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STATE OF U.P.

v.

DYER MEAKIN BREWERIES LTD.

March 8, 1973

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[K. S. HEGDE, P. JAGANMOHAN REDDY AND H. R. KHANNA, JJ.]

Central Sales Tax Act, 1956, Section 10-A—Assessee registered as dealer in Gaziabad—Penalty proceedings initiated against assessee—Subsequently, assessee's registration transferred to Lucknow—Sales Tax Officer had jurisdiction to impose penalty on assessee even after transfer of registration.

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The assessee was registered as a dealer under the Central Sales Tax Act, 1956, at Ghaziabad. For the relevant assessment years, he was assessed by the Tax Officer at Ghaziabad. The Sales Tax Officer, Ghaziabad, subsequently came to know that the assessee had misused some of the 'C' Forms and, therefore, issued a penalty notice u/s 10-A of the Act on January 8, 1960. During the pendency of the penalty proceedings, the assessee transferred his registration to Lucknow. The Sales Tax Officer, Ghaziabad imposed the penalty on the assessee for the misuse of Form 'C'. At the instance of the assessee, the Revisional Authority under the Statute referred three questions of law to High Court under section 11(1) of the U.P. Sales Tax Act, the principal question being whether the Sales Tax Officer, Ghaziabad, had jurisdiction to impose penalty when the registration was transferred to Lucknow. The High Court answered the question against the State.

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On appeals by special leave, allowing the appeals,

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HELD: *Prima facie*, the Sales Tax Officer, Ghaziabad was competent to levy the penalty on the assessee. Section 10-A definitely says that the authority who granted the certificate of registration to an assessee is one of the authorities competent to levy penalty. Undoubtedly the Sales Tax Officer, Ghaziabad, was the authority who granted the certificate of registration to the assessee and that certificate was in force during the relevant assessment years. Even though after 28-3-1960, the date of transfer of registration, he ceased to be the authority competent to grant certificate of registration to the assessee he still had the competence to levy penalty on the assessee in view of the fact, that it was he who had granted certificate of registration to the assessee. The levy of penalty is one of levying tax. If the Sales-tax Officer was competent to levy sales-tax on the assessee in respect of the relevant assessment years, he was equally competent to levy penalty on the assessee in respect of the offences committed during these years. [653 D]

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CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1655 and 1656 of 1970.

Appeals by special leave from the judgment and order dated 1st January 1970 of the Allahabad High Court in Sales Tax Reference Nos. 15 and 16 of 1968.

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N. D. Karkhanis and *O. P. Rana*, for the appellant.

D. P. Singh, *S. C. Agarwal*, *V. J. Francis* and *R. P. Singh*, for the respondent.

The Judgment of the Court was delivered by

HEGDE, J. These are appeals by Special Leave. They related to penalty proceeding. The assessee, M/s. Dyer Meakin Breweries Ltd., is carrying on business of manufacture and sale of wines, bear and fruit juices, etc. at Ghaziabad. The assessee was registered as a dealer under The Central Sales Tax Act, 1956 (hereinafter referred to as the Act) at Ghaziabad. During the assessment years 1958-59 and 1959-60, the assessee submitted its sales tax returns to the Sales Tax Officer at Ghaziabad and he was assessed by that Officer. Subsequently, the Sales Tax Officer, Ghaziabad, came to know that the assessee had misused some of the 'C' forms issued to it. According to his information, the assessee, by misusing the 'C' form, had purchased goods worth Rs. 11,754.62 P. in the assessment year 1958-59 and goods worth Rs. 2,68,242.38 P. in the assessment year 1959-60. Hence, the Sales Tax Officer, Ghaziabad, issued to the assessee a notice on January 8, 1960 calling upon him to show cause why he should not impose penalty on him under Section 10-A of the Act. The assessee did not give any explanation. Some time thereafter, the assessee made an application praying for condonation of his default, alleging that the defaults were committed due to ignorance of law. The Sales Tax Officer did not accept that explanation. The Sales Tax Officer, Ghaziabad again issued a notice to the assessee on October 31, 1960 requiring it to show cause why it should not be prosecuted under Section 10(b) of the Act. Thereupon, the assessee submitted an application offering to compound the offence for a sum of Rs. 7,000/-. That offer was not accepted. Subsequently, on January 23, 1961, the Sales Tax Officer again called upon the assessee to show cause why penalty should not be imposed on him under Section 10-A. After examining the representation made by the assessee, the Sales Tax Officer imposed on the assessee a penalty of Rs. 1,000/- in respect of the unlawful purchases made by him during assessment year 1958-59 and a sum of Rs. 23,000/- in respect of the unlawful purchases made by him during the assessment year 1959-60. On appeal, the Assistant Commissioner (Judicial) reduced the penalty in respect of the assessment year 1958-59 to Rs. 750/- and in respect of the assessment year 1959-60 to Rs. 17,000/-. Thereafter, the assessee took up the matter in revision. The Revisional Authority dismissed the assessee's appeal in respect of the assessment year 1958-59, but reduced the penalty from Rs. 17,000/- to Rs. 15,000/- in respect of the assessment year 1959-60. Thereafter, at the instance of the assessee, the Revisional Authority submitted the following questions to the High Court under Section 11(1) of the U.P. Sales Tax Act :—

"1. Whether on the facts and circumstances of the case the Sales Tax Officer, Ghaziabad being not seized

- A of the matter at the time of making the penalty order the jurisdiction having been transferred to Lucknow circle, was right and just in law in initiating the penalty proceedings and imposing the fine ?
- B 2. Whether on the facts and circumstances of the case the additional Revising Authority, Sales Tax, Meerut Range was justified in holding that the applicants made the representations with a guilty mind fraudulently and falsely; with the full knowledge that the objected goods purchased were not covered by the registration certificate ?
- C 3. If the answer to question No. 2 is in the negative, whether the imposition of penalty under section 10(b) of the Central Sales Tax Act was justified and right in law ?”

