Santumal Vs. Assistant Commissioner of Sales Tax (Appeals), Eastern Division, Ranges I and Ii, Nagpur and anr.

Santumal Vs. Assistant Commissioner of Sales Tax (Appeals), Eastern Division, Ranges I and Ii, Nagpur and anr.

SooperKanoon Citation : sooperkanoon.com/337679

Court : Mumbai

Decided On : Aug-27-1962

Reported in : [1963]14STC287(Bom)

Judge : Kotval and ;Paranjpe, JJ.

Acts : Berar Sales Tax Act, 1947 - Sections 2, 8(2) and 11(4); Berar Sales Tax Rules, 1947 - Rules 7, 8, 14, 15, 16, 17 and 26(3)

Appeal No. : Special Civil Applications Nos. 389 and 390 of 1961

Appellant : Santumal

Respondent : Assistant Commissioner of Sales Tax (Appeals), Eastern Division, Ranges I and Ii, Nagpur and anr.

Advocate for Def. : G.R. Mudholkar, Additional Government Pleader

Advocate for Pet/Ap. : M.N. Phadke and ;V.M. Golwalkar, Advs.

Judgement :

Kotval, J.

1. These are two petitions preferred by one Santumal Alamchand who has been assessed to sales tax under the Central Provinces and Berar Sales Tax Act, 1947 (No. XXI of 1947). The two petitions are in respect to two different assessment years. In S.C.A. No. 390 of 1961 the assessment year is 27th October, 1954, to 14th November, 1955, and in S.C.A. No. 389 of 1961 the assessment period involved is from 15th November, 1955, to 2nd November, 1956. The petitioner had made quarterly returns as required by law in each year but the return were in every case delayed. The delay was not condoned by the authorities and so they have assessed the petitioner in both the years upon a best judgment assessment and under section 11(4) of the Act, for the delay in making the returns, the petitioner has also been penalized. The penalty imposed is Rs. 3,500 in the year involved in S.C.A. No. 390 of 1961, namely, 27th October, 1954, to 14th November, 1955, and in S.C.A. No. 389 of 1961 which is for the period 15th November, 1955, to 2nd November, 1956, the penalty imposed is Rs. 650.

2. On behalf of the petitioner the imposition of these penalties has been challenged before us as also the best judgment assessments on the ground that the assessment is so utterly capricious and arbitrary that it cannot, even having regard to the provisions of section 11(4), be deemed to be a judgment under that section. Apart from this point the principal point argued in these petitions by Mr. Phadke on behalf of the petitioner is directed against the disallowance of exemption in regard to certain sales made to registered dealers. These were sales in respect of which the petitioner claimed exemption under section 2(j)(a)(ii) of the Act, that is to say, because they were made to registered dealers. These sales were all made to three persons, namely,

(1) Mohanlal Asumal,

(2) Deepchand Khatumal, and

(3) Tarachand Gagandas. According to the petitioner, there three persons were registered dealers and they purchased goods from him and granted him the requisite declarations that they were registered dealers and relying upon those declarations he sold his goods and therefore he was entitled to claim exemption from sales tax. The revisional authority, namely, the Assistant Commissioner of

Sales Tax (Appeals), Eastern Division, Nagpur, dealing with this aspect of the case however did not allow the exemption. It may incidentally be mentioned here that these sales formed the main bulk of the transactions which the petitioner entered into in the years under assessment. The reason why the Assistant Commissioner disallowed exemption for these transactions was that he held that these persons were not bona fide dealers at all, that they had been granted certain registration certificates upon utterly false representations made by them, and when such false or fraudulent representations were discovered, the department cancelled the certificates of these three dealers. Therefore the petitioner could not, having regard to the provisions of the law, take advantage of such fraudulent certificates obtained by bogus dealers nor could he claim exemption in regard to sales made to such dealers.

3. The facts to be culled from the order of the Assistant Commissioner as to the dates of issue and cancellation and the dates from which these certificates were cancelled are as follows :

Certificate -- Name of the dealer : Issued on : Cancelled on : Cancelled from : (Effective according to rule 14) 1. Mohanlal Asumal 25-9-1953 21-2-1955 27-11-1954 2. Deepchand Khatumal 17-1-1955 7-1-1956 8-2-1955 3. Tarachand Gagandas 13-4-1955 25-8-1956 13-3-1955

4. It will be noticed that the registration certificate of each of these three dealers was in force during the currency of the years under assessment and that the cancellation orders were subsequent to the commencement of the second year under assessment though before it ended except in the case of Mohanlal where the certificate was cancelled during the first year under assessment.

