

(1972) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 420 of 1971

Tahsil Co-Operative Agricultural Marketing Association Private
Limited

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 29-04-1972

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 44(1)

Citation : (1978) ILR (MP) 1081 : (1972) JLJ 902 : (1972) 17 MPLJ 960 :
(1973) 31 STC 97

Hon'ble Judges : Bishambhar Dayal, C.J.; Shiv Dayal Shrivastava, J

Bench : Division Bench

Advocate : P.S. Khirwadkar, for the Appellant; Y.S. Dharmadhikari, Advocate-
General, for the Respondent

Judgement

Bishambhar Dayal, C.J.

This judgment shall govern the disposal of Miscellaneous Civil Case No. 419 of 1971 also.

These are two references u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958. Same question has been referred to this court in both the cases and the facts on which these references are based are exactly the same. They merely relate to two periods, one relates to the period from 1st July, 1957, to 30th June, 1958 and the other to the period from 1st July, 1958, to 30th June, 1959. In the latter period, a part of it from 1st July, 1958, to 31st March, 1959, is covered by the old C.P. and Berar Sales Tax Act, 1947.

The question referred is whether, in the circumstances of the case, under the sales tax law before 1st April, 1959, or after 1st April, 1959, in respect of sale of cotton, the assessee, Tahsil Co-operative Agricultural Marketing Association Private Ltd., Khandwa, was not a dealer and was not liable to pay sales tax. The exact words of the question referred to us are as follows :

Whether, on the facts and circumstances of the case, under the State sales tax law applicable before 1st April, 1959, as well as after 1st April, 1959, in respect of the sale of cotton under the cotton pool scheme, as an agent of the Mahakoshal Marketing Co-operative Society, the Tahsil Co-operative Agricultural Marketing Association Ltd., Khandwa, was not a dealer liable to assessment of the State sales tax?

The facts are not in dispute. The Government of India in order to give facilities to the cotton growers for marketing their goods sponsored a co-operative marketing society. That marketing society either undertakes to sell the cotton which is received in pool from the producers or sells it in some places and, where suitable agricultural marketing associations are available, appoints as its sub-agents the Tahsil Co-operative Agricultural Marketing Associations for performing the duties under the pool scheme. In this judgment, the assessee, which is the Tahsil Co-operative Agricultural Marketing Association, will be called the Tahsil Association, whereas the Mahakoshal Marketing Co-operative Society will be called the Marketing Society.

In a Division Bench case of this Court reported in *Madhya Pradesh State Co-operative Marketing Society v. Commissioner of Sales Tax* 1971 M.P.L.J. 163 the rules and the cotton pool scheme were considered and it was held that the Marketing Society was a dealer and was liable to pay sales tax. That was a case in which the Marketing Society itself was selling the pool cotton and the question was whether under the cotton pool scheme the Marketing Society could be called a dealer and assessed to sales tax for sales effected by it. In this case, the Marketing Society has appointed the Tahsil Association as its sub-agent and sales are effected by that Association. The sales tax department assessed the Tahsil Association to sales tax on the sales effected by it. The contention of the Tahsil Association was that it was merely acting as an employee of the main Marketing Society and was, therefore, not liable to pay sales tax on the sales effected by it. This contention was not accepted by the department and the Board of Revenue also agreed with the sales tax department that the Tahsil Association was liable to be assessed to sales tax. On an application by the Tahsil Association, this reference has been made to this court.

The main contention of the learned counsel appearing for the assessee is that the Tahsil Association is not the owner of the goods and it is not free to sell them to anybody unless the sale is approved by the pool committee. Under the rules, a Tahsil Association has also to keep the cotton purchased by it from the growers for and on behalf of the Marketing Society and, after its sale, to forward immediately the sale proceeds to the Marketing Society. It was, therefore, contended that the Tahsil Association had actually no discretion in the matter and cannot be called a dealer.

The definition of a "dealer" under the old Act of 1947 was as follows :

"Dealer" means any person who, whether as principal or agent, carries on in

Madhya Pradesh the business of selling or supplying goods, whether for commission, remuneration or otherwise and includes a firm, a partnership, a Hindu undivided family and the Central or a State Government or any of their departments and includes also a society, club or association selling or supplying goods to its members;

Explanation.-The manager or agent of a dealer who resides outside Madhya Pradesh and who carries on the business of selling or supplying goods in Madhya Pradesh shall, in respect of such business, be deemed to be a dealer for the purposes of this Act.

This definition clearly includes even an agent, whether he is acting on remuneration or commission. Under the definition given in the new Act of 1958, a dealer has been defined as follows:

"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) the Central or a State Government or any of their departments, 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, its 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 the business of buying, selling, supplying or distributing goods on behalf of any principal....

From this definition also, it has been made quite clear that a commission agent, a broker, a del credere agent or an auctioneer is also a dealer. The crux of the matter really is that the person must be carrying on the business of selling and he must be able to transfer the goods to the purchaser himself. In the present case, the rules framed by the Tahsil Association for the conduct of its business themselves indicate that it is the Tahsil Association which is actually conducting the sales and passes title to the purchasers.

The learned counsel for the assessee referred to the cotton pool scheme (annexure B, at page 11 of the paper book) where the mode of sale is described and relied upon the following sentences to indicate that the Tahsil Association was not free to sell the goods. The sentences are as follows:

In case, the public auction does not bring in a reasonable price, the Association will invite tenders from purchasers. These tenders will be opened by the Secretary of the Association in the presence of members of the Managing Committee and a decision taken as to whether cotton should be sold and, if so, to whom. This decision shall be subject to the approval of the Marketing Society

or such person authorised by it in this behalf.

The contention of the learned counsel is that since the final disposal of the goods was subject to the approval of the Marketing Society, the Tahsil Association cannot be said to be a dealer which is really selling the goods. We are unable to agree with this contention. The Marketing Society advances money to the Tahsil Association and in order to ensure that the money is not lost and also to ensure that fair price is received by the growers, this control is exercised by the Marketing Society. Mere exercise of control by the Marketing Society does not take away the right of the Tahsil Association to ultimately sell the goods, whether it is with the approval of the Marketing Society or not. The seller of the goods is the Tahsil Association and the title passes to the purchasers by the act of the Tahsil Association.

The learned counsel appearing for the assessee relied upon paragraph 5 of the judgment of the Division Bench case referred to above. That paragraph does not deal with the liability of the sub-agent or the agricultural association for payment of sales tax on transactions effected by the agricultural association. The general remarks made in that paragraph do not affect the liability to pay sales tax on such transactions.

Our answer to the question referred, therefore, is that the assessee is a dealer liable to tax and so against the assessee. Parties shall bear their own costs of this reference.