

Commercial Taxes Officer, Circle-B, Bharatpur Vs. M/s. Bhagat Singh

Special Leave Petition (C) No. 15870/2020 · Supreme Court of India · 2021-01-21 · Indira Banerjee · Sanjiv Khanna · F2J-C-1386

Full judgment text

Commercial Taxes Officer, Circle-B, Bharatpur Vs. M/s. Bhagat Singh

[Special Leave Petition (C) No. 15870/2020]

Indira Banerjee, J.

1. This SLP is against a judgment and order dated 9.7.2020 passed by the High Court of Judicature of Rajasthan at Jaipur dismissing the Revision Petition being SB Sales Tax Revision/Reference No. 165/2019, filed by the Petitioner, against an order dated 08.10.2018 passed by the Rajasthan Tax Board, whereby Appeal No. 1132/2017/Bharatpur filed by the Petitioner against reversal by the Appellate Authority of a Tax Assessment Order dated 9.10.2012 of the Assistant Commissioner, Commercial Tax Department, Circle B, Bharatpur, had been rejected by the Rajasthan Tax Board.

2. The Respondent had purchased a truck/trailer (hereinafter referred to as 'said vehicle') from one M/s Ashok Auto Sales Ltd of Aligarh, Uttar Pradesh, for consideration of Rs. 16,20,000/- vide Invoice No. C1273/09 dated 26.12.2009. The said vehicle was registered in Bharatpur in Rajasthan and given the Registration No. RJ-05-GA-5299.

3. On 11th July 2012, that is, almost three years after the date of purchase of the said vehicle, summons were issued to the Respondent under Sections 3, 6 and 7 of the Rajasthan Tax on Entry of Motor Vehicle into Local Areas Act 1988, hereinafter referred to as the Entry Tax Act of 1988.

4. It appears that the Respondent failed to appear pursuant to the summons, whereupon an Assessment Order dated 9.10.2012 was passed by the Assistant Commissioner Commercial Taxes Department, Circle - B, Bharatpur, levying on the Respondent, tax of Rs.2,26,800/-, that is, 14% of the purchase value under Sections 3, 6 and 7 of the Entry Tax Act of 1988, alongwith penalty of Rs.1,000/- and interest of Rs. 72,576/-, the total demand being Rs. 3,00,376/-.

5. Being aggrieved, the Respondent filed an appeal before the Appellate Authority, Commercial Tax Department, Bharatpur being Appeal No. 134/RET/2016 - 17/A.A./Bharatpur, inter alia, contending that (i) the summons issued for 9.10.2012 was received by the Respondent after that date, after which no further notice was issued and (ii) the Assessment Order was barred by limitation, the same having been passed beyond the period of 2 years from the date of purchase of the said vehicle. Even otherwise, the liability of the Respondent to Entry Tax in respect of the said vehicle was disputed.

6. By an order dated 4.1.2017, the Appellate Authority allowed the appeal of the said Respondent and set aside the Assessment Order impugned, holding that the Respondent was a "Casual Trader" and, therefore, the limitation for passing an Assessment Order against him was only 2 years from the date of the transaction.

7. Being aggrieved by the aforesaid Order dated 4.1.2017 passed by the Appellate Authority in Appeal No. 134/RET/2016-17/A.A./Bharatpur, the petitioner filed Appeal No. 1132/2017/Bharatpur before the Rajasthan Tax Board. The said appeal was rejected by the Rajasthan Tax Board, by a judgment and order dated 8.10.2018.

8. The petitioner filed a revision petition in the High Court being S.B. Sales Tax Revision/Reference No. 165/2019, against the aforesaid order dated 8.10.2018 of the Rajasthan Tax Board, which has been dismissed by the order dated 9.7.2020 of the High Court, impugned in this Special Leave Petition.

