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March 30.

CENTRAL POTTERIES LTD.

v.

STATE OF MAHARASHTRA & OTHERS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Sales Tax—Assessment—Liability to pay tax, if depends upon being registered as dealer—Want of jurisdiction and irregular assumption of jurisdiction—Distinction—C. P. and Berar Sales Tax Act, 1947 (C. P. & Berar 21 of 1947), s. 3, 4 (1), 8. 10, 11.

The appellant was a company carrying on business in the manufacture of sale of potteries and Chinaware in Nagpur. The Central Provinces and Berar Sales Tax Act came into force on June 1st 1947. On May 27, 1947, notifications Nos. 597 and 599 were issued. Notification No. 597 fixed August 15, 1947 as the date by which the dealers liable to pay tax under the said Act were to get themselves registered and by notification No. 599 the District Excise Officer was appointed as the Sales Tax Officer for receiving application for registration and for issuing certificates. The appellant company presented an application to the said officer and the certificate was issued on July 21st 1947 but actually delivered to the appellant on September 13, 1947. Thereafter, the appellant had been duly submitting returns and paid taxes till June 30th 1951. The appellant instituted a suit in December 1951 contending that the Sales Tax Officer who issued the Registration Certificate to the appellant on July 21st, 1947, was not authorised to do so under the Act, and the recoveries of tax from him were illegal and void, The Trial Court held that the certificate of registration was delivered to the appellant on 13th September, 1947, i.e. after the Rules had been finally published on August 15, 1947, and the irregularity if any in the issue of the certificate had been cured, and further held that the liability of the appellant to pay sales tax was not affected by the invalidity of the registration under s. 8. On appeal the High Court held that the question whether the 'registration of the appellant as dealer under s. 8 of the Act was valid or not did not call for a decision as even if it was invalid, that did not affect its liability to be assessed to sales tax, and dismissed the appeal. The appellant came up in appeal by certificate to the Supreme Court.

The question was whether the appellant was not liable to pay tax under the provisions of the Central Provinces and Berar Sales Tax Act 1947 on the ground alleged that it had not been validly registered as a dealer under s. 8 of the Act.

Held, that the High Court was correct in its view that the appellant was liable to pay the tax under the Act irrespective of whether the registration under s. 8 was valid or not. The liability arose under s. 4 of the Act which was the charging section and the liability was not conditional on the registration of the dealer under s. 8 of the Act.

The position of the dealer who has obtained a certificate of registration which turns out to be invalid cannot on principle be distinguished from that of one who has failed to obtain a certificate. The provision of ss. 8 and 11 do not, to any extent, affect the substantive liability to be assessed to tax which is imposed by s. 4 of the Act.

There is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction. Whereas the order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but as assumed it otherwise than in the mode prescribed by law is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good and not open to collateral attack. Therefore even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under s. 10 (1) that would be a mere irregularity in the assumption of jurisdiction and the ordered of a assessment passed in those proceedings cannot be held to be without jurisdiction and no suit will lie for impeaching them on the ground that s. 10 (1) had not been followed

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 205 of 1961.

Appeal from the judgment and decree dated June 16, 1959, of the Bombay High Court (Circuit Bench) at Nagpur in F. A. No. 32 of 1955.

Shankar Anand, M. S. Gupta and *Ganpat Rai* for the appellants.

M. C. Setalvad, Attorney General for India,

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C. K. Daphtary, Solicitor General of India, H. N. Sanyal, Additional Solicitor General of India, N. S. Bindra and *P. D. Menon*, for the respondent No. 3.

1962. March 30. The Judgment of the Court was delivered by

Aiyar J.

