DELHI CLOTH AND GENERAL MILLS CO. LTD. ETC. A

v.

COMMISSIONER OF SALES TAX, INDORE

July 28, 1971

[K. S. HEGDE AND A. N. GROVER, JJ.] B

Madhya Pradesh General Sales Tax Act, 1958, *ss.* 2(*c*), (*o*), (*t*), *and* 4—*Sales Tax recovered from buyer—If part of turnover.*

The assessee, while selling goods, charged the sales tax separately and collected it from the buyers. It did not include the sales-tax so collected in its turnover. The authorities under the Madhya Pradesh General Sales Tax Act, 1958, as well as the High Court, held that the sales tax collected from the buyers was a part of the price of the goods sold and therefore should have been included in the assessee's turnover. C

In appeal to this Court,

HELD: Under s. 4 of the Act the liability to pay tax is that of the dealer. There is no provision in the Act imposing any liability on the purchaser to pay the tax so imposed on the dealer and there is no law empowering the dealer to collect the tax from his buyer. Hence the dealer would not be legally entitled to collect *the tax* payable by him from his buyer, and whatever collection the dealer makes from his customers can only be by adding the tax to the price, so that, the tax becomes part of the valuable consideration given by a purchaser for the goods purchased by him. Therefore, the distinction between the two amounts—tax and price—loses all significance, and the tax becomes a part of the sale price as defined in s. 2(c) of the Act and must be taken into consideration in computing the turnover. [948D-G; 950A] D E

Tata Iron & Steel Co. Ltd. v. *State of Bihar*, [1958] S.C.R. 1355, *M/s. George Oakes (P) Ltd.* v. *State of Madras*, 12 S.T.C. 476, *Paprika Ltd. & Anr.* v. *Board of Trade*, [1944] All. E.R. 372 and *Love* v. *Norman Wright (Builders) Ltd.*, [1944] 1 All. E.R. 618, referred to.

Deputy Commissioner of Commercial Taxes, Coimbatore, v. *M. Krishnaswamy Mudaliar & Sons*, 5 S.T.C. 88, distinguished. F

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1272 and 1273 of 1967.

Appeals by special leave from the judgment and order dated July 10, 1967 of the Madhya Pradesh High Court in Misc. Civil Cases Nos. 61 and 62 of 1967. G

AND

Civil Appeal No. 2453 of 1968.

S. T. Desai, A. N. Sinha and *G. S. Chatterjee* for the appellant (in C.As. Nos. 1272 and 1273 of 1967).

A. N. Sinha, for the appellant (in C.A. No. 2453 of 1968). H

I. N. Shroff, for the respondent (in all the appeals).

A The Judgment of the Court was delivered by

Hegde, J.—These appeals by special leave arise from the decision of the High Court of Madhya Pradesh in three references under s. 44(1) of the Madhya Pradesh General Sales Tax Act, 1958 (to be hereinafter referred to as the Act). Those references were made at the instance of the assessee who is the appellant in B all these appeals. The question of law referred to the High Court for its opinion in each one of these cases is identical and that question reads :

> "In the facts and circumstances of the case is the sales tax recovered by the petitioner a part of the sale price as defined in clause (o) of Section 2 of the Madhya C Pradesh General Sales Tax Act, 1958."

Herein we are concerned with the assessment years 1961-1962, 1962-1963 and 1963-1964. The assessee is a dealer in Vanaspati. The facts found are that while selling Vanaspati, the assessee charged the sales tax separately and collected the same from his D buyers. To each of its buyer it issued a receipt in respect of each sale transaction wherein it showed the price of the goods as such and the sales tax payable on the price of those goods. In the turnover returned it did not include the sales tax collected by it from its buyers but the authorities under the Act as well as the High Court held that sales tax collected by it from its buyers was E a part of the price of the goods sold and therefore the same will have to be taken into consideration in computing its turnover. The assessee is challenging that conclusion.

Section 4 of that Act is the charging section. Sub-s. (1) thereof says :

F > "Every dealer whose turnover during a period of twelve months immediately preceding the commencement of this Act exceeds the limit specified in sub-section (5), shall from such commencement be liable to pay tax under this Act on his taxable turnover in respect of sales or supplies of goods effected in Madhya Pradesh."

G A dealer is defined in s. 2(d) as meaning 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, be it a society, a club, firm or association which buys goods from or sells, supplies or distributes goods to its mem- H bers or commission agent, a broker, a *del-creders* 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.

