

SirajuddIn Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-26-1978

Reported in : [1979]43STC444(MP)

Judge : C.P. Sen and ;B.C. Verma, JJ.

Appeal No. : First Appeal No. 219 of 1973

Appellant : Sirajuddin

Respondent : The State of M.P.

Advocate for Def. : K.K. Adhikari, Government Adv.

Advocate for Pet/Ap. : R.K. Pandey, Adv.

Disposition : Appeal dismissed

Judgement :

C.P. Sen, J.

1. The plaintiff has preferred this appeal against the dismissal of his suit by the trial court on the ground that the suit is barred under Section 37 of the M. P. General Sales Tax Act, 1958 (hereinafter referred to as the Act).

2. The plaintiff was a forest contractor and he was engaged in the business of selling timber and fuel wood by converting the standing trees. For this purpose, he

used to take forest coups from the forest department in public auctions. By order dated 21st August, 1966, the Assistant Sales Tax Officer, Rajnandgaon, imposed tax of Rs. 8,275 for the period 6th December, 1962, to 27th July, 1965, and by order dated 19th December, 1966, he imposed tax of Rs. 4,950 for the period 28th May, 1965, to 31st March, 1966. He also imposed penalty of Rs. 2,500 under Section 18 of the Act for non-registration by his order dated 17th January, 1967. The plaintiff preferred a revision before the Deputy Commissioner, Sales Tax, Raipur, which was dismissed on 28th June, 1969. In pursuance of the assessment orders, the sales tax authorities issued a certificate for recovery of the amount of Rs. 15,725.

3. The plaintiff filed the present suit for a permanent injunction restraining the State from realising the amount of sales tax and penalty imposed on him. According to him, he was not a dealer and had no business from 6th December, 1962, till 31st December, 1964. Sales of forest produces were exempted from sales tax for the period 1st April, 1959, to 2nd November, 1962, under' Section 12 of the Act and, therefore, the turnover of the 12 months preceding 6th December, 1962, cannot be taken into consideration for registration as a dealer. Moreover, the turnover has to be more than Rs. 25,000. The plaintiff was also not a manufacturer within the definition given under the Act during the period for which he was assessed to sales tax. As such, the assessment of sales tax on him is illegal and without jurisdiction. He further contended that the Sales Tax Officer assumed jurisdiction to commence and conclude proceedings of best judgment assessment against the plaintiff in the absence and unawareness of the plaintiff.

4. The defendant-State resisted the suit and submitted that the plaintiff had made an application for registration on. 28th July, 1965, under Section 16 of the Act. During the course of the enquiry in that case, the plaintiff produced his account books and was examined on oath. On examination of the record and the statement recorded, it was found that the plaintiff was liable to sales tax from 6th December, 1962. Therefore, for the unregistered period from 6th December, 1962, to 27th July, 1965, assessment case under Section 16 was started and the plaintiff was noticed to appear. The plaintiff remained absent in spite of service of notice and, as such, ex pane order was passed against him on 10th March, 1967.

Against that order, revision was preferred by the plaintiff, which was dismissed by the Deputy Commissioner on 28th June, 1969. The plaintiff with his counsel appeared in the assessment case for the period 28th July, 1965, to 31st March, 1966, but his contentions were rejected. It is true that the sale of forest produce by the forest department was exempted from 1st April, 1959, to 2nd November, 1962, but the exemption was not in respect of other dealers. The plaintiff was assessed to sales tax by best judgment assessment by the sales tax authority on the basis of evidence produced before it. The plaintiff was not assessed for any period prior to 6th December, 1962. The forest department was treated as a dealer thereafter and whenever there was sale by the forest department of any forest, it used to realise sales tax from the purchaser. This was the tax which the department was required to pay to the sales tax department. It has nothing to do with the sales tax payable by the purchaser of the forest who used to convert forest produce into timber and fuel from the trees taken in auction. The suit of the plaintiff was barred under Section 37 of the Act. The orders passed by the sales tax authorities were in accordance with the evidence on record and as per the provisions of the Act. It was denied that the sales tax authorities acted without jurisdiction.

5. Because of the objection taken, the learned trial Judge framed preliminary issue as to whether the suit filed by the plaintiff is barred under Section 37 of the Act. After hearing the parties and on perusing the record, the trial Judge came to the conclusion that the Sales Tax Officer did not act beyond jurisdiction in imposing taxes and penalty on the plaintiff. The remedies sought by the plaintiff in this suit could have been sought by him before the appellate and revisional authorities under the Sales Tax Act. If the plaintiff was not satisfied with such orders, he could have referred the question to the High Court under Section 44 of the Act. The erroneous finding of fact by the sales tax authority cannot be made a foundation for a civil suit and this Court cannot sit upon judgment against the orders of the Sales Tax Officer as an appellate court. Accordingly, the suit has been dismissed with costs.

6. The only question to be considered is whether the plaintiff's suit is barred under Section 37 of the Act.

7. Section 37 of the Act is as under:

Save as provided in Section 44, no assessment order or the determination of liability to pay any tax or penalty or the recovery of any tax or penalty made under this Act or the Rules made thereunder by the Commissioner or any person appointed under Section 3 to assist him shall be called into question in any civil court and save as provided in Sections 38 and 39, no appeal or application for revision shall lie against any such assessment or order.