VENKATARAMA AIYAR, J.—The sole point for determination in this appeal, which is directed against the Judgment of the High Court of Bombay is whether the appellant is not liable to pay tax under the provisions of the Central Provinces & Berar Sales Tax Act, 1947 (Act 21 of 1947), on the ground alleged that it had not been validly registered as a dealer under s.8 of the Act. The facts bearing on this contention are that the Central Provinces & Berar Sales Tax Act, hereinafter referred to as "the Act", received the assent of the Governor-General on May 23, 1947 and came into force on June 1, 1947. On May 27, 1947 a notification No. 601 was issued by the Provincial Government publishing draft rules which it "proposed to make, in exercise of the powers conferred by s. 28 of the Act" and on August 15, 1947, the rules as finally adopted were published. In the meantime two other notifications Nos. 597 and 599 had been issued on May 27, 1947, No. 597 under s.8 of the Act fixing August 15, 1947 as "the date by or on which all dealers liable to pay tax under the said Act shall get themselves registered" and No. 599 under s.3 of the Act appointing the District Excise Officers as the Sales Tax Officers for "receiving applications for registration and for issuing certificates under section 8 of the Act".

The appellant is a Company carrying on business in the manufacture and sale of potteries chinaware in Nagpur. On July 2, 1947 it presented, pursuant to the notifications aforesaid, an application to the Sales Tax Officer for registering itself as a dealer under the Act. On this application a certificate was issued on July 21, 1947 and actually delivered

to the appellant on September 13, 1947. Thereafter the appellant had been duly submitting returns as provided in the Act and assessment were made thereon and taxes paid from the period commencing from June 1, 1947 to June 30, 1951. Some time thereafter the idea dawned on the appellant that the proceedings taken by the respondents under the Act were unauthorised, that the assessments were illegal and that in consequence it was entitled to refund of the amounts paid as sales tax. And so, on December 18, 1951, it instituted the suit out of which the present appeal arises claiming a refund of Rs. 6,650-11-9 being the amount paid for sales tax during the period June 1, 1947 to June 30, 1951 and a sum of Rs. 2,000/- as damages, in all Rs. 8,650-11-9. Though a number of grounds were put forward in support of the claim, it is necessary now to deal with only one of them, and that is that the Sales Tax Officer who issued the registration certificate to the appellant on July 21, 1947 was not authorised to do so under that Act and in consequence all the assessments and recoveries of tax were illegal and void. The basis for this contention is that s. 3(1) of the Act confers authority on the State Government to appoint any person to be a Commissioner of Sales Tax, and "such other persons under any prescribed designations" to assist him as it thinks fit. By notification No. 595 dated May 27, 1947 the Government appointed in exercise of the powers conferred by s. 3(1) the Excise Commissioner, Central Provinces & Berar to be the Commissioner of Sales Tax, Central Provinces & Berar. The validity of this notification is not now in question. The attack is on the notification No. 599 dated May 27, 1947 whereby the Government acting under s. 3 of the Act directed that the District Excise Officers in charge of districts shall be the Sales Tax Officers for purpose of registration of certificates under s.8 of the Act. It is said that

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s. 3(1) authorises the Government to appoint "other persons under any prescribed designations", that the word "prescribed" is defined in s. 2(e) as meaning "prescribed by rules made under this Act" and that as the rules finally came into force only on August 15, 1947 the appointment of District Excise officers as Sale Tax Officers for the purpose of s. 8 on May 27, 1947 was in contravention of s. 3(i) and that in consequence the issue registration certificate on July 21, 1947 by an officer appointed under this notification was void.

The Civil Judge of Nagpur who tried the suit held that as the certificate of registration was delivered to the appellant on September 13, 1947 i.e. after the rules had been finally published on August 15, 1947, the irregularity, if any, in the issue of registration certificate on July 21, 1947 had been cured. He also further held that the liability of the appellant to pay sales tax was not affected by the invalidity of the registration under s. 8. In the result he dismissed the suit with costs.

Against this decision appellant preferred an appeal to the High Court of Nagpur and that was heard by a Bench of the Bombay High Court to which it stood transferred under the States Reorganisation Act. The learned Judges held that the question whether the registration of the appellant as dealer under s. 8 of the Act was valid or not did not call for a decision as even if it was invalid that did not affect its liability to be assessed to sales tax and in that view they dismissed the appeal with costs but granted a certificate under s. 109 C.P.C. and Art. 132(2) of the Constitution.

