
(1966) 08 MP CK 0001
Madhya Pradesh High Court
Case No: M.C.C. No. 53 of 1968

Commissioner of Sales Tax, M.P.

APPELLANT

Vs

Basantilal Banarsidas, Khandwa

RESPONDENT

Date of Decision: Aug. 25, 1966

Acts Referred:

- Central Provinces and Berar Sales Tax Act, 1947 - Section 2(c)
- Madhya Pradesh General Sales Tax Act, 1958 - Section 44

Citation: (1971) JIJ 138

Hon'ble Judges: Bishambhar Dayal, C.J; Shiv Dayal Shrivastava, J

Bench: Division Bench

Advocate: K.P. Munshi, for the Appellant; G.M. Chaphekar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Bishambhar Dayal, C.J.

This is a reference u/s 44 of the Madhya Pradesh General Sales Tax Act at the instance of the Sales Tax Department. The only point in this case is whether the assessee, while purchasing raw cotton from the market on behalf of the mills and thereafter getting it ginned and pressed and then forwarding it to the Mills, was acting as a principal dealing with the goods on his own behalf and was, therefore, a dealer in respect of those articles, or was acting merely as an agent on behalf of the Mills and was, therefore, not a dealer. Two questions have been referred to this Court, which are as follows : --

I. Whether on the facts and circumstances of the case the assessee was a dealer within the meaning of section 2 (c) of the C. P. and Berar Sales Tax Act in respect of the turnover amounting to Rs. 13,96,775-9-0?

II. Whether on the facts and circumstances of the case no taxable event occurred in the hands of the assessee in respect of the said sum of Rs. 13,96,775-9-0?

2. There is no dispute with regard to the dealing between the assessee and the Mills. The procedure in short was that the mills directed the assessee to purchase on behalf of the Mills, raw cotton from the market, authorised the assessee to sell cotton seeds on their behalf, and to arrange for ginning, pressing and despatching the cotton to the Mills. Under these instructions the assessee was acting. Even the sellers of raw cotton have been produced, who have stated that they sold raw cotton to the assessee in the name of the Mills and the name of the Mills has been entered in the account books of the sellers of raw cotton. On these facts the position is quite clear that the assessee was acting merely as an agent on behalf of the Mills.

3. It was contended by the Learned Counsel for the department that the assessee was not only acting on behalf of the Mills but was also investing his own money and was charging interest and commission from the Mills. He must, therefore, be deemed to be acting on his own behalf in these transactions. We are unable to agree that merely because the assessee had to invest some of his own money while purchasing cotton on behalf of the Mills, and had, therefore, to be reimbursed with that money along with interest, and charged commission for his labour it will make him a purchaser of cotton in his own right. He, at the best, was an agent who had interest in the transactions in which he advanced his own money.

4. Some letters were referred to in which the assessee asked the Mills to send authority letters in writing for particular dates, because purchases had already been made for the Mills. These letters do not justify the inference that the assessee had made purchases on his own behalf and was later on asking for these letters merely for the purpose of converting his own purchases into those for the Mills. These letters make it abundantly clear that the purchases had been made under the instructions of the Mills and only written documents were required so that they may be shown to the Inspectors. On consideration of the entire matter and after hearing Learned Counsel for the parties, we are satisfied that the order of the Board of Revenue was correct and that both the questions referred to this Court must be answered in the negative, in favour of the assessee.

5. The assessee is entitled to his costs which we estimate at Rs. 250.