9. Some provisions of the Entry Tax Act, 1988, relevant to the issues involved in this case, are set out hereinbelow for convenience:-

"3. Incidence of Tax.-

(1) There shall be levied and collected a tax on the purchase value of a motor vehicle, an entry of which is effected into a local area for use or sale therein and which is liable for registration in the State under the Motor Vehicles Act, 1939 (Central Act 4 of 1939), at such rate or rates as may be notified by the State Government from time to time but not exceeding the rates notified for motor vehicles under section 5 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954) or fifteen per cent of the purchase value of a motor vehicle, whichever is less:

Provided that no tax shall be levied and collected in respect of a motor vehicle which was registered in any Union Territory or any other State under the Motor Vehicles Act, 1939 (Central Act 4 of 1939) for a period of fifteen months or more before the date on which it is liable to be registered in the State under the said Act.

(2) The Tax shall be payable by an importer, -

(a) if he is a dealer registered or liable to be registered under the provisions of the Rajasthan Sales Tax Act, 1954 (Act No. 29 of 1954), in the manner and within the time as tax on sales is payable by him under the said Act; and

(b) if he is a person not covered by clause (a), on the date of entry of the motor vehicle into the local area, to the incharge of the entry check - post or the Commercial Taxes officer of the area where he ordinarily resides or carries on any business or provides any service, and the provisions of the Rajasthan Sales Tax Act, 1954 (Act No. 29 of 1954) as applicable to a registered dealer or casual trader shall, mutatis mutandis, apply to such dealer or, as the case may be, such person.

(3) The Tax shall be in addition to the tax levied and collected as Octroi by any local authority within its local area.

6. Offences and penalties.-

(1) Where any person liable to pay tax under this Act fails to comply with any of the provisions of the Act or rules made thereunder, then the Assessing Authority may, after giving such persons a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding fifty per cent of the amount of tax.

(2) Subject to the provisions of this Act, all the provisions relating to offences and penalties, including interest, of the Rajasthan Sales Tax Act, 1954 (Act No. 29 of 1954) shall, mutatis mutandis apply in relation to the assessment, reassessment, collection and enforcement of payment of tax required to be collected under this Act or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under the said Act.

7. Applicability of the provisions of the Rajasthan Sales Tax Act, 1954 (Act No. 29 of 1954) and the rules made thereunder. -

Subject to the provisions of this Act and the rules made thereunder, the authorities empowered to assess, reassess, collect and enforce payment of tax under the Rajasthan Sales Tax Act, 1954 (Act No. 29 of 1954) shall assess, reassess, collect and enforce payment of tax including penalty or interest payable by an importer under this Act as if the tax, penalty or interest were payable under the said Act, and for this purpose they may exercise all or any of the powers assigned to them under the said Act and all the provisions of the said Act and the rules made thereunder for the time being in force including the provisions relating to returns, advance, payment of tax, provisional assessments, recover of tax, appeals, rebates, penalties, interest, compounding of offences and other miscellaneous matters shall, mutatis mutandis, apply."

10. Under Section 2(ccc) of the Rajasthan Sales Tax Act, 1994 "Casual Trader" means a person who has, whether as principal, agent or in any capacity, occasional transaction of business nature involving the buying, selling, supply or distribution of such goods as may be specified by the State Government by notification in the official gazette whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration.

11. Sections 10A and 10B of the Rajasthan Sales Tax Act pertain to assessment and the time limit for assessment in the case of a Casual Trader. Section 10A(1) read with Section 10A(2) of the Rajasthan Sales Tax Act, 1954 provides that every "Casual Trader", on completion of a transaction of sale or purchase, for which he is liable to pay tax, shall make a report to the Assessing Officer or to the

Officer-in-charge of a Check Post, of the sale or purchase price, tax payable thereon, etc. and deposit the tax with such officer. Subsection (3) of Section 10 enables the Assessing Officer to assess the tax payable by a "Casual Trader" on his failure to make a report.