5. The principal argument in these two petitions has been that the subsequent cancellation has in each case, except that of Tarachand, been made to take effect, so to say, retrospectively, and it is by passing such orders of cancellation and giving them retrospective operation that the department has been enabled to say that the transactions entered into by the petitioner with these persons were not with registered dealers. Mr. Phadke has challenged the right of the department to pass cancellation orders of this kind and he has further submitted that even

assuming that they could pass such orders, the petitioner who bona fide dealt with these registered dealers could not be penalised so long as he obtained the requisite declarations under law from these dealers.

6. In our opinion, this argument is entitled to succeed. The stand which the departmental authorities have taken may best be set forth in the words of the Assistant Commissioner in paragraph 4 of this order dated 28th November, 1961, in Revision Case No. R/54/60-61 :

'It is, therefore, evident that the registration certificate granted to this dealer was required to be cancelled forthwith as it was found by the Assessing Officer that this dealer has no regular place of business and was not accounting for the purchases and sales effected and was trying to evade sales tax. In the circumstances the declarations furnished by this dealer to the applicant cannot be considered as genuine. Under the provisions of rule 26(3) of the C.P. and Berar Sales Tax Rules, 1947, a dealer who claims deductions under section 2(j)(a)(ii) is required to file true declarations in support of such claim.'

7. Then the learned Assistant Commissioner proceeded to quote rule 26 and continued his reasoning as follows :

'It would be seen from the above rule that the deduction under section 2(j)(a)(ii) would be admissible only if it is found that the declaration obtained under rule 26(3) is a true declaration. It is not enough that the declaration should be merely in the prescribed form but it must be a true and genuine declaration which means that the purchasing dealer would be in a position to show the purchases effected by him against such declarations as well as the sales thereof at the time of assessment. If an enquiry it is found that the declaration furnished by the purchasing dealers were declarations which were spurious in character or furnished with an ulterior or fraudulent motive there was no obligation on the part of the Assessing Officer to accept such declarations and to allow deductions under section 2(j)(a)(ii) in respect of such declarations notwithstanding the fact that the assessee may have acted in a bona fide manner or he may have allowed himself to be misled or duped by the purchasing dealer.'

8. In the first place, it may be noticed from the finding which we have quoted above that the Assistant Commissioner has used certain expressions regarding the declarations issued by the three registered dealers such as 'spurious in character', 'with an ulterior or fraudulent motive', and as not 'genuine'.

9. We are somewhat at a loss to find the material upon which the Assistant Commissioner proceeded to make these remarks. The only material which he set forth in his order was in the earlier part of the passage which we have quoted, namely, '... as it was found by the Assessing Officer that this dealer has no regular place of business and was not accounting for the purchases and sales effected and was trying to evade sales tax.' We are unable to see in the first place how, because a registered dealer was doing any one or more of these things, it could necessarily be held that the registration certificate given to him was either 'spurious in character' or that the declarations granted by him were 'furnished with an ulterior or fraudulent motive.' But apart from this, the other and perhaps the more important point to be noticed in the findings of the Assistant Commissioner is that he has given no finding that the present assessee whom he has deprived of the benefit of the declarations by those registered dealers was a party to any fraudulent designs of those registered dealers or that he shared their ulterior or fraudulent motive. On the contrary, it appears that the Assistant Commissioner assumed that the assessee had acted bona fide but that he was also the subject of a deception. This is clear from the words used in the passage quoted above 'notwithstanding the fact that the assessee may have acted in a bona fide manner or he may have allowed himself to be misled or duped by the purchasing dealer.'

10. We have set forth these findings of the revisional authority at some length to emphasize the peculiar nature of the findings because, in our opinion, these had a crucial bearing upon the decision which has been reached, the effect of which is to deprive the petitioner of the benefit of the clear declarations which he had obtained from the three registered dealers simply because those dealers or their dealings had been found to be subsequently shady in character.

11. The Central Provinces and Berar Sales Tax Act and the Rules framed thereunder have made detailed provision for the issue of registration certificates

and their cancellation. They are contained in section 8 of the Act. Sub-section (1) of that section requires that no dealer shall, while being liable to pay tax under this Act, carry on business as a dealer unless he has been registered as such and possesses a registration certificate. Sub-section (2) requires that the application for registration shall be in the prescribed manner to the prescribed authority. Sub-section (3) then requires that if the authority is satisfied that an application for registration is in order, it shall in accordance with such rules as may be made under the Act, register the applicant and grant him a certificate of registration in the prescribed form. Sub-section (4) gives power to the Commissioner to amend a registration certificate upon certain conditions. Then sub-section (6) deals with the cancellation of registration certificates and it prescribes :

'When -

(a) a registered dealer discontinues or transfers his business, or

(b) a registered dealer has ceased to be liable to pay tax under section 4, or

(c) a registered dealer has been granted a certificate of registration by mistake,

the Commissioner may, either on his own motion or on the application of the dealer in that behalf, cancel the registration but notwithstanding such cancellation, the dealer shall be liable to pay tax under this Act for the period during which his certificate of registration remained in force.'

