Mohanlal Chokhany Vs. Commercial Tax Officer and ors.

LegalCrystal Citation : legalcrystal.com/870721

Court : Kolkata

Decided On : Feb-19-1970

Reported in : [1970]25STC413(Cal)

Judge : P.K. Banerjee, J.

Appeal No. : C.R. No. 22(W) of 1965

Appellant : Mohanlal Chokhany

Respondent : Commercial Tax Officer and ors.

Advocate for Def. : S.C. Das Gupta and ;Bimal Kumar Datta, Advs.

Advocate for Pet/Ap. : Nirmal Chandra Mukherjee and ;P.C. Mukherjee, Advs.

Judgement :

P.K. Banerjee, J.

1. The petitioner in this Rule, a dealer registered under Section 7 of the Central Sales Tax Act, 1956, carries on business under the name and style of Messrs Chokhany Sons holding registration certificate No. 372 ALR (Central). On 24th March, 1964, the Commercial Tax Officer issued a notice in Form 3 calling for books of accounts and to show cause why a penalty under Section 11(1) of the Bengal Finance (Sales Tax) Act read with Section 9 of the Central Sales Tax Act should not be imposed on the petitioner. The petitioner filed the return and consequent thereto assessment order was made and the petitioner was again asked to pay the penalty of Rs. 2,500 for not filing the return and challan in due time. On 16th November, 1964, the Commercial Tax Officer issued a notice under Section 11 (4B) of the Bengal Finance (Sales Tax) Act read with Section 9 of the Central Sales Tax Act whereby it was stated that the petitioner has defaulted for making payment of tax for the year ending Chait Sudhi 8, 2019, within the date fixed for payment and it was proposed by the said notice to levy a penalty under the said section for Rs. 5,000 and the petitioner was asked to show cause. The petitioner did not show cause but straightway came to this court and obtained the present rule on 12th January, 1965, and ad interim order of stay on condition that the petitioner must deposit Rs. 2,500 with the Registrar of this court and the respondents were restrained from imposing any further penalty and from realisation of the penalty of Rs. 2,500 already imposed.

2. Mr. N.C. Mukherjee appearing for the petitioner contended that there is no provision under the Central Sales Tax Act for the imposition of penalty for late filing of return and/or for non-payment of assessed tax. Furthermore Mr. Mukherjee contended that under Section 10 of the Central Sales Tax Act there is no provision for

imposing a penalty for non-submission of return or for delay in filing such return. Mr. Mukherjee contended that Section 6 of the Central Act is the only charging section and Section 9 of the Act lays down the procedure for collection of the taxes. But under the said section the authorities cannot impose any penalty. Mr. Mukherjee further argued that if it is held that under the powers given under Section 9 the penalty can be imposed, then his argument is that Section 9 is ultra vires entry 92A and entry 93 of List I of Schedule VII of the Constitution of India. Mr. Mukherjee argued that by incorporating the provisions of the general sales tax laws of different States the Central Government is legislating on subjects which are State subjects covered by item No. 54 of List II and as such the provision is ultra vires. Mr. Mukherjee further argued that the Government of India cannot legislate indirectly which cannot be done directly.

3. Mr. Das Gupta on behalf of the respondents however contended that Section 9 of the Act makes clear the provision for the imposition of penalty and there is nothing wrong in such imposition. Section 9 in effect incorporates the different laws prevailing in the different States in regard to the levy and collection of sales tax. Mr. Das Gupta contended that without repeating the laws in this Act the Central Legislature only provided that for the purpose of levy and collection of the tax and penalty the general sales tax laws of the States will be applicable in those States.

4. Before I deal with the question raised it appears from Section 9 (as amended by Act 28 of 1969) and Section 9(3) and Section 10A of the said Act read together that the Central Legislature has made a provision for assessment, reassessment, collection and enforcement of payment of taxes including penalty and for these purposes the sales tax authorities in each State may exercise all or any of the powers under the general sales tax law of the State in respect of collection or levy of the Central sales tax in that State. It cannot be denied that under Section 11 of the Bengal Finance (Sales Tax) Act, the sales tax authorities in West Bengal are empowered to impose penalty for the purpose of non-submission of return or late submission of return and also for default in payment of assessed tax. In that view of the matter I am of the opinion reading Section 9(3) of the Central Act with Section 11 of the Bengal Finance (Sales Tax) Act, the sales tax authorities can impose penalty on a registered dealer who did not file return under the Central Sales Tax Act and/or did not pay any assessment due under the said Act and there is nothing wrong in regard to the said assessment or penalty.

5. Mr. Mukherjee's contention is that Section 9 of the Central Sales Tax Act of 1956 is ultra vires entry 92A or 93 of List I. Mr. Mukherjee submitted that by the said section the Central Government is trying to legislate on State subjects. I do not find any substance in the contention. The Central Sales Tax Act sought to legislate and formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into and export from India and in order to provide for levy, collection and distribution of taxes on sale of goods in the course of inter-State trade or commerce. It cannot be denied that they are covered by entry 92A and offence thereto is covered by entry 93 of List I. Mr. Mukherjee contended that Section 9 of the Act brings in the provision of the Bengal Finance (Sales Tax) Act for the levy or exercise of powers provided in the said Act and as such the Central Government is legislating on the State subjects. I am afraid that is also not correct. Section 9 makes provision for the levy and collection of tax and penalty under the Central Sales Tax Act, The said section empowered the sales tax authorities in different States to assess and reassess

and collect and/or enforce collection of taxes in accordance with the provisions of the general sales tax laws.

6. The Central Government could have enacted the provisions by incorporating the similar and elaborate provisions for the assessment, reassessment etc. and no objection could have been taken on that ground. But in my opinion to reduce the volume of statute and to avoid repetition of the provisions of the general sales tax laws of different States, what the Central Government did was to bring about the different provisions of the State Acts of the different States into the Central Act itself by reference to the provisions of the general sales tax laws of the different States. This is only a recognized mode of interpretation as stated in Craies on 'Statute Law', 6th Edition, at page 223 as follows :

The effect of bringing into a later Act, by reference, sections of an earlier Act is to introduce the incorporated sections of the earlier Act into the later Act as if they had been enacted in it for the first time. Consequently, when an Act of 1855 incorporated sections of an earlier Act of 1840 those sections were read so as to take effect as if they had been passed in 1855, and Lord Esher, M.R., said : 'If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act. just as if they had been actually written in it with the pen, or printed in it, and the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all. For all practical purposes, therefore, those sections of the Act of 1840 are to be dealt with as if they were actually in the Act of 1855.

7. Similarly in this case the Central Legislature by referring to the general sales tax laws of different States had in fact introduced the provisions for assessment and reassessment and imposition of penalty of different sales tax laws in different States into the Central Act, as if they have been enacted in the Central Act and thereby the Legislature avoided reprinting of the said provisions into the Central Act and for all practical purposes those sections of the general sales tax laws dealing with assessment and imposition of penalties are to be dealt with as if they were actually in the Central Sales Tax Act of 1956. By such incorporation the Central Government has not legislated on the State subjects as argued by Mr. Mukherjee.

8. In the circumstances both the points urged by Mr. Mukherjee fail. The Rule is discharged. There will be no order as to costs.

9. The respondent-Commercial Tax Officer can withdraw the sum of Rs. 2,500 lying in deposit with the Registrar, Appellate Side, towards realisation of taxes. The authorities now can proceed in accordance with law in pursuance of the notice under Section 9 read with Section 11 (4B) of the Bengal Finance (Sales Tax) Act.