12. Section 10B(1) (iii) of the Rajasthan Sales Tax Act, 1954, which stipulates the time limit for assessment, is set out hereinbelow for convenience:

"10B. TIME LIMIT FOR ASSESSMENT -

1) No assessment shall be made -

(i)

(ii)

(iii) in cases falling under section 10A after expiry of one year from the date of filing the report, and in the absence of any such report, after the expiry of two years from the date of the transaction."

13. In the case of a "Casual Trader", the time limit for assessment is one year from the date of making the report, and if no report is made, within two years from the date of the transaction. The date of transaction in this case is 26.12.2009. The question is whether assessment was barred upon expiry of two years from the date of transaction, and/or in other words after 25/26.12.2011.

14. In this Special Leave Petition, the main contention of the Petitioner is that a single transaction of purchase of a motor vehicle does not bring a person within the definition of "Casual Trader". "Casual Trader" envisages occasional transactions of business involving buying and selling of goods. The plurality of transactions is a condition precedent for treating a trader as a "Casual Trader". It is contended that there was only a single transaction in this case. The Respondent could not, therefore, be held a "Casual Trader".

15. The Appellate Authority, the Rajasthan Tax Board and the High Court have concurred in arriving at the finding that the assessment of the Respondent was barred by limitation as the Respondent was a "Casual Trader". A perusal of the definition of "Casual Trader" makes it amply clear that a person with occasional transactions of buying/selling are to be treated as casual traders, for whom a shorter time limit for assessment has been imposed under Section 10B(iii) read with Section 10A of the Rajasthan Sales Tax Act 1954. The Legislature could not, possibly, have intended that a person making 2 or 3 transactions should be treated as a "Casual Trader", but a person making only one transaction should be treated at par with regular traders.

16. It is well settled that in construing a statutory provision, words in the singular are to include the plural and vice versa, unless repugnant to the context in which the expression has been used, as provided in Section 13(2) of the General Clauses Act, 1897 and provisions identical thereto in State enactments pertaining to General Clauses.

17. Relying on Section 13(b) of the Bombay General Clauses Act, 1904, which states that words in the singular shall include the plural, and vice versa, this Court has held that the expression "any bodies or persons" in Section 43-A(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, will include a singular person, in the same way as the expression "leases" in the provision will include a single lease."¹

18. The Court must interpret a statute in a manner which is just, reasonable and sensible. If the grammatical construction leads to some absurdity or some repugnancy or inconsistency with the legislative intent, as may be deduced by reading the provisions of the statute as a whole, the grammatical construction may be departed from to avoid anomaly, absurdity or inconsistency.

To quote Venkatarama Aiyar, J. in *Tirath Singh v. Bachittar Singh*. AIR 1955 SC 830 (at 833), "where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

This view has been reiterated by this Court.

19. We, therefore, find no grounds to interfere with judgment and order impugned, under Article 136 of the Constitution of India in a catena of subsequent decisions.

20. The Special Leave Petition is, therefore, dismissed.

.....J. [Indira Banerjee]

.....J. [Sanjiv Khanna]

New Delhi;

January 21, 2021

1 Govinda Bala Patil v. Ganpati Ramchandra Naikwade, (2013) 5 SCC 644

Item No. 8

Commercial Taxes Officer, Circle-B, Bharatpur Vs. M/s. Bhagat Singh

[Petition(s) for Special Leave to Appeal (C) No.15870/2020 arising out of impugned final judgment and order dated 09-07-2020 in SBSTR No.165/2019 passed by the High Court of Judicature for Rajasthan at Jaipur]

[With appln.(s) for IA No.134852/2020-EXEMPTION FROM FILING O.T.]

Date: 21-01-2021

This petition was called on for hearing today.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s)

Mr. Vishal Meghwal, Adv.

Mr. Milind Kumar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

ORDER

1 The Special Leave Petition is dismissed in terms of the signed reportable judgment.

2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)

A.R.-cum-P.S.

(SAROJ KUMARI GAUR)

Court Master

(Signed reportable judgment is placed on the file)

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