12. The provisions of this section have to be read along with the rules 7, 8, 14, 15, 16 and 17. Rule 7 prescribes how an application for registration under section 8 or 8-A has to be made and it says that it should be made in Form I given in the Appendix to the Rules. It also indicates that the dealer has to specify in clear terms various details as to the nature of his business and the goods or the class of goods in which he deals, the location and the nature of the business and so on. The provisions of rule 8 are important. Sub-rule (1) of that rule prescribes that when the Sales Tax Officer is satisfied 'after making any enquiry that he may think necessary' that the applicant has correctly given all the requisite information and that the application is in order, he shall register the dealer and shall issue a

certificate of registration in Form II together with the copies of the schedules to the Act. The registration certificate has to specify the location of the business, the nature of the business and the raw materials which may be sold to the dealer free of tax. Rule 14 deals with the cancellation of the registration certificate issued under section 8, and rule 15 with the publication of the cancellation of the certificate. Rule 16 provides for the submission of a cancelled certificate by the dealer for cancellation, and rule 17, sub-rule (1), lays down that the State Government shall publish the list of names and addresses of registered dealers together with the particulars required by section 9 in the Official Gazette in an alphabetical order in the prescribed form. The form is given in rule 17 showing the name and address of the registered dealer, the location of the place of business, the number and date of his registration certificate, and the goods specified in the registration certificate of dealers who manufacture any goods for sale. Sub-rule (2) prescribes that the State Government shall publish in the first Gazette in the month of April of each subsequent year or as soon thereafter the consolidated list prescribed under clause (b) of section 9.

13. It will be seen from these provisions that meticulous care has been bestowed by the Legislature in making the provisions as to registration as also by the State Government in framing their rules as to registration of dealers. Not only has the dealer on his part got to give details about the nature and location of his business but a duty is cast upon the authorities themselves to check these details mentioned in the application by the dealer and make such inquiry as they may think necessary. They can only grant a certificate of registration when they are satisfied that the applicant has correctly given all the requisite information and that his application is in order. It was not in dispute in these petitions that the three registered dealers to whom the petitioner sold his goods, namely, Mohanlal, Deepchand and Tarachand, had been given registration certificates under rule 8 and that they continued to hold those certificates until they were cancelled by order of the appropriate authorities. The cancellation was mostly after the transactions entered into by the petitioner.

14. For the purpose of claiming exemption these certificates are vital documents because on the basis of these certificates being granted by the department to a

dealer that dealer is empowered to grant certain declarations which declarations in their turn would entitle persons selling goods to the registered dealer to claim exemption from sales tax. These provisions which grant exemption from sales tax in respect of goods sold to a registered dealer are to be found in section 2(j)(a)(ii). Section 2(j) defines 'turnover' as follows :

''turnover' means the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period; and includes in the case of goods on the purchase of which a tax is leviable under this Act the aggregate of the amount of purchase prices and parts of purchase price paid or payable by a dealer in respect of the purchases of each goods effected during the prescribed period; and the expression 'taxable turnover' means in relation to turnover of sales that part of a dealer's turnover during which period which remains after deducting therefrom -

(a) his turnover during that period on -

(i) the sale of goods declared tax-free under section 6;

(ii) sales to a registered dealer of goods declared by him in the prescribed form as being intended for resale by him or of goods specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale and of containers and other materials used in the packing of such goods;

* * * *'

15. It will be clear from clause (ii) of section 2(j)(a) that sales to a registered dealer of goods declared by him in the prescribed form as being intended for resale by him or of goods specified in such dealer's certificate of registration as being intended for use by him as raw materials in the manufacture of any goods for sale, would be exempt. Now, the declaration is prescribed by rule 26 which has to be read along with section 2(j). Rule 26 runs thus :

'26. Production of documents. - (1) A dealer who desires to claim deduction from his turnover under the provision of paragraph (1) of sub-clause (a) of clause (j) of section 2 shall, on demand, produce the cash memoranda or bills or other relevant documents in support of such claim.

