

(1980) 11 MP CK 0007

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No"s. 97 and 98 of 1978

Jaskaran Govindram

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision: Nov. 12, 1980

Acts Referred:

- Madhya Pradesh General Sales Tax Act, 1958 - Section 7

Citation: (1982) 49 STC 51

Hon'ble Judges: R.K. Vijayvargiya, J; G.G.Sohani, J

Bench: Division Bench

Advocate: Goyal, for the Appellant; Surjit Singh, Government Advocate, for the Respondent

Judgement

R.K. Vijayvargiya, J.

This order will also govern the disposal of M.C.C. No. 98 of

2. By this reference u/s 44(1) of the M.P. General Sales Tax Act, 1958, hereinafter referred to as the Act, the Board of Revenue has referred the following question of law to this Court for its opinion :

Whether, under the facts and circumstances of the case, the supply of foodgrains to the Food Corporation of India under the Foodgrains Levy Order will amount to disposal of such goods in any manner other than by way of sale in this State as provided u/s 7 of the Act, and the purchases are liable to levy of purchase tax under that section ?

3. The material facts giving rise to this reference briefly are as follows: The assessee deals in foodgrains, oil-seeds, etc., and was assessed to tax under the provisions of the Act for the assessment years 1967-68 and 1968-69. The assessee had not included in the gross turnover the price received for the supply of wheat and juwar under the provisions of the Foodgrains Levy Order to the Food Corporation of India.

The assessments were reopened under the provisions of Section 19(1) of the Act and the assessing authority held that purchase of wheat and juwar from unregistered dealers, which were supplied to the Food Corporation of India, was liable to purchase tax under the provisions of Section 7(1) of the Act. The appeals preferred by the assessee before the Appellate Assistant Commissioner were rejected. The assessee then filed further appeals before the Board of Revenue. It was contended on behalf of the assessee that the levy of purchase tax was illegal as the supply of goods in question to the Food Corporation of India did not involve any element of volition and the assessee was compelled to supply those goods to the Food Corporation under the provisions of law. This contention was, however, rejected by the Tribunal, and it was held that the assessee was liable to purchase tax. At the instance of the assessee, the Board has referred the aforesaid question of law to this Court for its opinion.

4. A similar question came up for consideration before another Division Bench of this Court in *Khushal Chand Laxmichand v. Commissioner of Sales Tax* (M.C.C. No. 117 of 1978, Gwalior, decided on 29th July, 1980) [1981] 48 STC 567 (SC). The question referred in that case was as follows :

Whether wheat and/or juwar purchased from unregistered dealers and supplied under the Foodgrains Levy Orders to the Food Corporation of India from time to time is exigible to purchase tax u/s 7 of the Act ?

This question was answered by this Court in favour of the department and it was held that the provisions of Section 7 of the Act were attracted and that the dealers were liable to levy of purchase tax.

5. The learned counsel for the assessee contended that the aforesaid decision did not take into account the distinction between the expressions "disposal" and "disposed of". We are, however, not impressed with the argument. The learned counsel for the assessee has not been able to satisfy us that the decision of this Court in *Khushal Chand Laxmichand v. Commissioner of Sales Tax* (M.C.C. No. 117 of 1978) [1981] 48 STC 567 (SC) requires reconsideration. It has not been shown to have been overruled by any Full Bench decision of this Court or by a decision of the Supreme Court. We, therefore, see no cogent reason to take a view different from that taken by the Division Bench of this Court in *Khushal Chand Laxmi* Agreeing with the decision, our answer to the question referred to us is in the affirmative and in favour of the department. Parties shall bear their own costs of this reference.