D The High Court answered the first question in favour of the assessee. It came to the conclusion that the Sales Tax Officer, Ghaziabad, had no jurisdiction to initiate penalty proceedings against the assessee as by the time he made his order, the jurisdiction over the assessee had been transferred to the Sales Tax Officer, Lucknow. Having answered the first question in favour of the assessee, the High Court thought it unnecessary to answer the remaining two questions.

E The only question that we have to decide is whether the High Court was justified in coming to the conclusion that the Sales Tax Officer, Ghaziabad, had no jurisdiction to impose penalty on the assessee. As mentioned earlier, the assessee was registered as a dealer before the Sales Tax Officer, Ghaziabad. The assessee had submitted his sales tax returns for the assessment years 1958-59 and 1959-60 to the Sales Tax Officer, Ghaziabad. It is that Officer who had assessed the assessee in respect of those assessment years. The validity of those assessments have not been questioned at any stage. The registration of the assessee was transferred from Ghaziabad to Lucknow only on 28-3-1960. Till that date, the assessee continued to be registered as a dealer in the office of the Sales Tax Officer, Ghaziabad. The penalty proceedings had been initiated on January 8, 1960, *i.e.* long before the assessee's registration was transferred from the Sales Tax Officer, Ghaziabad to the Sales Tax Officer, Lucknow. The High Court came to the conclusion that when the penalty was actually imposed on the assessee, the Sales Tax Officer, Ghaziabad, had no jurisdiction over the assessee and hence the levy made was invalid. We shall presently examine the correctness of that conclusion. But before doing so, it would be convenient to dispose off a new contention advanced by Mr. Singh, the learned counsel for the assessee. Mr. Singh contended that the registration of the assessee as a dealer

before the Sales Tax Officer, Ghaziabad was an invalid registration as the U.P. Sales Tax Act as well as the Central Sales Tax Act did not permit double registration of the same assessee. According to him the assessee's head office was at all time at Lucknow. This is an entirely new contention. No such contention appears to have been taken either before the authorities under the Act or before the High Court. On the basis of the material on record it is not possible to come to a firm conclusion that the same assessee had been registered at two places. Further there is no material before us to show that during the relevant assessment years the assessee's head office was at Lucknow. These are essentially questions of fact. We cannot go into those questions at this stage. Hence, we do not propose to go into the contention that the assessee's registration at Ghaziabad was invalid. We have to proceed on the basis that the assessee was properly registered as a dealer at Ghaziabad. If that was not so, the assessee would not have applied to the Sales Tax Officer, Ghaziabad, for registration; nor would it have submitted its sales tax returns to that officer. As mentioned earlier, the sales tax assessments for the years 1958-59 and 1959-60 were not challenged as being unauthorised.

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This takes us to the question whether under Section 10-A of the Act, the Sales Tax Officer, Ghazibad, had competence to levy penalty on the assessee. We shall first read Section 10 of the Act to the extent it is material for our present purpose. That section says :—

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“10. If any person—

- (a)
- (b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or
- (c)
- (d)
- (e)
- (f)

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he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues”.

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A Section 10-A(I) says :—

B “If any person purchasing goods is guilty of an offence under clause (b) or clause (c) or clause (d) of section 10, the authority *who granted to him or, as the case may be is competent to grant to him* a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed :

C Provided that no prosecution for an offence under section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section. “(emphasis supplied).

D There is no dispute that the authority who granted the certificate of registration was the Sales Tax Officer, Ghaziabad. Therefore, *prima facie*, he was competent to levy penalty on the assessee. But it was contended on behalf of the assessee that on 28.3.1960, the registration before the Sales Tax Officer, Ghaziabad, stood cancelled and thereafter the assessee was registered before the Sales Tax Officer, Lucknow, that being so, the Sales Tax Officer, Ghaziabad, had no jurisdiction to levy penalty on the assessee.

E This contention overlooks the language of Section 10-A. That section definitely says that the authority who granted the certificate of registration to an assessee is one of the authorities competent to levy penalty. Undoubtedly, the Sales Tax Officer, Ghaziabad, was the authority who granted the certificate of registration to the assessee and that certificate was in force during the assessment years 1958-59 and 1959-60. Even though after 28.3.1960 he ceased to be the authority competent to grant certificate of registration to the assessee he still had the competence to levy penalty on the assessee in view of the fact that it was he who had granted certificate of registration to the assessee. In this case, we are dealing with the penalty relating to offences committed during the assessment years 1958-58 and 1959-60.

F In fact the levy of penalty is one form of levying tax. If the Sales Tax Officer was competent to levy sales tax on the assessee in respect of those assessment years, he was equally competent to levy penalty on the assessee in respect of the offences committed during those years. In our opinion, the High Court did not properly appreciate the legal position in this case. The High Court was wrong in thinking that the proceedings initiated on January 9, 1960 stood terminated as a result of the subsequent notices issued by the Sales Tax Officer. The notices issued by

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him are not statutory notices. Under Section 10-A of the Act the Sales Tax Officer was only required to give reasonable opportunity to the assessee to show cause why penalty should not be imposed on him. **A**

In the result, we allow these appeals, set aside the order of the High Court and remand the case to the High Court for answering the remaining questions. Costs of these appeals will be costs in the cause. **B**

S.B.W.

Appeals allowed.