(2) A dealer who desires to deduct from his turnover any amount on the ground that he is entitled to make such deduction under paragraph (ii) of sub-clause (a) of clause (j) of section 2 shall, in respect of each sale to which that amount relates -

(i) submit along with the quarterly returns prescribed under rule 19, a list of such sales to be signed and verified by him; and

(ii) produce, at the time of assessment, the copy or counterfoil of the relevant cash memorandum or the bill, according as the sale is a cash sale or a sale on credit, or other relevant document in support thereof, and a true declaration in writing by the purchasing dealer.

* * * *'

16. We have already shown that the words of this rule which have weighed with the Assistant Commissioner in coming to the conclusion to which he did were the words 'a true declaration in writing by the purchasing dealer' which are to be found in rule 26(2)(ii). According to the learned Assistant Commissioner, since three dealers in this case had been found to be evading sales tax, had no regular place of business and were not accounting for the purchases and sales effected, their certificates were not true and were cancelled. But during the time that those certificates were extant, they had issued the declarations which were filed by the petitioner in support of a claim for exemption. We are unable to see how the declarations validly granted in the form appended to rule 26 by these three dealers which the petitioner upon the finding of the Assistant Commissioner had no reason to suspect were not true, became untrue because the registered dealers had been guilty of one or more evils specified such as that they tried to evade sales tax, had no regular place of business and were not accounting for the purchases and sales effected. In our opinion, the words 'a true declaration in writing by the purchasing dealer' can have no reference to such sort of conduct on the part of a registered

dealer. In our opinion, the words 'a true declaration' can only mean in the context in which they are used in rule 26(2)(ii) that the declaration must not be a false declaration in the sense that what is stated in that declaration must not be contrary to the truth. Now, what has to be declarations were in respect of purchase of goods for resale, and for such a declaration the form prescribed runs as follows :

'1 Invoice or Bill No. and date .... 2. Price of goods sold. Taxable .... Non-taxable .... ---------- Total ... ---------- 3. I, ..., a dealer holding Registration Certificate No. ....., hereby declare that I have purchased the abovementioned goods from Shri ...... a dealer holding Registration Certificate No. ..... for sale and that such resale shall not take place outside the State of Bombay. Signature (of the dealer or an agent duly authorised in writing Date .... by him).'

17. It is in respect of the above statements that the words 'declaration in writing' are used in rule 26(2)(ii). Thus, if a dealer declares that he has purchased certain goods when he has never purchased them or declares that he is holding a registration certificate for sale and does not hold a certificate or does not intend to buy the goods for resale, then such statements would be false. We do not think that because a registered dealer had fraudulently taken out a certificate upon false declarations (we are assuming all this), the declaration which is signed in the form appended to rule 26 can possibly become an untrue declaration so long as he holds a registration certificate. Yet, this is precisely what the learned Assistant Commissioner seems to think. We are unable to accept his reasoning in that behalf.

18. But apart from this, we may here stress the other point regarding his finding. There is no finding given by the Assistant Commissioner that the petitioner has in any way colluded with the registered dealers or was aware of the fraud played by them or the fraudulent nature of their business. On the other hand, as we have shown from the passage which we have quoted, the Assistant Commissioner felt and assumed that the assessee may have acted in a bona fide manner or that he may have allowed himself to be misled or duped by the purchasing dealer. This is nothing in rule 26 which, under these circumstances, justifies the department in

refusing to accept a declaration given by a registered dealer or to hold that it is an untrue declaration though on the face of it there is no reason to say so.

19. The crucial point however upon which the order of the Assistant Commissioner must be set aside is the fact that in all these cases the certificates were not cancelled until all or most of the transactions between the petitioner and those registered dealers had already taken place. We have already shown that the orders for cancellation were passed in the case of the three dealers as follows :

1. In the case of Mohanlal on 21-2-1955;

2. In the case of Deepchand on 7-1-1956;

3. In the case of Tarachand on 25-8-1956;

20. If these dates were to be taken into account, then all the transactions between the registered dealers and the petitioner had already taken place before the certificates were cancelled. No doubt, the orders purported to cancel the certificates retrospectively, that is to say, from a date anterior to the date of the passing of the order, but in the first place we are unable to see how such orders could have been passed having regard to the provisions of section 8(6) read with rule 14. Rule 14 states a number of grounds upon which a registration certificate can be cancelled. We are not sure in these cases whether these grounds have been made out. They do not appear on the face of the order of the Assistant Commissioner.

