Union of India v. Mohan Singh

Kapur, J.

ground that there the contract itself was held to be void in view of section 175(3) of the Government of India Act and therefore the supplies were made and enjoyed without any contract. The point is not free from difficulty and we would prefer to rest our decision on the ground that the Union of India cannot be allowed to raise the point which they had not raised in their pleadings. As we have pointed out earlier in paragraph 8 of the written statement all that they contended was that the Chief Engineer had no authority to sanction the increase of rates. They did not contend that the contract was not expressed in the name of the Governor-General and was therefore void. We have already held against the appellant regarding the authority of the Chief Engineer to sanction the increase in rates. We do not propose to permit the appellant to raise the other question particularly because the question involves some investigation into the facts. Even the file of the Government was not available and if the issue had been raised the plaintiff may have succeeded in showing that the Government had agreed to the increase in rates and that was done in proper form. Their Lordships of the Supreme Court in *Kalyanpur Lime Works Ltd.* v. *State of Bihar and another* (6), did not permit such a point to be raised in the absence of plea in the pleadings. Even the perusal of the trial Court's judgment shows that this point was not agitated there and the arguments were confined only to the authority of the Chief Engineer to sanction the increase. In view of this the appeal must fail and is dismissed with costs.

D. Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

K. S. K.

SALES TAX REFERENCE

Before A. N. Grover and S. K. Kapur, JJ.

KEWAL KRISHAN-OM PARKASH,—*Appellant.*

versus

THE STATE,—*Respondent*

Sales Tax Reference No. 3-D of 1958

1965

May, 11th

Bengal Finance (Sales Tax) Act. (Bengal Act IV of 1941) as extended to the Union Territory of Delhi—S. 4(5)(a) and (c)—Taxable quantum—Dealer whose turnover is less than Rs. 30,000 and includes turnover in respect of manufactured goods which is less than Rs. 10,000—Whether liable to be taxed under clause (a) or clause (c).

(6) 1954 S.C.R. 958.

Held, that under sub-section (1) of section 4 only such dealers whose gross turnover exceeds the taxable quantum are liable to pay sales tax. From the definition of the expression "taxable quantum" in sub-section (5) of section 4 it is clear that clause (a) would apply only if the taxable quantum with respect to the goods imported or manufactured or produced for sale is Rs. 10,000 or more. Where turnover with respect to such goods is less than Rs. 10,000, then clause (c) of sub-section (5) of section 4 would be applicable. Sub-section (5) of section 4 creates three classes of dealers for the purposes of taxation—(1) those whose business mainly is to import, manufacture or produce goods for sale and in their case the taxable quantum with respect to such sales is fixed at Rs. 10,000; (2) particular class of dealers not falling within above, the taxable quantum is left to be determined by rules and (3) other dealers whose taxable quantum is fixed at Rs. 30,000. The tax is attracted only if in the first class of cases taxable quantum with respect to goods imported, manufactured or produced exceeds Rs. 10,000.

Reference under Section 21 of the Bengal Finance (Sales Tax) Act, 1941, referred to this Court by the Chief Commissioner wherein the following law point arises for the opinion of their Lordships of this Court :—

> *"Whether the dealer's taxable turnover should be determined under sub-clause (a) or sub-clause (c) of sub-section (5) of Section 4 of the Bengal Finance (Sales Tax) Act, as extended to Delhi."*

YOGESHWAR DAYAL, ADVOCATE, for the Appellant.

S. N. SHANKER, CENTRAL GOVT. COUNSEL, for the Respondent.

ORDER

KAPUR, J.—This reference made to this Court by the Chief Commissioner of Delhi, under section 21 of the Bengal Finance (Sales Tax) Act, 1941, arises in the following circumstances. The firm Kewalkishan-Omparkash (hereafter refered to as the assessee) is a dealer in cloth. During the assessment year 1954-55 its total turnover was Rs. 15,836-4-0. In this year the assessee paid Rs. 10-4-0 as stitching charges to a tailor for stitching some quilts, mattresses and petticoats. From this it was deduced that the assessee sold stitched garments and quilts as well of a very nominal value. It was contended on behalf of the assessee before the authorities that since its turnover

Kapur, J.

Kewal Krishan-Om Parkash
v.
The State

Kapur, J.

with respect to goods manufactured or produced for sale was less than Rs. 10,000, clause (a) of sub-section (5) of section 4 was not applicable to the assessee and it could be taxed only under clause (c) of sub-section (5) of section 4, as it then stood, if its turnover was Rs. 30,000 or more. The Chief Commissioner took the view that since the assessee's turnover included the sale-proceeds, though of a very small amount, of manfactured goods also, the assessee was liable to tax under clause (a) of sub-section (5) of section 4. In other words he held that where the turnover of an assessee is comprised partly of manufactured goods, he would be liable to tax if his total turnover is more than Rs. 10,000 even if the turnover with respect to the manufactured goods is very much lesser. The Chief Commissioner, however, referred to this Court the question of law as to whether "in the present case the dealer's turnover should be determined under sub-clause (a) or (c) of sub-section (5) of section 4 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi.

