

(1984) 07 MP CK 0004

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 1429 of 1982

Ranomal Ramesh Kumar,
Gwalior

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision: July 28, 1984

Acts Referred:

- Madhya Pradesh Sthaniya Kshetra Me Mal ke Pravesh Par Kar Adhiniyam, 1976 -
Section 3(1), 7

Citation: (1984) JLJ 702 : (1984) MPLJ 585

Hon'ble Judges: G.L. Oza, Acting C.J.; B.M. Lal, J

Bench: Division Bench

Advocate: V.S. Dabir with A.G. Dhande, for the Appellant; M.V. Tamaskar, Govt. Advocate,
for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, Actg. C.J.

This order will also dispose of Misc. Petition No. 28 of 1982 (M/s Nathilal Bansal v. State of M.P. & others).

This petition has been filed by the petitioner who is a dealer in pulses and foodgrains carrying on his business in Dal Bazar, Gwalior. The petitioner is a registered dealer under the provisions of the Madhya Pradesh General Sales Tax Act, 1958. According to the petitioner, he purchased broken Dal from various registered dealers in the State and claimed deduction u/s 3 (1), Proviso (iv), of the Madhya Pradesh Sthaniya Kshetra Me Mal ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as the Entry Tax Act) being the goods other than the local goods. It is alleged that for the period between 23-10-1976 to 7-11-1977 and

11-11-1977 to 31-10-1978, respectively, in the assessment proceedings before respondent No. 4, the petitioner claimed deductions under Proviso (iv) to section 3(1) but respondent No. 4 by his orders dated 7-11-1981 and 25-11-1981 refused to allow deductions as claimed by the petitioner. It is alleged by the petitioner that u/s 7 (1) a registered dealer while selling the goods is expected to issue a bill or a cash memo and it is further provided that if sale of local goods is effected by the dealer such a statement should be recorded on the bill by affixing a rubber stamp showing that he had sold the focal goods. The rubber stamp provided under the rules provides for a statement "local goods", and "local area" with a further endorsement "entry tax not paid". It is also provided that every dealer will maintain the counterfoil of such bills. It is, therefore, contended that when the petitioner purchased these goods from the registered dealers and produced bills before the assessing authority and those bills do not bear the rubber stamp as required u/s 7 it would clearly show that the petitioner has purchased goods which were chargeable to entry tax in the hands of the selling" dealer and, therefore, within the meaning of the words used in proviso (iv) to section 3(1) the petitioner is entitled to deduction.

The petitioner contends that he preferred a revision petition before respondent No. 3 but the revising authority also did not accept the contention of the petitioner and rejected the revision petition. The petitioner has, therefore, filed this petition.

It is contended by the petitioner that the petitioner is entitled to deduction claimed by him in view of the language of proviso (iv) to section 3 (I) of the Entry Tax Act. It is contended that section II, no doubt, casts a burden of proof on the petitioner to establish that he is entitled to this exemption but the burden is discharged as soon as the petitioner assessee produces the bills of the selling dealer and where the bills do not bear the rubber stamp showing that they were goods of the local origin, then apparently they were chargeable to entry tax in the hands of the selling dealer. This, therefore, according to the counsel for the petitioner is sufficient for attracting proviso (iv) to section 3 (1). It is further contended that originally the language as used in the proviso clearly indicated that the petitioner is entitled to exemption but when this was amended it made the things further clear. Alternatively it was also contended that section 11 is ultra vires as it casts a heavy burden on the petitioner as according to the Learned Counsel for the petitioner it throws the burden on the petitioner to prove matters which are beyond his control and, therefore, it is an excessive piece of legislation. In substance, it was contended that it being unreasonable, is being challenged. Alternatively it was contended that the burden which is on the petitioner u/s 11 is discharged as soon as the petitioner establishes *prima facie* that the goods purchased by him from a registered dealer were such on which entry tax was payable or was paid in the hands of the selling dealer and according to the Learned Counsel this is established as soon as the bills are produced as the bills which do not bear the rubber stamp indicating that they were goods of the local origin presupposes that the entry tax is payable on such goods in the hands of the selling dealer or that entry tax has been paid. It is contended that

the law when it requires a dealer to affix the rubber stamp about the goods of local origin, then he sells those goods without payment of entry tax. It is clear that when he does not affix such a stamp, he claims no exemption and it is clear that goods are not of local origin and, therefore, when a selling dealer sells goods which are not of local origin, it is clear that he has imported the goods in the local area and thus the goods were such on which entry tax was payable. It is, therefore, contended by Learned Counsel that production of the bills which do not bear the rubber stamp fully discharges the burden cast on the petitioner. The rest as to whether the entry tax was paid by the selling dealer when he brought these goods or not is a matter between the department and the selling dealer. So far as the petitioner is concerned, he is entitled to exemption.

