the difference between the amount of tax on the sale of such raw material at the full rates mentioned in column 3 of Schedule II and the amount of tax payable under Sub-section (1), and not exceeding one and one-quarter times the amount of tax at such full rate as the Commissioner may determine having regard to the circumstances in which such use was made :

* * *

The relevant form XII-A is as under :

Form XII-A Declaration [See Rule 20(3)]

I, a dealer holding registration certificate No.... hereby declare that I have purchases the under-mentioned goods for Rs.... (in figures) Rs.... (in words) from Shri a dealer holding registration certificate No....under purchase order No.... dated.... as per bill/cash memo/challan No.... dated.... and further declare that the said goods are for use in the manufacture of goods for sale by me in the State of Madhya Pradesh or in the course of inter-State trade or commerce. I further certify that the said goods are specified in my registration certificate as raw materials and that the said certificate of registration was in force on the date of aforesaid purchase of goods. _____
(Mention here particulars of goods) Signature of the dealer or agent duly authorised in writing in this behalf. Particulars of bill/cash memo.

Date.... No.... Amount....

The real question for decision is about the meaning of the words "purchase by a registered dealer of any raw material for the manufacture of other goods for sale in the State of Madhya Pradesh" used in Sub-section (1) of Section 8. In other words, the question is whether the words "in the State of Madhya Pradesh" qualify only the word "sale" or also the words "manufacture of other goods". It was stated at the Bar that the point is not covered by any authority, in a situation like the present, where purchase of the raw material and sale of the manufactured goods were both within the State of M. P. and it was only for the purpose of manufacture of raw material into a finished product that the raw material had been taken outside the State of M. P. It appears to us that the words "in the State of Madhya Pradesh" qualify only the word "sale" and not also "manufacture of other goods". For the purpose of sales tax, it is the event of sale

which is relevant and, therefore, if the sale of the manufactured goods is within the State of M. P. so as to enable recovery of sales tax on the basis of taxing event, within the State of M. P., the purpose of taxing sale of the raw material at the concessional rate only is obvious. The only condition imposed for the purpose of getting benefit of Sub-section (1) of Section 8, in such a situation, appears to be the utilisation of raw material for the "manufacture of other goods" and sales of the manufactured goods within the State of M. P. irrespective of the place of such manufacture. In a way, the condition is only one, i.e., manufacture of the raw material into some other goods to be sold within the State of M. P. For satisfaction of this condition, the place of manufacture is not material, so long as the sale of the manufactured goods is within the State of M. P.

Sub-section (2) exposes such a dealer to penalty where any raw material purchased under Sub-section (1) "is utilised by him for any purpose other than the purpose specified in the said sub-section". This means that the penalty is attracted, if utilisation of the raw material is for any purpose other than the specified purpose, i.e., for manufacture of other goods to be sold within the State of M. P. so long as the raw material is utilised for manufacture of the specified goods and the manufactured goods are sold within the State of M. P., penalty is not attracted. The place of manufacture, other requirement being satisfied, does not really come in as a relevant factor in this connection. The relevant words in form XII-A in which the requisite declaration is to be given by the dealer for getting the benefit of concessional rate u/s 8(1) are "that the form XII-A goods are for use in the manufacture of goods for sale by me in the State of Madhya Pradesh". This expression is even more unambiguous to indicate that the requirement of sale alone within the State of M. P. is there and not also of the manufacture of the goods within the State of M. P. This conclusion is reinforced by the words which follow in Sub-section (1) as well as in form XII-A. The words which follow are, "or in the course of inter-State trade or commerce" and these words are common in Sub-section (1) of Section 8 as well as form XII-A. This indicates that the goods manufactured out of the raw material for sale "in the State of Madhya Pradesh" or "in the course of inter-State trade or commerce" qualify for the concessional rate, the word "or" being used as a disjunctive between the two expressions "in the State of Madhya Pradesh" and "in the course of inter-State trade or commerce". If the words "manufacture of other goods" do not qualify the other expression "in the course of inter-State trade or commerce", which was not disputed, then it is difficult to see why they should qualify the other expression "in the State of Madhya Pradesh", when both these expressions admittedly qualify the word "sale" preceding them. The construction we have made of Sub-section (1) appears to be the proper construction of the language used therein and is also supported by the contents of the declaration in form XII-A, prescribed by the rules made under the Act as well as Sub-section (2) of Section 8, which provides for a penalty in case of breach of the condition imposed by Sub-section (1) of Section 8, for getting the benefit of the concessional rate.

