

(1986) 08 CAL CK 0012
In the Calcutta High Court
Case No : Matter No. 683 of 1979

The Manager, Government of India Forms Stores	APPELLANT
Vs	
Assistant Commissioner, Commercial Taxes	RESPONDENT

Date of Decision : 19-08-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 13, 2, 9
Constitution of India, 1950 — Article 226

Citation : (1987) 67 STC 93

Hon'ble Judges : Monjula Bose, J; Dipak Kumar Sen, J

Bench : Division Bench

Advocate : Gopal Chakraborty and M. Bhattacharji, for the Appellant; S.K. Mitter and R.N. Saha, for the Respondent

Judgement

Dipak Kumar Sen, J.—Government of India Forms Stores, the assessee, is a department of the Government of India. The said department supplies official forms to various departments of the Government of India as also to undertakings belonging either to the Government of India or the State Governments. For supply of such forms the assessee charges to the concerns supplied the value of the forms supplied, cost of packing and an amount described as "levy charge" being 10 per cent of the total amount of the previous two items.

2. The assessee is registered as a dealer under the Bengal Finance (Sales Tax) Act, 1941.

3. The Commercial Tax Officer, Sealdah Charge, in the course of examination of the sales journals of the assessee found that during the period from the 1st April, 1965 to the 31st March, 1966, there had been inter-State supply of forms by the assessee as aforesaid and a total amount of Rs. 1,78,671.83 had been realised by the assessee on account thereof.

4. The Commercial Tax Officer held, that such amount represented the turnover of the assessee under the Central Sales Tax Act, 1966, under which the assessee

was not registered as a dealer and assessed Central sales tax on the said amount u/s 9(2) of the Central Sales Tax Act. In the course of assessment the assessee was called upon by the Commercial Tax Officer to furnish analysis of sales showing supply to the Government of India departments and to other Government undertakings. Such analysis was not furnished as directed. The Commercial Tax Officer held that the entire amount represented the value of the sales to Government undertakings other than the Government of India departments.

5. Being aggrieved, the assessee preferred an appeal from the said assessment before the Assistant Commissioner of Commercial Taxes. It was contended before the Assistant Commissioner that the assessee was not a dealer within the meaning of Section 2(b) of the Central Sales Tax Act, 1956, inasmuch as the transactions involved did not amount to sales under the Indian Sale of Goods Act. It was contended further that in any event, only the transactions where forms were supplied against cash payment could be subjected to the Central sales tax.

6. The Assistant Commissioner noted that the assessee was a dealer registered under the Bengal Finance (Sales Tax) Act, 1941, and had been filing returns under the said Act, thereby admitting its liability to pay tax under the said Act.

7. He held that the transactions had by the assessee were within the meaning of the expression "sale" and that the consideration "sale price" as defined in the Central Sales Tax Act. It was noted that no documentary evidence had been produced to show that any part of the transactions were exempt from Central sales tax by reason of the supplies being made to the Government of India itself. The Assistant Commissioner held that the question of profit-motive was redundant in view of the definition "business" in the Bengal Finance (Sales Tax) Act, 1941. The appeal of the assessee was rejected.

8. Being aggrieved, the assessee preferred a revision before the Commissioner of Commercial Taxes, West Bengal, which was ultimately taken up and disposed of by the West Bengal Commercial Tax Tribunal. It was contended before the Tribunal, inter alia, that the Government of India Forms Stores was not a person and, therefore, should not be regarded as a dealer within the meaning of the Central Sales Tax Act. This contention was rejected by the Tribunal on the ground that the definition of the term "dealer" u/s 2(b) of the Central Sales Tax Act included any person who carried on business of buying or selling goods and also a Government which carried on such business. The Tribunal held that as the assessee was a concern of the Government, the question whether or not it was a person was of no relevance. The Tribunal further held that the Government or its departments or concerns could be regarded as distinct quasi legal entity and could be held to be a dealer within the meaning of the Central Sales Tax Act, if it carried on business of buying and selling goods even though it might not be a person.