Learned Government Advocate, on the other hand, contended that the burden cast on the petitioner is not discharged merely by production of the bills which show that the goods are such on which entry tax was payable in the hands of the selling dealer. It was contended by the learned Government Advocate that although non affixure of rubber stamp as is required for goods of local origin, no doubt, clearly indicates that the goods in the hands of the selling dealer were not of local origin and, therefore, were such on which entry tax was payable but it was contended that if the petitioner claims a deduction u/s 3 (1), Proviso (iv), the burden is on the petitioner to establish that the entry tax is paid on these goods as according to the Learned Counsel it is clear that the scheme of this Act requires payment of entry tax only once in any of the local areas. Learned Government Advocate placed reliance on Sha Pannalal Pemraj and Co. and Others Vs. Commercial Tax Officer, Hassan Circle, Hassan and Others,.

The Entry Tax Act clearly shows that under the scheme of this Act entry tax is payable only once and it is clear that once the entry tax is paid, there will be no liability of payment of this tax second time when it moves from one local area to another. Section 3 of this Act, which is the charging section, provides:

3. Incidence of taxation -- (I) there shall be levied an entry tax--

(a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein; and

(b) on the entry in the course of business of a dealer of goods specified in Schedule III, into each local area for consumption or use of such goods as raw material or as packing material or in the execution of works contracts but not for sales therein;

and such tax shall be paid by every dealer liable to tax under the Sales Tax Act who has effected entry of such goods.

Proviso (iv) to this section reads:

Provided that no tax under this sub-section shall be levied:

* * * *

(iv) in respect of goods specified in Schedule II, other than local goods, which are purchased from registered dealer;

During the period which is the subject matter of this petition, the language of the proviso as quoted above was applicable. However, by a later amendment, this proviso has been amended to read as follows:

(iv) in respect of goods specified in Schedule II, other than local goods, purchased from a registered dealer on which entry tax is payable or paid by the selling registered dealer.

But this amendment only adds the goods on which the tax is payable or has paid and this, the learned Government Advocate rightly conceded, is only a further explanation of this and therefore even for the period for which the present petition is pending the language as amended of the proviso could be considered. In substance, the language of this proviso clearly indicates that the dealer who is submitting his return for assessment of entry tax u/s 3 will not be liable to tax if the goods were other than the local goods and which are purchased from a registered dealer. This clearly shows that although the dealer who submits his return for tax u/s 3 is not liable to pay entry tax on the goods which he had purchased from another registered dealer and if those goods were not of local origin. The meaning, therefore, is very clear that if the selling dealer has sold to this petitioner goods of local origin of the local area where the selling dealer has his business, then this purchasing dealer who brings into his local area those goods is bound to pay entry tax but the goods which he is bringing in his local area were purchased by him from a registered dealer and the goods so purchased were not goods of local origin, then it is clear that on those goods the selling dealer was bound to pay entry tax as he brought those goods in the local area where the selling dealer is carrying on business. It is this which is clearly spelled out from the language of Proviso (iv) as it stood even before the amendment and after the amendment what has been further stated is only a clarification of the goods on which entry tax was payable or was paid.

Section 7 of the Entry Tax Act provides for the manner in which a registered dealer is expected to issue bills. Section 7 reads :

7. Registered dealers to issue bills etc. stating that goods sold are local goods.-(1) Every registered dealer who, in the course of his business, manufacture, produces or grows any goods specified in Schedule II in a local area in such manner that the goods become local goods in relation to that local area, shall on the sale of such local goods to any other registered dealer, issue to him a bill, invoice or cash memo specifically stating in such manner as may be prescribed, that the goods being sold are local goods in relation, to such local area and that no entry tax has been paid on such goods.

(2) Where the goods mentioned in sub-section (1) are purchased and sold in the course of their business by a chain of registered dealers, the selling registered dealer shall issue a bill or invoice or cash memo, containing the statement referred to in sub-section (1):

Provided that where the goods are purchased by a registered dealer who effects the entry of such goods into a local area other than the local area in relation to which such goods are local goods, it shall not be necessary for him to make the statement referred to in sub-section (1).

(3) Every registered dealer referred to in sub-sections (1) and (2) shall maintain a separate account of purchases and consumption, use or sale of local goods and separately books and invoice for the sales of local goods effected by him in the same local area in relation to which the goods are local goods.

(4) Omitted.