Mr. Yogeshwar Dayal, the learned counsel for the assessee, contends that clause (a) of sub-section (5) of section 4 is applicable only if the turnover with respect to the goods imported for sale into the State of Delhi or manufactured or produced for sale is Rs. 10,000 or more. According to the learned counsel since in this case the turnover of manufactured goods was less than Rs. 10,000, clause (a) of sub-section (5) of section 4 was not applicable and the assessee could be taxed under clause (c) only if the turnover was more than Rs. 30,000. Section 4(1) and (5), as it stood at the relevant time, was as under:—

> "4(1) With effect from such date as the Chief Commissioner may, by notification in the Official Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified.
>
> (5) In this Act the expression "taxable quautum" means—
>
> (a) in relation to any dealer who imports for sale any goods into the State of Delhi, or manufactures or produces any goods for sale, 10,000 rupees; or

(b) in relation to particular classes of dealers not falling within clause (a) such sum as may be prescribed; or

(c) in relation to any other dealer, 30,000 rupees."

Mr. S. N. Shanker, the learned counsel for the State, on the other hand contends that even where a small part of sale-proceeds is represented by manufactured goods, then clause (a) of sub-section (5) is applicable and if the total sale-proceeds are more than Rs. 10,000 comprising both of manufactured goods or other goods the turnover becomes taxable.

We are in agreement with the submission of Mr. Yogeshwar Dayal. Under sub-section (1) of section 4 only such dealers whose gross turnover exceeds the taxable quantum are liable to pay sales-tax. From the definition of the expression "taxable quantum" in sub-section (5) of section 4 it is clear that clause (a) would apply only if the taxable quautum with respect to the goods imported or manufactured or produced for sale is Rs. 10,000 or more. Where turnover with respect to such goods is less than Rs. 10,000, then clause (c) of sub-section (5) of section 4 would be applicable. This view is in accord with the decision of Nagpur High Court in *Ayodhyaprasad Suklal* v. *The Crown* (1), and of the judgment of Madhya Pradesh High Court in *Mahabir Prasad* v. *B. S. Gupta, Income-tax Officer, Indore, and another* (2). Sub-section (5) of section 4 creates three classes of dealers for the purposes of taxation—(1) those whose business mainly is to import, manufacture or produce goods for sale and in their case the taxable quantum with respect to such sales is fixed at Rs. 10,000; (2) particular class of dealers not falling within above, the taxable quantum is left to be determined by rules and (3) other dealers whose taxable quantum is fixed at Rs. 30,000. The tax is attracted only if in the first class of cases taxable quantum with respect to goods imported, manufactured or produced exceeds Rs. 10,000. That, to our mind, appears to be the plain construction of the section. Mr. Shanker seeks to distinguish the Nagpur decision on the ground that the word "gross" in sub-section (1)

(1) 1951 (2) Sales Tax Cases 44.
(2) 1957 (8) Sales Tax Cases 429.

Kewal Krishan-Om Parkash, v. The State

Kapur, J.

of section 4 does not appear in the corresponding provision in the Nagpur Act. That, in our view, makes no difference. Taxable quantum having been defined the definition has to be incorporated in sub-section (1) of section 4. When so incorporated the presence of the word "gross" in the earlier part of this section will make no difference. In this view our answer to the question referred is that the taxable turnover in this case had to be determined under clause (c) of sub-section (5) of section 4. In the circumstances, however, there will be no order as to costs.

Grover, J.

A. N. GROVER, J.—I agree.

B. R. T.

INCOME-TAX REFERENCE

Before A. N. Grover and S. K. Kapur, JJ.

RAM GOPAL MOHTA (DECEASED) THROUGH SURAJRATTAN MOHATTA,—Petitioner.

versus

THE COMMISSIONER OF INCOME-TAX,, DELHI AND RAJASTHAN,—*Respondent.*

Income-Tax Reference No. 22-D of 1963.

1965

May, 14th.

Income-tax Act (XI of 1922)—S. 8—Proviso—Income from interest on securities—Expenditure for earning it in excess of income (i.e. negative income)—Deduction thereof—Whether allowable.

Held, that the use of the word "such" before "interest" in the proviso to section 8 of the Indian Income-Tax, Act, 1922, necessarily refers to the interest receivable on the securities. Therefore, only a reasonable sum expended for the purposes of realising the interest can be deducted and it follows that if no interest is realised, the assessee cannot claim deduction of any expenses for such realisation. The intention clearly is to allow deduction only when there has been income by way of interest on the securities. The words "in respect of any interest payable on money borrowed for the purpose of investment in the securities" immediately follow the provision relating to expenses incurred for the purposes of realising interest. The same meaning, therefore, should normally be attributed to these words, namely, that such interest paid on borrowed capital would be deductible only if there