Under Section 9 of the C. P. C., civil courts have jurisdiction to try all suits of civil nature excepting suits, whose cognizance is either expressly or impliedly barred. It is now settled law that the exclusion of jurisdiction of the civil court is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied. The existence of jurisdiction in civil courts to decide questions of civil nature being the general rule and the exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such contention. The legislature is competent to curtail the jurisdiction of civil courts and confer the same to any other tribunal or authority. It is only the question of construction of a particular statute, whether the same by express or by necessary implication excludes the jurisdiction of civil court. If the statute creates new rights and liabilities, and if it also provides special remedy for enforcing it, ordinarily remedy of civil suit is barred. Under Section 37 of the Act, the jurisdiction of the civil court is expressly barred and the party aggrieved has to seek the remedies provided under Sections 38 and 39 by way of appeal and revision before the prescribed authorities.

8. Considering a similar provision under Section 18-A of the Madras General Sales Tax Act, 1939, the Supreme Court in *Firm of I.S. Chetty & Sons v. State of Andhra Pradesh* A.I.R. 1964 S.C. 322 has held that a suit by an assessee for recovery of a sum of money against the State on the ground that the said amount had been illegally recovered from him as sales tax under the Act is incompetent in view of the bar enacted in Section 18-A of that Act. In dealing with a similar provision under Section 20 of the Bombay Sales Tax Act, 1946, the Supreme Court in *Kamala Mills Ltd. v. Bombay State* A.I.R. 1965 S.C. 1942 has held that the clause

'an assessment made' does not mean an assessment properly or correctly made. The said clause takes in all assessments made or purported to have been made under the Act. An order of assessment, even if erroneous, and based on an incorrect finding of fact is, nevertheless, an order of assessment within the meaning of Section 20 ; and it will not be called in question in any civil court. In the above-mentioned two cases, the Supreme Court had relied on the decision of the Privy Council in *Raleigh Investment Co. v. Governor-General in Council* [1947] 15 I.T.R. 332 (P.C.) that even the constitutional validity of the taxing provisions can be challenged by adopting the procedure prescribed under the Income-tax Act. This observation of the Privy Council was doubted by the Supreme Court in *Venkataraman & Co. v. State of Madras* A.I.R. 1966 S.C. 1089 and it was held that a suit for refund of sales tax assessed under the provisions which were declared to be ultra vires was maintainable even though there was a statutory provision excluding the jurisdiction of civil courts because, in such a case, the sales tax authorities had acted outside the provisions of the relevant Act and not under the provisions of that Act. The legal position was summarised thus : 'If a statute imposes a liability and creates an effective machinery for deciding the questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdiction on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a civil court in that regard. But an authority created by a statute cannot question the vires of that statute or any of the provisions thereof whereunder it functions. It must act under the Act and not outside it. If it acts on the basis of a provision of the statute, which is ultra vires, to that extent it would be acting outside the Act. In that event, a suit to question the validity of such an order made outside the Act would certainly lie in a civil court.' Considering an identical provision in Section 17 of the Madhya Bharat Sales Tax Act, 1950, in *Dhulabhai v. State of M.P.* A.I.R. 1969 S.C. 78, the Supreme Court held that when the statute gives finality to the orders of the authorities, civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory

tribunal has not acted in conformity with the fundamental principles of judicial procedure. Held, on the facts and in the circumstances of the case, that the suit in question for declaring that the provisions of the law relating to assessment under the Act were ultra vires and the suit for refund of the amount of the tax illegally collected was not barred by Section 17 of the Act.

9. In the present case, there is an express bar on the exercise of jurisdiction by civil court in respect of jurisdiction conferred on the Sales Tax Officers and the appellate and revisional authorities under the Act. The remedy sought by the plaintiff in the present suit could very well have been agitated before those authorities. It is not the plaintiff's case that any of the provisions under which the assessment has been made is ultra vires of the Constitution nor it is his case that the sales tax authorities had not acted in conformity with the provisions of the Act or the fundamental principles of judicial procedure. The only allegation is that the assessments were made in the absence and unawareness of the plaintiff. It has not been alleged that without notice to him these assessments were made. On the other hand, from the pleadings of the defendant, it is clear that the plaintiff was given notice of these proceedings but in some cases he remained absent and he was proceeded ex parte, while in other cases he appeared through his counsel and after considering the objections raised, the assessment orders were passed. The plaintiff has failed to show that the Sales Tax Officer ignored the provisions of the Act or the fundamental principles of judicial procedure. It cannot, therefore, be said that the adjudications were beyond the competence of the sales tax authorities, nor they violated the fundamental principles of judicial procedure, nor this is a case of assuming jurisdiction by wrongly deciding jurisdictional questions of law or fact. Under the circumstances, it cannot be said that the orders are nullity. The view we have taken finds support from the single Bench decision of this Court in *State of M.P. v. Laxman* 1970 M.P.L.J. 233, wherein it has been held that the suit which was in substance directed against recovery of the tax was barred under Section 37 of the M. P. General Sales Tax Act. The remedy of the plaintiff was to use the machinery provided by the Act to question the recovery. The plaintiff's suit is clearly barred under Section 37 of the Act and it has been rightly dismissed.

10. Accordingly, the appeal fails and it is dismissed with costs. Counsel's fee as per schedule, if certified.

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