(5) Where a registered dealer, referred in sub-section (1) or sub-section (2) has, in the course of his business, sold local goods to other registered dealer and has failed to make the statement referred to in sub-section (1), it shall be presumed that he has facilitated the evasion of "entry tax on" the local goods so sold and accordingly he shall be liable to pay penalty equal to one and a half times the amount of entry tax payable on such goods as if they were not goods of local origin.

(6) Where any registered dealer referred to in sub-section (2), in the course of his business has sold local goods purchased by him to other registered dealer and a bill, cash memo or invoice is not issued by him as required by sub-section (2), it shall be presumed that he has facilitated the evasion of entry tax on the local goods so sold and he shall be liable to pay a penalty equal to one and a half times the amount of entry tax payable on, such goods as if they were not goods of local origin.?

Rule 7 casts a further duty on the dealer who, issues bills to affix rubber stamp if the goods sold by him are of local origin. Rule 7 reads:

7. Manner of issue of bills, cash memo or invoice u/s VII.--A registered dealer required to issue a bill, cash memo or invoice under sub-section (1) of sub-section (2) of section 7, shall for each sale of local goods effected by him to another registered dealer, issue a bill, cash memo or invoice after recording therein the statement referred to in sub-section (1). The Statement may be recorded by affixing a rubber stamp and as far as may be, read as follows:

Local Goods, for.....(enter here the name of local area), entry tax not paid.

Every such dealer shall also maintain the counter foil or duplicate of each such bill, dash memo or invoice and preserve it till the completion of assessment.

The language used in section 7 and Rule 7 clearly provides that a dealer is bound to maintain bills and accounts as required u/s 7 and when he sells goods of local origin

he has to affix a rubber stamp as contemplated under Rule 7 therefore, Rule, 7 read,, with section 7 cast a mandatory duty on a dealer to affix such a rubber stamp and if a dealer-has chosen not to affix that rubber stamp, it could not be doubted that the dealer who has issued the bills without the rubber stamp cannot turn round and say that they are goods of local origin. Admittedly, therefore, when a registered dealer issues bills or cash memo without the required rubber stamp showing that the goods are of local origin he makes a declaration that they are goods on which entry tax is payable. Unfortunately, there is nothing in the rules which would make it necessary for the dealer to show on the bills about payment of entry tax but as he has not affixed the rubber stamp declaring the, goods to be of local origin, the dealer who issues such bill in law cannot say that the goods are of local origin.

It is in this context that proviso (iv) to section 3 will have to be read. Proviso (iv) provides for an exemption that a dealer when he brings certain goods specified in Schedule If in any local area, ordinarily on such goods entry tax will have to be paid but if the goods are such which are other than local goods and which are purchased from the registered dealer no such tax is payable. It clearly means that if the goods are purchased from a registered dealer and that registered dealer has not shown the goods to be of local origin, then entry tax is payable on those goods when that selling dealer purchases those goods and brings them in the local area where the selling dealer transacts his business and, therefore, if such goods are purchased by a dealer and the goods are brought into another local area, such a dealer u/s 3 is not expected to pay entry tax on such goods as it is expected that entry tax was payable on these goods when they were brought in the local area by the selling dealer himself. It is in this context that section 11 of this Act has to be considered. Section 11 reads :

11. Burden of proof.-(1) The burden of proving--

- (a) that a dealer has not effected the entry of any goods specified in Schedule II into a local area for consumption, use or sale therein;
- (b) that a dealer has not effected the entry of any goods specified in Schedule III into a local area for consumption or use therein as a raw material or as packing material or in the execution of works contracts;
- (c) that a dealer is entitled to deduction in respect of purchase value of local goods for the purpose of the computation of taxable purchase value;
- (d) that goods purchased by a dealer in a local area from a person or a dealer who is not a registered dealer had not entered into that local area before they were purchased by him;
- (e) that a dealer is, entitled to any other deduction in computing the taxable quantum;

shall be on the dealer.