The learned Deputy Advocate-General referred to the decision of this Court in *Chhotabhai v. State of M. P.* [1972] 30 STC 1; 1972 MPLJ 619 for the purpose of showing that some observations therein indicate that not only sale of the manufactured goods but also its manufacture should be within the State of M. P. for getting the benefit of Sub-section (1) of Section 8 of the Act. No doubt certain observations in that decision are wide enough to give such an indication but the same must be read in the context in which they were made. In that case, the raw material purchased in the State of M. P. was sent to another State for manufacture of other goods there as well as sale also of the manufactured goods in the other State. In such a situation, obviously the requirement of sale of the manufactured goods within the State of M. P. not being satisfied, the case could not fall within the ambit of Section 8(1). The further fact that manufacture of the goods was also outside the State of M. P., was, therefore, not significant and a reference to that fact as well is not the ratio of that decision. That decision is clearly distinguishable on facts and it cannot be read as an authority to hold that Sub-section (1) of Section 8 not only requires sale of the manufactured goods within the State of M. P. but also its manufacture within the State of Madhya Pradesh.

The decision of the Supreme Court in *Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another*, also indicates the proper construction. The relevant provision related to a deduction while computing the taxable turnover for the purpose of sales tax under the law applicable in Delhi. The deduction was permitted where the purchase was of goods "specified in the certificate of registration of such dealer, as being intended for resale by him, or for use by him as raw materials in the manufacture of goods for sale". Where the dealer had utilised the goods for any other purpose, there was breach of the declaration, resulting in penalty. The relevant provisions were in Section 5(2)(a)(ii) and the second proviso of the Delhi Act. This provision was later amended in which the relevant words were "as being intended for resale by him, or for use by him as raw materials in the manufacture of goods in the Union Territory of Delhi". As for sale inside Delhi (sic). The question for decision was whether the condition for manufacture, sale as well as resale within Delhi had to be read in both the expressions. It was held that prior to the amendment, the geographical restriction did not attach to either manufacture or sale or resale and neither of these events were required to be performed inside Delhi ; and after the amendment also no such geographical restriction applied to resale even though by use of the express words, this restriction was applied to the events of manufacture and sale. An earlier decision in *Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another*, was distinguished on the basis that express words were used to qualify the place of manufacture in the expression "in the manufacture in the State of Punjab or any goods for sale".

The Supreme Court referred the settled rules of construction of a taxing statute, pointing out that it must be construed strictly and where the plain and literal meaning shows that the statutory provision "is quite intelligible, reasonable and

workable", there is no room for any intendment. It was also reiterated that "the words of a taxing Act must never be stretched against a taxpayer", and "if the Legislature has failed to clarify its meaning by use of appropriate language, the benefit must go to the taxpayer" ; and "even if there is any doubt as to interpretation, it must be resolved in favour of the subject".

The Supreme Court construed the above provisions in the Delhi Act relating to exemption from sales tax on these principles and reached the following conclusions, viz.,

We do not think there is any substance or validity in these arguments and we see no cogent or compelling reasons to add the words "inside the Union Territory of Delhi" to qualify "resale" in section 5(2)(a)(ii) and the second proviso.(at page 421)

The word used in Section 5(2)(a)(ii) and the second proviso is "resale" simpliciter without any geographical limitation and according to its plain natural meaning it would mean resale anywhere and not necessarily inside Delhi. Even where the purchasing dealer resells the goods outside Delhi, he would satisfy the requirements of the statutory provision according to its plain grammatical meaning. There are no words such as inside the Union Territory of Delhi" qualifying "resale" so as to limit it to resale within the territory of Delhi. (at page 422)

We think that in a taxing statute like the present which is intended to tax the dealings of ordinary traders, if the intention of the Legislature were that in order to qualify a sale of goods for deduction, "resale" of it must necessarily be inside Delhi, the Legislature would have expressed itself clearly and not left its intention to be gathered by doubtful implication from other provisions of the Act. The absence of specific words limiting "resale" inside the territory of Delhi is not without significance and it cannot be made good by a process of judicial construction, for to do so would be to attribute to the Legislature an intention which it has chosen not to express and to usurp the legislative function. (at page 423)

We have already explained the scheme of Section 5(2)(a)(ii) and its two provisos and, even on the view that "resale" means resale anywhere and not necessarily inside Delhi, they enact a statutory provision which is quite intelligible, reasonable and workable. (at page 426)

Similarly, for the same reasons, which we need not repeat again, "manufacture" and "sale" in Section 5(2)(a)(ii) and the second proviso mean manufacture and sale anywhere without any geographical limitation and neither "manufacture" nor "sale" is restricted to the territory of Delhi. There are no words like "inside the Union Territory of Delhi" to qualify "manufacture" or "sale" and there is no cogent or compelling reason for reading such words in Section 5(2)(a)(ii) and the second proviso. The use of the goods purchased as raw materials in the manufacture of goods may, therefore, take place anywhere and not necessarily

inside Delhi and equally the sale of the goods so manufactured may be effected anywhere, whether inside or outside Delhi. The only end-use of the goods purchased required to be made for attracting the applicability of Section 5(2)(a) (ii) is that the goods must be utilised by the purchasing dealer as raw materials in the manufacture of goods and the goods so manufactured must be sold, irrespective whether the manufacture or sale takes place inside Delhi or outside. If the purchasing dealer does not use the goods purchased as raw materials in the manufacture of goods or having manufactured the goods does not sell them, he would commit a breach of the intention expressed by him in the declaration furnished to the selling dealer and the second proviso would immediately be attracted and the price of the goods purchased by him would be liable to be included in his taxable turnover. But so long as he carries out the intention expressed in the declaration and uses the goods purchased as raw materials in the manufacture of goods, whether inside or outside Delhi, and sells the goods so manufactured in Delhi or outside, he would not fall within the second proviso and the sale to him would not be taxable in his hands.