9. It was further contended on behalf of the assessee that supply of forms to the Government departments or Government undertakings by the assessee did not amount to carrying on of any business in a commercial sense as the same was done without any profit-motive. The Tribunal noted that the assessee supplied forms to the indentors for valuable consideration and issued bills in respect of such supplies to the persons to whom the forms were supplied. In the bills, the assessee charged the value of the forms, the cost of packing as also a levy charge at the rate of 10 per cent of the total amount of the earlier two items. No explanation was offered by the assessee about the imposition of the levy charge. The Tribunal noted that the assessee was unable to produce before the Commercial Tax Officer the final accounts in respect of supply of forms for the material period in spite of demands. It was contended on behalf of the Revenue that a presumption should be drawn by reason of the withholding of the final accounts that the assessee had in fact made gains or earned some profits in the valuation.

10. The Tribunal held that the fact that the assessee had imposed levy charge at the rate of 10 per cent over and above the value of the forms supplied and the costs of packing indicated that the assessee intended to make some amount of profit or gain out of the transactions. The Tribunal came to this conclusion following a decision of the Assam (Gauhati) High Court in *Government Medical Store Depot v. Superintendent of Taxes, Gauhati* (Civil Rule No. 460 of 1969 decided on 26th June, 1973-Gauhati High Court), where the facts were almost identical. The Tribunal also noted a decision of the Punjab and Haryana High Court which followed the decision of the Assam High Court. The contentions of the assessee were rejected and the revision prayed for was rejected.

11. On an application of the assessee u/s 9(2) of the Central Sales Tax Act, 1956, read with Section 21(1) of the Bengal Finance (Sales Tax) Act, 1941, the Tribunal has referred the following questions, as questions of law arising out of its order, for the opinion of this Court:

Q. 1. Can the assessee, Government of India Forms Stores, being a department of the Government of India, be regarded as a "person" within the meaning of the definition clause of the term "dealer" u/s 2(b) of the Central Sales Tax Act ?

Q. 2. Can the transactions of supply of forms by the assessee to the various departments and undertakings of the Government during the material period on the facts and in the circumstances of the case, be regarded as "business" within the meaning of the definition clause of the term "dealer" u/s 2(b) of the Central Sales Tax Act ?

Q. 3. Was the Tribunal right, on the facts and in the circumstances of the case, in holding that the assessee is a "dealer" as defined by Section 2(b) of the Central Sales Tax Act ?

Q. 4. Was the levy of sales tax on the assessee under the Central Sales Tax Act by the Commercial Tax Officer concerned, on the facts and in the circumstances

of the case, without jurisdiction or illegal ?

12. At the hearing of this reference, learned Advocate for the assessee contended that the impugned assessment was erroneous inasmuch as the unit of assessment could not be the Manager, Government of India Forms Stores but the Union of India. Learned Advocate contended further that to the extent the assessee supplied forms to the other departments of the Government of India there was neither a sale nor any transfer of property because there could not be any sale by a person to itself.

13. Learned Advocate contended further that in terms of the directive issued by the authorities concerned for the purpose of accounts and audits it was not necessary for the Forms Store to keep and maintain accounts as required in commercial concerns by way of profit and loss account and balance sheets. All that the Government required was to ascertain with some accuracy taking into account the amounts received and amounts paid out whether the balance of the amount was sufficient to cover the payments made. The intention of the Government was to ascertain whether the balance would be a surplus or a deficit on the basis of which the Government would either curtail or expand its activities or increase or decrease taxation. Learned Advocate referred to an official publication, named "Introduction to Indian Government Accounts and Audits".