Sub-clause (e) is relevant for the purposes of the present case. It provides that in the case of a dealer who is entitled to any deduction, the burden will be on that dealer. Section 11, therefore, only casts the burden on the dealer who claims a deduction to prove that he is entitled to deduction and in order to prove that he is entitled to deduction what he has to establish is what is provided in Proviso (iv) to section 3 as has been quoted above and has been made clear after the amendment, only requires that the dealer is not liable to pay tax in respect of goods specified in Schedule If which are other than the local goods and which are purchased from a registered dealer and that entry tax was payable on them or has been paid. In this view of the matter, therefore, what the dealer has to establish is that when he has purchased these goods from a registered dealer, the registered dealer has sold these goods and that these goods were not of a local origin in the hands of the selling dealer then the selling dealer was not liable to pay entry tax. That means that the goods were such on which the entry tax was not payable but if the goods were not local goods when they were sold by the selling dealer who is a registered dealer then the inference is that he was liable to pay entry tax on those goods. That means entry tax was payable on those goods or entry tax may have been paid on those goods by the selling dealer. Either of these two things, therefore, are sufficient to exempt the purchasing dealer from the liability of payment of entry tax. In view of this, learned Government Advocate vehemently contended that, therefore, the burden of proof which u/s 11 is on this dealer is to establish that the goods that he had purchased from a registered dealer were not goods of local origin. The main controversy, therefore, is that if this is to be established then what more is necessary to be done than to produce the bills issued by the local dealer. According to the Learned Counsel for the petitioner if the goods were of a local origin, a duty was cast on the selling dealer to affix the rubber stamp as required under rule 7 and if he has chosen not to affix that rubber stamp, the only inference is that the goods sold by the selling dealer were not of local origin and the petitioner, therefore, has nothing more to establish than to produce those bills and the bills without the rubber stamp as required under rule 7 is a *prima facie* proof of the fact that the goods sold by the selling dealer were not of local origin and, therefore, were liable to entry tax as it is not necessary to further establish that entry tax was paid on them by the selling dealer. In this view of the matter, therefore, the question of vires of section 11 is not of any consequence. Learned Counsel for the petitioner was not in a position to contend that there is anything on the basis of which it could be contended that the Legislature had no authority to enact section 11. The only argument was that it requires the petitioner to establish it which is beyond his control but it could not be disputed that what the law requires him to establish is only that the goods purchased were not goods of local origin in the hands of the selling dealer and this could very well be established by production of the bills and in this view of the matter, therefore, it could not be said that there is any reason to challenge the validity of section 11. It is also clear that section 11 only lays the burden of proof and while discharging the burden of proof it may depend on the

facts of each case to come to a conclusion that the burden is discharged and on that ground the vires of the provision could not be challenged.

As regards the question as to whether in the instant case the burden is discharged or not, it is not in dispute that the petitioner has submitted before the taxing authorities the bills from the selling dealers. It is also not in dispute that the bills do not bear the rubber stamp showing that the goods were of local origin in the hands of the selling dealer. It is also not in dispute that the selling dealers are also registered dealers and, therefore, in law were bound to affix the rubber stamp if the goods sold by them were goods of local origin and, therefore, it is plain that when these bills are produced without rubber stamps the petitioner has established that he has purchased the goods from a registered dealer and the goods sold by the selling dealer were not goods of local origin and this is what the petitioner was expected to establish. The contention of the learned Government Advocate that the petitioner had to establish further that the goods in the hands of the selling dealer were not of local origin cannot be accepted as admittedly the selling dealer who is a registered dealer has to be presumed to have prepared the bills in accordance with law and if the goods were of local origin it was a duty cast on him to affix the rubber stamp as required under Rule 7 and as rubber stamp has not been affixed, it is not open to the selling dealer now to turn round and say that the goods are of local origin and, therefore, the petitioner is not expected to establish anything further if he has produced the bills which show that the goods were not of local origin.

The amendment made in Proviso (iv) which further clarifies the matter indicates that the goods in the hands of the selling dealer were such on which the entry tax was payable or that the entry tax is paid. By production of these bills which do not show the goods to be of local origin, the inference is straight that the goods are such on which entry tax was payable and this is what is required to be established by the petitioner while claiming deduction under Proviso (iv) to section 3 of the Act. In view of this, therefore, it could not be disputed that the petitioner has discharged the burden cast on him and he is entitled to that exemption.

Learned Government Advocate relied on a decision in Sha Pannalal Pemraj & Company v. Commercial Tax Officer. That decision is under the sales tax law of the Karnataka State. The requirement under the Sales Tax Act which has been examined in this decision is not exactly what is required to be established by a dealer in Proviso (iv) to section 3 and in that view of the matter, therefore, that decision is not of much consequence so far as the case in hand is concerned.

In the light of the discussion above, therefore, it is clear that respondents Nos. 3 and 4 have committed an apparent error on the face of the record when they held that the petitioner has not established that the goods fall within the category of goods exempted. Under Proviso (iv) to section 3.

The petitions are allowed. The orders passed by the respondents Nos. 3 and 4 are hereby quashed. In the circumstances of the case, parties are directed to bear their own costs. Security amount, if deposited, be refunded to the petitioners.