

**Suraj Mal Vs. the State and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/684999](http://sooperkanoon.com/684999)

**Court :** Delhi

**Decided On :** Dec-08-1980

**Reported in :** [1981]48STC63(Delhi)

**Judge :** Dalip K. Kapur and; N.N. Goswamy, JJ.

**Acts :** Bengal Finance (Sales Tax) Act, 1941 - Sections 17

**Appeal No. :** S.T.R. No. 1 of 1970

**Appellant :** Suraj Mal

**Respondent :** The State and Others

**Judgement :**

**Kapur, J.**

1. Shri Suraj Mal as sole proprietor of M/s. Varshney Hosiery Factory, situated at 1295, Phatak Habash Khan, Delhi, entered into a partnership with one Shri Abdul Ghani with effect from 7th July, 1955. He was holding sales tax registration certificate No. 11765 dated 31st October, 1951. The new partnership was to carry on business in bidi, cigarettes and cigars; intimation of this was given to the sales tax department on 4th August, 1952. A dissolution deed was drawn up between the partners on 23rd August, 1952, and the change in constitution was intimated to the sales tax department. As a result of the dissolution, the registration certificate

was to go to Shri Abdul Ghani, the other partner, who was authorised to transfer it to the name of M/s. S. A. Ghani. A joint statement was made before the Sales Tax Officer on 8th October, 1952, stating that the petitioner would be jointly and severally responsible for payment of tax only up to 23rd August, 1952, and after that Shri Abdul Ghani would be responsible.

2. On 30th September, 1953, an assessment order for the year 1952-53 was framed raising an additional demand for Rs. 38,464.56. This demand was framed after notice to Shri Abdul Ghani. The amount of tax was not paid, so process of recovery of Rs. 6,161.25 was taken against the petitioner Shri Suraj Mal as representing the additional tax in respect of the partnership business carried on from 7th July, 1952, to 23rd August, 1952.

3. Shri Suraj Mal filed a revision before the Commissioner, Sales Tax, which was dismissed on 13th July, 1959. A second revision was dismissed by the Chief Commissioner on 13th November, 1959. A reference to the High Court was refused. A Division Bench of the Punjab High Court by order dated 25th July, 1966, directed the Chief Commissioner to state a case on the following questions of law :

'(1) Whether, on a correct interpretation of section 17 of the Act, the transferee becomes liable to pay the sales tax in respect of the business for the period prior to the transfer and if so, whether the liability of the transferor in respect thereof has ceased

(2) Whether, in view of the fact that the notices in the matter of the assessment of sales tax were issued to S. A. Ghani only, the petitioner is liable for the demand which has been created ?'

4. Undoubtedly, the facts show that the petitioner was a partner with Shri Abdul Ghani during the period 7th July, 1952, to 23rd August, 1952. Originally he was the proprietor of M/s. Varshney Hosiery Factory but the sales tax certificate was transferred to Shri Abdul Ghani, who, therefore, became liable as transferor in respect of that sales tax business (sic). The question now for consideration is whether the petitioner is liable for the period during which he was a partner along

with Shri Abdul Ghani. A statement had been made by the petitioner that he would be jointly and severally liable for this period. However, the claim of the petitioner was that the liability was completely transferred to Shri Abdul Ghani and he was not liable even for the joint period.

5. The relevant provision of the Bengal Finance (Sales Tax) Act, 1941, as applicable to Delhi, at the relevant time is as follows :

'17. Transfer of business. - Where the ownership of the business of a registered dealer is entirely transferred and the transferee carries on such business either in its old name or in some other name, the transferee shall for all the purposes of this Act (except for liabilities under this Act already discharged by such dealer) be deemed to be and to have always been registered as if the certificate of registration of such dealer had initially been granted to the transferee; and the transferee shall on application to the Commissioner be entitled to have the registration certificate amended accordingly.'

6. According to this provision, when a transfer of business takes place, the transferee is deemed to be the holder of the certificate of registration for all purposes under the Act. This would include assessment as well as realisation of tax. As this transfer took place during the year, the assessment could only be made against the transferee. The only point for determination is whether the transferor is liable for payment of the tax during the period when the partners were joint and the petitioner was also a partner. The learned counsel for the petitioner relies on *Ranjit Singh v. Assessing Authority, Sales Tax Officer, Ward No. VII, Delhi* [1972] 29 S.T.C. 499. In that case, there was a firm, M/s. Juginder Pal Ranjit Singh, which had three partners. Two of the partners retired and the question arose whether the retired partners could be liable for payment of the tax. Relying on the decision of the Supreme Court in *State of Punjab v. Jullundur Vegetables Syndicate* : [1966] 2SCR457 it was held that it was settled law that a partnership firm ceased to be liable to assessment by the mere fact of its dissolution and proceedings for assessment cannot be initiated after dissolution. In fact it was held by the Supreme Court in that case that the partnership ceased to be a legal entity for the purposes of the Sales Tax Act and cannot be assessed. In any case, this

Court granted a writ restraining the recovery of the tax from the erstwhile partners.

7. Another judgment referred to is Jagdish Kaur v. Sales Tax Officer, XXIV K-Block, Vikas Bhawan, New Delhi [1974] 33 S.T.C. 522, wherein it was held that a widow who was carrying on business was liable for sales tax due as she was a transferee within the meaning of section 17 of the Act. It was there held that the transferee is only liable to pay the arrears of sales tax if the previous owner has not already paid the tax. This is so provided in section 17.

8. The result would be that in the present case the liability would be of the transferee Shri Abdul Ghani as the transferor has not paid the tax. But the question still remains whether the transferor can be liable to pay the tax in view of the statement made on 8th October, 1952 (annexure D). Therein, the petitioner stated as follows :

'..... I have retired from the firm with effect from 23rd May, 1952, and have no connection whatsoever with the firm now. The return for the period 7th July, 1952, to 23rd August, 1953, have been filed and the due tax has been deposited but in case any tax may be found due to the ending 23rd August, 1952, we shall be jointly responsible for the same.'

9. Thus, it was clearly stated that there would be joint liability for this period. Then it was also a term in the dissolution deed that for the sales tax due for the period 7th July, 1952, to 23rd August, 1952, the partners would be equally liable.

10. The real contention of the learned counsel for the petitioner is that the firm which was assessed was M/s. S. A. Ghani Gigarwalla, which was a proprietary concern of Shri Abdul Ghani. No assessment of the petitioner took place and, therefore, he cannot be liable.

11. The questions referred to us have been set out earlier. No doubt, under section 17 of the Act the transferee is liable to pay sales tax, but this is only so when the transferor has not so paid it. The section seems to imply that the transferee is liable if the transferor does not pay. In the present case, the question is somewhat academic because the dealer himself stated before the Sales Tax

Officer that he would be jointly liable for the period up to 23rd August, 1962, which is the only period for which the tax amounting to Rs. 6,164.25 has been claimed. The remaining demand for the whole year is not being claimed from the present petitioner, Shri Suraj Mal. The answer to the first question has, therefore, to be in the negative : it is in the negative because the liability of the transferor has not ceased by reason of his own statement.

12. As far as time second question is concerned, there is no doubt that notices were issued to S. A. Ghani only which is in accord with section 17. However, this does not affect the liability of the petitioner by reason of the provisions of section 17 read with his own statement and the terms of the dissolution deed. The petitioner is only liable for the demand relating to the period during which he was a partner and not for the subsequent period. The demand has been properly raised to the extent of Rs. 6.164.25 against the petitioner. This question is, therefore, answered in the affirmative. We would, however, leave the parties to bear their own costs.

13. Reference answered accordingly.