14. Learned Advocate next submitted that the decision of the Assam High Court in Government Medical Store Depot (Civil Rule No. 460 of 1969 decided on 26th June, 1973-Gauhati High Court) on the basis of which the Tribunal passed its order had been since reversed by the Supreme Court. It was contended, therefore, that the very basis of the decision of the Tribunal was erroneous and should not be upheld.

15. In support of his contentions learned Advocate for the assessee cited the following :

(a) Government Medical Store Depot Vs. State of Haryana and Another, . The facts in this case were that the Government Medical Store Depot, Karnal, a department of the Central Government, supplied medicines and hospital equipments to Government hospitals, Government institutions, health centres, dispensaries and primary health units in northern India. The stores and equipments were purchased by the depot and supplied to the aforesaid institutions after adding service charges of 10 per cent on the cost of indented stores. In 1956-67, a question arose whether the activities of the depot brought it within the mischief of the Punjab General Sales Tax Act, 1948, and whether the depot was a dealer within the meaning of Section 2(d) of the said Act. The Excise and Taxation Officer, Karnal, assessed the depot under the Punjab General Sales Tax Act, 1948, as also under the Central Sales Tax Act. The said assessment was challenged under Article 226 of the Constitution. The matter ultimately came up before the Punjab and Haryana High Court. The Punjab and Haryana High Court noted the definition of dealer both under the Punjab General Sales Tax Act, 1948,

as also under the Central Sales Tax Act and following its earlier decision held that the depot was a dealer both within the meaning of the Central Sales Tax Act as also the Punjab General Sales Tax Act. The High Court noted that appeals against the assessment as also the penalty imposed were pending and did not interfere any further in the matter.

(b) Government Medical Store Depot, Gauhati Vs. Superintendent of Taxes Gauhati and Others, . In this case, a Government Medical Store Depot, set up at Gauhati by the Government of India, used to procure and supply medical stores to the Government institutions of both Central and State Governments as also the Railway establishments located in Assam and other areas of the North Eastern Region of India. The said depot was sought to be taxed under the Assam Finance (Sales Tax) Act, 1956 and the Central Sales Tax Act, 1956. The depot resisted the assessment contending that it was not a dealer within the meaning of either of the said Acts and was not liable to be taxed. The assessments made on the depot were challenged by a writ petition filed before the Assam High Court without success. The depot came up on an appeal before the Supreme Court. It was contended before the Supreme Court that the charges made by the depot were fixed on the basis of costs of acquisition plus departmental charges consistent with overheads on the principle "no loss- no profit". The formula of fixation of rates and the levy of departmental charges had been approved by the Government of India. It was contended that unless it was found that the transactions had been carried on with a view to make profit, the same would not be held to constitute a business and the depot would not come within the mischief of the definitions of a dealer under the said Acts which required a business of buying and selling of goods to be carried on by a dealer.

16. The Supreme Court noted several of its earlier decisions and held that during the relevant period the definitions of the term "business" in the Acts, profit-motive had not been omitted and in the absence of such profit-motive, transactions though satisfying the other requirements of business, namely, volume, frequency, continuity or regularity, would not constitute a business so as to make a person, entering into such transactions, a dealer within the meaning of the said Act. The Supreme Court noted the decision of the Punjab and Haryana High Court in Government Medical Store Depot [1977] 39 STC 114 and held that the said decision was to be read on the facts available on record and would not cover the case before the Supreme Court. The Supreme Court held further, that the depot concerned had from the very beginning taken the stand that the transactions in question were without any profit-motive. The burden lay on the Revenue to show that these transactions were carried on with a profit-motive, whether profit was actually earned or not was of no material importance. No investigation had been made by the Revenue into this aspect of the matter. The High Court also did not come to a finding that the depot was carrying on business with a view to earn profit. The Supreme Court allowed the appeal and quashed the assessment. The prayer of the sales tax authorities that the matter should be remanded for further enquiry was not allowed as the Supreme Court

thought that long time had elapsed since the original assessment.