21. But that apart, the last sentence of rule 14 states :

'If the Commissioner is satisfied about the correctness of the report he shall cancel the registration and thereupon the liability of the dealer to pay tax shall cease with effect from the date of communication to him of the order of cancellation.'

22. In terms, therefore, the rule says that the liability of the dealer whose certificate is cancelled, to pay tax ceases with effect from the date of communication to him of the order of cancellation. There is no other provision in the Act or in the Rules indicating from what date the effectiveness of the order of cancellation shall

operate. Rule 14 in terms says that it shall take effect from the date of communication to the dealer. In the face of this rule and in the absence of any other provision we think that the view which the Assistant Commissioner has taken that the subsequent cancellation could affect the position of the registered dealer prior to the cancellation cannot upheld. In our opinion, the cancellation can only take effect from the date of the order of cancellation in each case and not before. Upon that view also, the transactions which the petitioner had entered into would all be covered by valid declarations issued by one or more of the three registered dealers. We think that the two orders regarding the dealers Mohanlal and Deepchand purporting to cancel their certificates from a date prior to the order were bad and cannot be justified under any provision of the Act or the Rules.

23. So far as the order passed in the case of Tarachand is concerned, there is some doubt as to what that order was. From the order of the Assistant Commissioner, it is not clear from what date that order was to take effect. He has stated at one place that it shall take effect according to rule 14, that is to say, from the date of communication of the order, but at another place, he has recorded the date of cancellation as being 13th March, 1955. We do not find on what basis he accepted that date as the date of cancellation. If that is the date, it cannot be justified under any provision of law. That order, we have already shown, can take effect only from the date of its communication.

24. The learned Additional Government Pleader did not seriously attempt to support the findings given by the Assistant Commissioner; but the stand that he took was somewhat different. He urged that the Assistant Commissioner misunderstood the findings given by his subordinate officer, namely, the Sales Tax Officer, and that he gave findings which were not necessary for the purposes of the revision before him. The learned Additional Government Pleader referred to the order of the Sales Tax Officer and urged that he has found that no sales ever took place to the three registered dealers named. He relied upon the following passage in the order of the Sales Tax Officer :

'All the three persons were in the habit of signing the declaration without purchasing any goods. This dealer (the petitioner) was asked to show that the goods were actually delivered to these persons. He had no proof to show the same. In view of all these facts, the dealer's claim under section 2(j)(a)(ii) is entirely disallowed.'

25. Now, no doubt this cryptic finding, without any reasons given in support of it, may suggest that one way out of the difficulty which faced the Sales Tax Officer was thought to be that no sales ever took place in this case, but that the three registered dealers, so to say, merely gave declarations unattached to any actual sales. But if that view were to prevail, it seems to us that there could be no levy of sales tax at all for the simple reason that no sale within the meaning of section 2(g) ever took place. That line of argument would take away the very foundation of the assessment. We may in that connection stress the fact that the Sales Tax Officer has not found as a fact that sales did take place to any person other than the three registered dealers. Therefore, if he were to hold that no sales took place to the three registered dealers in fact, then he would have no jurisdiction to assess at all. There is no finding given by him that sales took place to any other person. The learned Additional Government Pleader urged that such as it is this finding was not considered by the Assistant Commissioner and that he has completely missed the point when he proceeded to consider the effectiveness of the dealers' certificate granted to the three registered dealers. In this submission the learned Additional Government Pleader may be correct, but it is difficult to see how one can blame the Assistant Commissioner because the finding of the Sales Tax Officer is extremely vague and it is difficult to understand clearly what is was that he was finding.

26. In the result, therefore, we think that the best order that we can pass in the interests of both the petitioner and the department is to set aside both the orders of the authorities below and send back these cases for fresh assessments.

27. Two other points which have been raised in these petitions, it is not necessary to decide in the view we have taken. We may note these points here : Mr. Phadke urged in both the petitions that the best judgment must was capricious and arbitrary and did not partake of that judgment which is contemplated by section 11(4) of the Act. The other contention was that the penalties imposed upon the

petitioner in the two years under assessment could not have been levied. It was urged that the penalties were levied under rule 67, item 11-A, and that we have recently held item 11-A in rule 67 as ultra vires of section 16 of the Act, in Special Civil Application No. 375 of 1961 (heard with S.C.A. No. 376 of 1961) decided on 24th August, 1962. Since we are setting aside the orders of the authorities below, we do not think that we should pronounce upon these contentions raised. We merely note them here so that the petitioner may not be prejudiced. These points may be considered by the authorities if raised, before them.

28. The petitions are allowed with costs and the cases are sent back for fresh assessments.

29. Petitions allowed.