"Turnover" is defined thus in s. 2(t): A

" "turnover" used in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period: B

Provided that in the case of a sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, the amount of the consideration relating to such sale shall be excluded from his turnover when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting." C D

"Sale price" is defined in s. 2(o):

" 'sale price' means the amount payable to a dealer as valuable consideration for the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice but including any sum charged for anything done by the dealer in respect of the goods at the time or before delivery thereof other than the cost of installation when such cost is separately charged and the expression 'purchase price' shall be construed accordingly." E F

In view of the definition of sale price all that we have to see is whether the collection of sales tax by the dealer from his purchasers can be considered as valuable consideration received by him for the sale of goods.

Under s. 4 the liability to pay tax is that of the dealer. The purchaser has no liability to pay tax. There is no provision in the Act from which it can be gathered that the Act imposes any liability on the purchaser to pay the tax imposed on the dealer. If the dealer passes on his tax burden to his purchasers he can only do it by adding the tax in question to the price of the goods sold. In that event the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchasers for the goods purchased by him. If that be so, the tax collected by the dealer from his purchasers becomes a part of the sale G H

price fixed, as defined in s. 2(o). In some of the Sales Tax Acts power has been conferred on the dealers to pass on the incidence of tax to the purchasers subject to certain conditions. Those provisions may call for different consideration. In the Act there is no such provision except s. 7-A which was introduced into the Act by Madhya Pradesh Act 23 of 1963. That provision would have relevance only in respect of the assessment for the year 1963-64.

Section 7-A says:

> "No dealer shall collect any amount, by way of sales-tax or purchase tax, from a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting."

In these appeals, it is not necessary to examine the relevance of that provision. But that provision does not give any statutory power to collect sales tax as such from any class of buyers. There is no other provision in the Act which confers such a power on the dealers. Unless the price of an article is controlled, it is always open to the buyer and the seller to agree upon the price to be payable. While doing so it is open to the dealer to include in the price the tax payable by him to the government. If he does so, he cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers the same can only be considered as valuable consideration for the goods sold.

In *M/s. George Oakes (Private) Ltd.* v. *The State of Madras and Ors.* (1) this Court was called upon to consider whether a dealer can pass on his tax liability as such to his customer. In that decision while rejecting the contention that the tax liability as such can be transferred to the buyers this Court referred to the observations of Lawrence J. in *Paprika Ltd. and anr.* v. *Board of*

(1) 12 S.T.C. 476.

Trade(1) and Goddard L. J. in *Love* v. *Norman Wright (Builders) Ltd.*(2). A

In the former case Lawrence J. observed:

"Whenever a sale attracts purchase tax, that tax presumably affects the price which the seller who is liable to pay the tax demands but it does not cease to be the price which the buyer has to pay even if the price is expressed as x plus purchase tax." B

In *Love's case* (supra) Goddard L. J. observed :

"Where an article is taxed, whether by purchase tax, customs duty, or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer. If the buyer agrees to the price, it is not for him to consider how it is made up or whether the seller has included tax or not." C D

In that decision reference was also made to the decision of this Court in *Tata Iron and Steel Co. Ltd.* v. *State of Bihar*(3) Therein Das C. J. who delivered the majority judgment of the Court said: E

"The circumstance that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and to retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax, which by the express provisions of the law, is cast upon the seller. The buyer is under no liability to pay sales tax in addition to the agreed sale price unless the contract specifically provides otherwise. See *Love* v. *Norman Wright (Builders), Ltd.*"(1) F G H

(1) [1944] 1, All. E.R. 372. (2) [1944]1 All. E.R. 618.
(3) [1959] S. C. R. 1355.

A From all these observations, it is clear that when the seller passed on his tax liability to the buyer, the amount recovered by dealer is really part of the entire consideration paid by the buyer and the distinction between the two amounts, tax and price looses all significance.

B In support of his contention the appellant relied on the decision of the Madras High Court in *The Deputy Commissioner of Commercial Taxes, Coimbatore* v. *M. Krishnaswamy Mudaliar and sons*(1). Therein on an interpretation of the relevant provisions of the Madras General Sales Tax Act, the court came to the conclusion that the sales tax which the dealer was authorised to collect from his customers was not a part of the sale price C received by him. This conclusion was primarily based on s. 8(B) (1) of the Madras General Sales Tax Act, 1939. There is no similar provision in the Act. Therefore it is not necessary for us to consider the correctness of that decision.

In the result these appeals fail and they are dismissed with D costs. Hearing fee one set.

V. P. S. *Appeals dismissed.*

(1) 5 S.T.C. 88.