17. Learned Advocate for the commercial tax authorities contended on the other hand that the Tribunal has found as a fact that by imposing a levy charge of 10 per cent over and above the value of the form supplied and costs of packing it was indicated that the assessee intended to make some amount of profit or gain out of the transaction. This finding of fact had not been challenged by the assessee and has become final.

18. Learned Advocate contended further that the assessee in the instant case, had voluntarily registered itself as a dealer under the Bengal Finance (Sales Tax) Act, 1941, and thereby admitted that it was carrying on business as a dealer in the State. Learned Advocate submitted that this fact distinguished the present case from the case before the Supreme Court in Government Medical Store Depot, Gauhati Vs. Superintendent of Taxes Gauhati and Others,

19. Learned Advocate submitted further that in the instant case the tax authorities had sufficiently investigated the matter and had called upon the assessee to produce its accounts to show that it was not the intention of the assessee to make any profit. The assessee failed to do so in spite of opportunities given.

20. Learned Advocate for the assessee contended in reply that, so far as the Bengal Finance (Sales Tax) Act, 1941 was concerned, the registration of the assessee thereunder was by mistake and in any event, the same could not form a valid basis for registration or assessment of the assessee under the Central Sales Tax Act. Learned Advocate also pointed out that u/s 13 of the Act the assessee was required to keep a true account of the value of the goods bought and sold by it. The assessee had maintained such an account and had produced the same before the Commercial Tax Officer. In any event, under the said section the Commissioner was empowered to call upon the assessee in writing to keep accounts in a particular manner as prescribed. This had not been done in the instant case. Therefore, the question of final accounts did not arise and the authorities concerned misdirected themselves in assuming that the assessee was called upon to keep any final accounts to establish whether the assessee had earned a profit or not.

21. It is not in dispute before us that at the material time the expression "dealer" as defined under the Central Sales Tax Act, 1956 meant any person who carried on the business by buying or selling or supplying of goods. In the same Act the expression "business" was defined to include any trade or commerce or adventure in the nature of trade or commerce. Prior to 1976, the Central Sales Tax Act did not provide that a trade or commerce or adventure in the nature of trade without a motive to make a gain or profit whether or not any gain or profit had accrued from such trade or commerce would still be a business within the meaning of the Act.

22. It is clear from records that it was the case of the assessee throughout that it

did not enter into transactions with the object of making profit.

23. Even assuming that the assessee failed to explain the amount charged described as "levy charges" it does not follow that by making the said charge the assessee intended to make any profit. The value of the forms and the costs of packing would not represent the entire costs of the forms in the hands of the assessee. Under ordinary business or commercial principle, one cannot overlook storage, overhead and administration charges.

24. In our view the levy charges of 10 per cent could very well be intended to cover such other costs in the hands of the assessee which were not covered by the value of the forms and the costs of packing.

25. Assuming that all the facts which have been found by the Tribunal are correct and have not been challenged, still then the conclusion drawn by the Tribunal that in making the said charges the assessee was actuated by a profit-motive is not warranted. Conclusions drawn from the facts found may very well be a question of law.

26. We also note that the Tribunal based its conclusion on the decision of the Assam High Court in Government Medical Store Depot, Gauhati (Assam) (Civil Rule No. 460 of 1969 decided on 26th June, 1973-Gauhati High Court). The said decision of the Assam High Court has been set aside by the Supreme Court as noted earlier. The facts before us in this reference and the facts before the Supreme Court do not appear to be different in any significant manner. We also note that the Supreme Court noted the decision of the Punjab and Haryana High Court and held that the said decision should be confined to the facts on record of that case.

27. For the reasons as above, we answer questions Nos. 2, 3 and 4 all in the negative and in favour of the assessee.

28. In view of our answer to the questions Nos. 2, 3 and 4 we refrain from answering question No. 1 as the answer to the other questions disposes of the reference.

29. In the facts and circumstances, there will be no order as to costs.

Monjula Bose, J.

30. I agree.