A

STATE OF RAJASTHAN AND OTHERS

v.

GHASILAL

January 21, 1965

B [K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH, J. R. MUDHOLKAR AND S. M. SIKRI JJ.]

Rajasthan Sales Tax Act, 1955, *ss.* 7(2), 16(1)(b) *and Rajasthan Sales Tax Rules, r.* 31—*Scope of.*

On a petition of the assessee challenging the validity of Rajasthan Sales Tax Rules, the High Court passed an interim order that the assessee C would keep proper accounts and file the prescribed returns, but that he should not be assessed till further orders. While the petition was pending an ordinance was promulgated validating the rules, and the assessee withdrew the petition. The sales tax officer sent a show cause notice and the assessee filed the return and deposited tax. The Sales Tax Officer assessed tax and imposed a penalty under s. 16(1)(b) of the Act and justified and imposition on the ground that the High Court did not say that the assessee was allowed to withhold the tax, but that D on the contrary the order of the High Court showed that the assessee should have filed returns in time and according to s. 7(2) of the Act the Treasury challan of the deposit should have accompanied them. The assessee's appeal to the Deputy Commissioner of Sales Tax (Appeals) was dismissed. The Sales-tax Officer, for a subsequent period, imposed another penalty on the same grounds. The assessee filed two writ petitions in the High Court which were allowed. In appeal

E HELD: (i) There had been no breach of s. 16(1)(b) of the Act, and consequently the orders imposing the penalties could not be sustained. [809 H]

Till the tax payable was ascertained by the assessing authority under s. 10, or by the assessee under s. 7(2), no tax could be said to be due within s. 16(1)(b) of the Act, for, till then there was only a liability to be assessed to tax. [810 B-C]

F Rule 31 of the Rajasthan Sales Tax Rules comes into the picture only when an assessment has been completed. [810 D]

(ii) Section 7(2) of the Act could not be attracted till the assessee filed the returns. [810 F]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 408-409 of 1964.

G

Appeal by special leave from the judgment and order dated February 5, 1963 of the Rajasthan High Court in D.B. Civil Writ Petitions Nos. 172 and 111 of 1961.

G. C. Kasliwal, Advocate-General, for the State of Rajasthan, H *K. K. Jain* and *R. N. Sachthey*, for the appellant.

R. K. Garg, S. C. Agarwala, D. P. Singh and *M. K. Ramamurthi*, for the respondent.

The Judgment of the Court was delivered by

Sikri, J. These two appeals by special leave are directed against the judgment of the Rajasthan High Court allowing Civil Writ Petitions Nos. 111 and 172 of 1961, and quashing orders of the Sales Tax authorities imposing penalties on the respondent, Ghasilal, for delay in payment of tax due. The High Court came to the conclusion that the penalties had been imposed in violation of Art. 20(1) of the Constitution, but it is not necessary to deal with this question because we are inclined to accept the contention raised by the learned counsel for the respondent, Mr. Garg, that the penalties have been imposed in violation of the relevant statutory provisions.

The relevant facts are these. On March 28, 1955, Rajasthan Sales Tax Rules (hereinafter referred to as the Rules) were published in the Rajasthan Gazette. The Rajasthan Sales Tax Act (hereinafter referred to as the Act) came into force on April 1, 1955. The respondent filed Civil Writ Petition, No. 11 of 1958, in the High Court challenging the making of assessments on the turnover of the respondent for the year 1955-56 on the ground that the said Rules were invalid. On January 9, 1958, the High Court passed an interim order that 'the petitioner will keep proper accounts and file the prescribed returns but he shall not be assessed till further orders'. While the petition was pending in the High Court, an Ordinance (No. 5 of 1959) was promulgated on November 6, 1959, validating the Rules. Thereupon the respondent withdrew Writ Petition No. 11 of 1958. On December 17, 1959 the Rajasthan Sales Tax Validation Act (Rajasthan Act 43 of 1959) replaced the Ordinance. It is common ground that the effect of the said Ordinance and the said Act was to validate the Rules, even if any defect existed in the making of the Rules. We may mention that according to the appellant, the said Ordinance and the said Validating Act were enacted out of abundant caution.

