

(1979) 10 MP CK 0007

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 307 of 1976

Commissioner of Sales Tax

APPELLANT

Vs

Basant Stores

RESPONDENT

Date of Decision: Oct. 19, 1979

Acts Referred:

- Madhya Pradesh General Sales Tax Act, 1958 - Section 27(1), 27(2), 44

Citation: (1980) 46 STC 50

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

Bench: Division Bench

Advocate: K.L. Goyal, for the Appellant;

Judgement

R.K. Vijayvargiya, J.

By this reference u/s 44 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 for the opinion of this Court:

Whether, in the facts and circumstances of the case, the maximum penalty of Rs. 50 prescribed in Section 27(2) of the Act is in relation to each bill or cash memorandum in respect of which there was a contravention of Section 27(1) or is it in relation to all the bills or cash memoranda in respect of which there was such a contravention during one accounting period ?

2. The facts giving rise to this reference as set out in the statement of the case are these : The assessee, a dealer in cutlery, hosiery and fancy goods, was assessed to sales tax for the period 1st April, 1969, to 31st March, 1970. In the course of that assessment, a penalty of Rs. 300 was levied u/s 27(2) of the Act for the non-issue of bills. The order passed by the Sales Tax Officer was maintained in first appeal. In second appeal by the assessee the Board of Revenue held that there were only three instances of non-issue of bills, the total of which came to Rs. 95.65 and that u/s 27(2) of the Act the penalty that can be imposed is double the amount of the bill or

the cash memorandum in respect of which such contravention has occurred or Rs. 50 whichever is less and that the maximum penalty that could be imposed is only Rs. 50. In this view, the penalty was reduced to Rs. 50 by the Board of Revenue. At the instance of the Commissioner of Sales Tax the Board has referred the aforesaid question of law for the opinion of this Court.

3. It has been found as a fact that three instances were discovered in which the assessee had not issued bills and the total of transactions in which the bills were not issued amounted to Rs. 95.65 The Board was of the view that u/s 27(2) of the Act the maximum penalty that can be levied is Rs. 50 and on that ground the penalty was reduced in the present case. Section 27 of the Act reads as follows :

27. Certain dealers to issue bills or cash memoranda.-(1) Every dealer whose turnover exceeds rupees sixty thousand in any year shall, for each sale made by him of goods exceeding rupees twenty in value in the next succeeding year, issue to the purchaser, a bill or a cash memorandum signed and dated by such dealer or his servant,"" manager or agent and showing such particulars as may be prescribed. Every such dealer shall also, maintain a counterfoil or duplicate of each bill or cash memorandum issued by him with signature, date and all other aforesaid particulars and shall preserve it for a period of not less than five years from such date or till the completion of assessment, whichever is earlier:

Provided that the Commissioner may, subject to such conditions and restrictions as he may deem fit to impose, exempt any dealer or class of dealers in respect of sale of any goods or class of goods from issuing a bill or a cash memorandum to the purchaser or from showing some of the particulars or from maintaining a counterfoil or duplicate of each bill or cash memorandum issued by him.

(2) If any person to whom Sub-section (1) applies, contravenes the provisions of the said sub-section, the Commissioner may, after giving such person a reasonable opportunity of being heard, direct him to pay a penalty not exceeding double the amount of the bill or the cash memorandum in respect of which such contravention has occurred or rupees fifty whichever is less.

Section 27(1) of the Act enjoins a dealer whose turnover exceeds Rs. 60,000 in any year to issue to the purchaser a bill or cash memorandum for each sale made by him of goods exceeding Rs. 20 in value in the next succeeding year, and to maintain a counterfoil or duplicate of each bill or cash memorandum issued by him. Sub-section (2) of Section 27 of the Act provides penalty for the contravention of the provisions of Sub-section (1) of Section 27 of the Act. The Commissioner is empowered to impose a penalty not exceeding double the amount of the bill or cash memorandum in respect of which contravention has occurred or Rs. 50, whichever is less. On a bare reading of the provisions of this section it is clear that contravention of each instance is made penal and it is made a distinct offence. If an assessee is required to issue a number of bills or cash memoranda in respect of

various sale transactions during an accounting period and if he fails to do so he commits as many offences for which he has not issued such bills or cash memoranda and is liable to penalty in respect of each of such defaults and the penalty in respect of each such default can be double the amount of the bill or the cash memorandum for that transaction or Rs. 50, whichever is less. The Board of Revenue committed an error of law in holding that the penalty in respect of all the instances committed by the assessee during the assessment period cannot exceed Rs. 50.

4. As a result of the discussion aforesaid, our answer to the first part of the question is in the affirmative and against the assessee in that the maximum penalty of Rs. 50 prescribed in Section 27(2) of the Act is in relation to each bill or cash memorandum in respect of which there was a contravention of Section 27(1) of the Act and, consequently, our answer to the second part of the question is in the negative and against the assessee. As the assessee has not appeared at the hearing of this reference there shall be no order as to costs of this reference.