The subsequent history of the Act also supports the construction which we are inclined to place on Section 6(2)(a)(ii) and the second proviso. Section 5(2)(a) (ii) was amended with effect from 28th May, 1972 by the Finance Act, 1972 and the words "in the Union Territory of Delhi" were added after the word "manufacture" so as to provide that manufacture should be inside the territory of Delhi. It was also provided by the amendment that the sale of manufactured goods should be inside Delhi or in the course of inter-State trade or commerce or in the course of export outside India. This amendment clearly excluded manufacture of goods as also sale of manufactured goods outside Delhi. (at pages 428 and 429)

We must, therefore, reach the conclusion that during the relevant assessment years "resale" within the meaning of Section 5(2)(a)(ii) and the second proviso was not confined to the territory of Delhi, but also included resale outside the territory of Delhi and, similarly, for the period up to 28th May, 1972 when Section 5(2)(a)(ii) was amended by the Finance Act, 1972 "manufacture" and "sale" contemplated by the section were not restricted to the territory of Delhi but could also be outside. There was no geographical limitation confining "resale", "manufacture" or "sale" to the territory of Delhi. (at page 430)

Section 6(2)(a)(ii) was amended by the Finance Act, 1972 and the words "in the Union Territory of Delhi" were added after the word "manufacture" and the words "inside Delhi" after the word "sale". It is clear from this amendment that from and after 28th May, 1972 sale of goods was exempted from tax only if the goods were purchased by the purchasing dealer "as being intended.....for use by him as raw materials in the manufacture in the Union Territory of Delhi ...of goods...for sale inside Delhi". Both "manufacture" and "sale" were now required to be in the territory of Delhi and not outside. (at page 431)

It would not be competent to the assessing authority to read the words "in the

territory of Delhi" after the word "manufacture" and the words "inside Delhi" after the word "sale" in the declarations given by the assesseees when these words are conspicuous by their absence... (at page 432)

The decision in *Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another*, is, therefore, no authority for the proposition that even where the declaration is given on the prescribed form by a purchasing dealer, which does not contain a statement that the manufacture of goods would be in Delhi or the manufactured goods would be sold in Delhi, this condition should be read into the declaration by the addition of some such words as "inside Delhi" after "manufacture" and "sale", so that if the goods purchased are not used as raw materials in manufacture in Delhi or the goods manufactured are sold outside Delhi, the purchasing dealer could be said to have committed a breach of the statement made in the declaration so as to attract the applicability of the second proviso. We are clearly of the view that such is not the correct legal position and the second proviso is not attracted in such a case. (at page 434)

It is, therefore, clear from the above Supreme Court decision that in this context, after purchase of the raw material, its use for the manufacture of other goods and sale of the manufactured goods are two distinct and separate acts ; that express words of geographical limitation alone can restrict these activities to the specified territory ; such words, imposing the restriction must be used separately to qualify each of these events; and use of the words prescribing limitation only for manufacture or sale, cannot be construed as also qualifying the other which is a separate and distinct activity.

The construction made by us of the words "purchase by registered dealer of any raw material for the manufacture of other goods for sale in the State of Madhya Pradesh" is supported by the above decision of the Supreme Court. The words "in the State of Madhya Pradesh" can qualify only "sale" and not also "manufacture of other goods". The words used in the declaration given in form XII-A by the dealer also support this view and the same can be used for construction of this expression in the statute, as was done by the Supreme Court decision. It follows that where the sale of manufactured goods is either "in the State of Madhya Pradesh" or "in the course of inter-State trade or commerce", the condition is satisfied on utilisation of raw material for manufacture of that goods, irrespective of this fact whether the process of manufacture was "in the State of Madhya Pradesh" or outside it.

As a result of the aforesaid discussion, it followed that there was no misuse of the declaration in form XII-A by the dealer and the benefit of concessional rate in accordance with Section 8(1) of the Act was rightly given by the assessing authority to the dealer and that the Additional Commissioner of Sales Tax as well as the Tribunal acted contrary to law in taking a contrary view.

Accordingly, the common questions of law referred in both these references are

answered as follows :

(1) On the facts and in the circumstances of the case, proceedings u/s 39(2) of the Act were contrary to law ; and

(2) Reading and interpretation of the declaration contained in form XII-A as, well as Section 8(2) of the Act by the Tribunal was not proper, and the levy of penalty u/s 8(2) of the Act was neither lawful nor justified.

There will be no order as to costs.