On December 4, 1959, the Sales Tax Officer, Kotah City Circle, sent a show cause notice to the respondent in the following words :

> "Your writ No. 11 has been dismissed by the Hon'ble High Court on 23rd November, 1959. You are, therefore, requested to deposit the tax due upto date within a week, failing which necessary action according to law will be taken."

This notice was served on the respondent the same day. The respondent filed a return for the 4th quarter ending October 22, 1957,

A and Rs. 11,898.31 was deposited as tax. It appears that on January 8, 1960, March 5, 1960 and March 19, 1960, he deposited Rs. 28,607 as tax in respect of the four quarters of the accounting period October 23, 1957 to November 10, 1958. It is not clear from the record whether he filed returns on these dates. On April 25, 1960, the Sales Tax Officer made an assessment in respect of the accounting period November 3, 1956 to October 22, 1957, and proceeded to impose a penalty of Rs. 400 under s. 16(1)(b) of the Rajasthan Sales Tax Act. He justified the imposition of penalty thus :

> "The assessee has not deposited tax of the quarters on the due date, the tax deposited for 4th quarter is very late, *i.e.*, after two years the assessee was given a notice and in reply to which he referred the stay order of the Hon'ble High Court granted to him in a writ petition filed challenging the validity of sales tax rules made under the Act, the stay order of the Hon'ble High Court does not say that the assessee is allowed to withhold the tax on the contrary, it directs that the petitioner (assessee) will keep proper accounts and file prescribed returns but shall not be assessed. This clearly shows that the assessee should have filed returns in time and according to section 7(2) the Treasury challan of the deposit should have accompanied them. This amounts to contravention of the mandatory provisions, the writ was dismissed on 23-4-58 *sic* (23-11-59), even the amount was not deposited till 17-12-59. This shows that the assessee withheld the tax intentionally."

The respondent appealed to Deputy Commissioner Sales Tax (Appeals), Kotah, who dismissed the appeal, holding that the stay order of the High Court did not justify the respondent in not filing the return and depositing the tax in accordance with s. 7(2) of the Rajasthan Sales Tax Act.

On December 6, 1960, the Sales Tax Officer assessed the respondent in respect of the accounting period October 23, 1957 to November 10, 1958, and imposed a penalty of Rs. 1,000 for not depositing the tax in time on the same grounds. The respondent then filed a petition (No. 111 of 1961) under Art. 226 of the Constitution, on April 3, 1961, challenging the imposition of penalty in respect of the period November 3, 1956 to October 22, 1957, and on April 4, 1961, he filed a petition (No. 172 of 1961) challenging the imposition of penalty in respect of the

accounting period October 23, 1957 to November 10, 1958. As we have said before, the High Court allowed the petitions. A

The learned Advocate-General has raised a number of points before us and particularly invited us to hold that the High Court was in error in holding that there has been contravention of Art. 20(1) of the Constitution, and that the Rules as originally published on March 28, 1955, suffered from no procedural defect in the matter of their promulgation and duly came into force on April 1, 1955. But we express no opinion one way or the other on these points as the appeals can be disposed of on a narrow point of the construction of the Act. B C

The relevant provisions of the Act read thus:

"s. 7(1) Every dealer liable to pay tax shall furnish returns of his turnover for the prescribed periods in the prescribed form, in the prescribed manner and within the prescribed time, to the assessing authority. D

Provided that the assessing authority may extend the date for the submission of such returns by any dealer or class of dealers by a period not exceeding fifteen days in the aggregate.