In our judgment the High Court is clearly correct in its view that the appellant was liable to pay the tax under the Act irrespective of whether

the registration under s. 8 was valid or not. That liability arose under s. 4 which is the charging section. Section 4 is as follows:—

> 34(1) (a). In Madhya Pradesh excluding the merged territories every dealer whose turnover during the year proceeding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax in accordance with the provisions of this Act on all sales effected after the commencement of this Act."

This liability is not conditional on the registration of the dealer under s. 8. Section 8 (1) enacts that no dealer shall, while being liable to pay tax under this Act carry on business as a dealer unless he has been registered as such and possesses a registration certificate". Section 11(i) provides that "If the Commissioner is satisfied that the returns furnished by a registered dealer in respect of any period are correct and complete, he shall assess the dealer on them". These provisions do not, to any extent, effect the substantive liability to be assessed to tax which is imposed by s. 4-A dealer who fails to get himself registered would be hit by s. 8(1) and may loss the benefit conferred by s. 11(1) but the Act does not put him in a better position than a dealer who has got himself registered under s. 8(1) and absolve him from his liability to pay tax under s. 4. The position of the dealer who has obtained a certificate of registration which turns out to be invalid cannot on principal, be distinguish from that of one who has failed to obtain a certificate.

It was argued for the appellant that it would make a difference in the procedure prescribed for making assessment whether a dealer was registered or not. It was said that under s. 10(1) while every registered dealer is under an obligation to make returns for the purposes of assessment, a dealer who is not registered becomes liable to send the return

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only if he is required to do so by the Commissioner by notice served in the prescribed manner and Rule 22 which has been framed for carrying out the purpose of s. 14(1) provides that if the Commissioner is of opinion that a dealer other than a registered dealer is liable to pay tax, he may send a notice to him in a form prescribed therein, requiring him to furnish returns. It is contended that the jurisdiction of the Sales Tax Officer to take proceedings for assessment with respect to non-registered dealers depends, on the issue of a notice such as is prescribed by s. 10 and rule 22 and that as no such notice had been issued in the case of the appellant, the assessment proceedings must be held to be incompetent, if the registration certificate is invalid. We see no force in this contention. The taxing authorities derive their jurisdiction to make assessments under s. 3 and 11 of the Act, and not under s. 10, which is purely procedural. The appellant had itself, acting under s. 10(1) been submitting voluntarily returns on which the assessments had been made and it is now idle for it to contend that the proceedings taken on its own returns are without jurisdiction.

In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a mattar over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack. Therefore even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under s. 10 (1) that would be a mere irregularity in the assumption

of jurisdiction and the order of assessment passed in those proceedings cannot be held to be without jurisdiction and no suit will lie for impeaching them on the ground that s. 10 (1) had not been followed. This must a fortiori be so when the appellant has itself submitted to jurisdiction and made a return. We accordingly agree with the learned Judges that even if the registration of the appellant as a dealer under s. 8 is bad that has no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder.

We should add that s. 21 of the Act bare the jurisdiction of Civil Courts to entertain suits calling in question any orders passed by the authorities under the Act, and in the view which we have taken it is unnecessary to go into the question whether in view of this section the present suit is maintainable.

There are no merits whatsoever in this appeal and it is dismissed with costs.

Appeal dismissed.

STATE OF ANDHRA PRADESH

v.

DUVVURU BALARAMI REDDY

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJGOPALA AYYANGAR, and T. L. VENKATARAMA AIYAR, JJ.)

Subsoil Right—Shrotriem inam—When includes sub-soil rights.

The respondents has obtained leases for mining mica from the owners of a certain *shrotriem* village for one year with a stipulation that the lessors were bound to renew the leases for such periods as may be desired by the lessees. Shortly, thereafter, the village waseanoified and the estate of the owners was resumed by the pptllant. The respondent contended that