(2) Every such return shall be accompanied by a Treasury receipt or receipt of any bank authorised to receive money on behalf of the State Government showing the deposit of the full amount of tax due on the basis of return in the Government Treasury or bank concerned. E

(3) If any dealer discovers any omission, error, or wrong statement in any returns furnished by him under sub-section (1), he may furnish a revised return in the prescribed manner before the time prescribed for the submission of the next return but not later. F

(4) Every deposit of tax made under sub-section (2) shall be deemed to be provisional subject to necessary adjustments in pursuance of the final assessment of tax made for any year under section 10. G

S. 16(1)—If any person—

(a) has without reasonable cause failed to get himself registered as required by sub-section (1) of section 6 within the time prescribed; or H

A (b) has without reasonable cause failed to pay the tax due within the time allowed; or

(c) has without reasonable cause failed to furnish the return of his turnover, or failed to furnish it within the time allowed; or

B ....

....

the assessing authority may direct that such person shall pay by way of penalty, in the case referred to in clause (a) in addition to the fee payable by him, a sum not exceeding Rs. 50 and in case referred to in clause (b), in addi-
C tion to the amount payable by him, a sum not exceeding half of that amount, and that in cases referred to in clauses (c) and (d), in addition to the tax payable by him, a sum not exceeding half the amount of tax determined; in the case referred to in clause (e), in addition to the tax payable by him a sum not exceeding double the
D amount of tax, if any which would have been avoided if taxable turnover as returned by such person had been accepted as correct turnover, and in the cases referred to in clauses (f), (ff) and (g), a sum not exceeding Rs. 100."

E Mr. Garg contends that there was no breach of s. 16(1)(b) of the Act. No tax was due till the respondent filed returns under s. 7(1) of the Act. Section 7(2), which requires a deposit of the full amount due on the basis of the return was compiled with when the respondent filed the returns, on December 18, 1959, and in January to March, 1960. There cannot be non-compliance
F of s. 7(2) unless a return is filed without depositing the tax due on the basis of the return, and as no return was filed earlier than December 18, 1959, there had been no violation of the requirements of s. 7(2). He further contends that no tax is due till assessment is made under s. 10 of the Act.

G The learned Advocate-General, on the other hand, urges that tax becomes due because of the charging sections of the Act, *i.e.*, s. 3 with s. 5. He further contends that a show cause notice had been given on December 4, 1959, and as there was delay in complying with the notice, there was breach of s. 16(1)(b) of the Act.

H In our opinion, there has been no breach of s. 16(1)(b) of the Act, and consequently, the orders imposing the penalties cannot be sustained. According to the terms of s. 16(1)(b), there must

be a tax due and there must be a failure to pay the tax due within the time allowed. There was some discussion before us as to the meaning of the words 'time allowed', but we need not decide in this case whether the words 'time allowed' connote time allowed by an assessing authority or time allowed by a provision in the Rules or the Act, or all these things, as we are of the view that no tax was due within the terms of s. 16(1)(b) of the Act. Section 3, the charging section, read with s. 5, makes tax payable, *i.e.*, creates a liability to pay the tax. That is the normal function of a charging section in a taxing statute. But till the tax payable is ascertained by the assessing authority under s. 10, or by the assessee under s. 7(2), no tax can be said to be due within s. 16(1)(b) of the Act, for till then there is only a liability to be assessed to tax.

The contention of the learned Advocate-General that the show cause notice dated December 4, 1959, makes tax due is without any substance. He was not able to point to any rule or provision of the Act, under which the show cause notice was issued. It may be that the assessing authority had in mind r. 31, but that rule comes into the picture only when an assessment has been completed.

The last contention of the learned Advocate-General is that the stay order passed by the High Court required the respondent to submit returns. This, according to him, implied that he had to submit returns in accordance with law, including s. 7(2). As he had failed to submit returns and deposit the tax in accordance with the directions of the High Court, there was a breach of s. 16(1)(b). We are unable to read the stay order as implying that the respondent was obliged to deposit tax for the stay order then would be of no utility to the assessee. Apart from that, the respondent did not file returns till December 1959, and January—March 1960, and s. 7(2) could not be attracted till then.

We may mention that we are not concerned with the question whether there has been any breach of s. 16(1)(c).

In the result, the appeals fail and are dismissed with costs. One set of hearing fee.

Appeals dismissed.