

-( 1 )- First Appeal No.169/2003

HIGH COURT OF MADHYA PRADESH  
BENCH AT GWALIOR

SINGLE BENCH:

(Vivek Agarwal, J.)

**First Appeal No.169/2003**

.....Appellant : Nagar Palika Parishad

Versus

.....Respondents : Anil Kumar & Ors.

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Shri Anil Sharma, learned counsel for the appellant.  
Shri R.D.Agrawal, learned counsel for respondent No.1.  
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Whether approved for reporting :

J U D G M E N T  
(25/1/2018)

This first appeal has been filed by the defendant being aggrieved by judgment and decree dated 19.12.2002 passed by the Court of Additional District Judge, Ganj Basoda, Distt. Vidisha, in civil suit No.2-A/1999 (Anil Kumar & Anr. Vs. Nagar Palika Parishad), whereby a suit for permanent injunction filed by the plaintiffs claiming injunction on recovery of export tax has been decreed by the trial Court on the ground that plaintiffs were having two offices, namely one at Ganj Basoda in the name of Anil Hardware Stores Naya Bazar, Ganj Basoda and another at village Jiwajipur, Tyonda Road Basoda in the name of Deepak Fire Works and since the second office was outside the municipal limits, therefore, any transaction carried out by the said office namely Deepak Fire Works was not liable to be subjected to export tax inasmuch as export tax is leviable only on a entity situated within the municipal limits of the local body.

**2.** Learned counsel for the appellant submits that this judgment and decree suffers from basic infirmity inasmuch as both the firms Anil Hardware Stores Naya Bazar, Ganj Basoda and Deepak Fire

Works at village Jiwajipur, Tyonda Road Basoda were situated within the municipal limits at Bada Bazar, Sawar Chowk, and therefore, levying of export tax cannot be faulted with and the plaintiffs are liable to pay the export tax. It is also submitted that admittedly levy of export tax of Rs.2,17,693/- was imposed on the firm which was reduced by the Collector to Rs.80,000/- and out of this, firm had already deposited a sum of Rs.55,000/-, that means plaintiffs had admitted their liability and paid the amount in part. It is also submitted that deficit court fee was paid, and therefore, in fact suit was not maintainable before the trial Court. It is submitted that actually valuation of the suit should have been made at Rs.80,000/-, but instead it was arbitrarily valued at Rs.55,000/- and this aspect too has been overlooked by the trial Court.

**3.** Learned counsel for respondent No.1 Shri R.D.Agrawal submits that impugned order does not suffer from any infirmity inasmuch as two entities as is apparent from the name are different and the entity namely Deepak Fire Works being outside the territorial jurisdiction of the municipality was not liable to pay any export tax inasmuch as export tax is payable on the entity falling within the municipal limits in terms of Section 127 of the Municipalities Act. In view of such submissions, he prays for dismissal of the appeal and affirming the judgment and decree passed by the trial Court.

**4.** This Court after going through the record and hearing the arguments, asked categorically whether M/s. Deepak Fire Works was branch of M/s. Anil Hardware Stores for the period under assessment or it was an independent entity and registered separately as a dealer having independent assessment. To this query, though there is no specific answer but the documents which have been filed before the trial Court by rival parties reveal that provisional certificate of registration was obtained in the name of M/s. Deepak Fire Works, Jiwajipur Tyonda Road, Ganj Basoda on 12.8.1999. There is a certificate of registration under the Central Sales Tax (Registration and Turnover) Rules, 1957 in the name of M/s. Anil Hardware Stores Basoda. This certificate is valid from

September, 1968 until cancelled. There is an endorsement of adding Branch M/s. Deepak Fire Works, Basoda w.e.f. 1.2.1989. There is another certificate of registration under Rule 8 in the name of M/s. Anil Hardware Stores, Basoda, which also makes a mention of addition of branch office as M/s. Deepak Fire Works, Basoda, w.e.f. 1.2.1989.

**5.** Office of Joint Chief Controller of Explosives had issued a licence for fire works, Chinese Crackers and sparklers in the name of Suresh Chand Jain of Anil Hardware Stores, Ganj Basoda. There is another communication dated 22.11.1989 issued by Deputy Chief Controller of Explosives on record which shows that District Magistrate, Vidisha, had granted a no objection certificate in respect of the site for the proposed fire works store house at village Jiwajipur Distt. Vidisha and therein it is mentioned that construction of store house should be completed in all respects and this office intimated without delay. It is further mentioned that a licence in form 21 of the Explosives Rules, 1983 will be granted on receipt of the completion report of the store house and forwarded to the Dy. Chief Controller of Explosives, Bhopal, for endorsement as required under rule 161(2) of the Explosives Rules, 1983. Thus, this communication makes it clear that there was no independent explosives licence in favour of M/s. Deepak Fireworks, otherwise the plaintiffs would have brought it on record. Further communication dated 22.11.1989 makes it clear that permission was granted for construction of a store house at village Jiwajipur Distt. Vidisha and when this licence alongwith permission to construct store house is read in conjunction with certificate of registration under the Sales Tax Act and the State Sales Tax Act, so also the provisional registration certificate issued to M/s. Deepak Fire Works on 12.8.1999, whereas the demand was raised in January, 1999, it is apparent that till the time of raising of the demand and for the period for which demand was raised, the entity of M/s. Deepak Fireworks was that of a branch of M/s. Anil Hardware Stores.

**6.** M.P. Commercial Tax Act, 1994 defines "business" in Section

2(c) as under :-

“2(c) Business includes-

(a) any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern and irrespective of the volume, frequency, continuity or regularity of such trade, commerce, manufacture, adventure or concern; and

(b) any transaction of sale or purchase of goods in connection with or incidental or ancillary to the trade, commerce, manufacture, adventure or concern referred to in sub-clause (a), that is to say -

(i) goods of the description referred to in sub-section (3) of Section 8 of the Central Sales Tax Act, 1956 (No. 74 of 1956), whether or not they are specified in the registration certificate, if any, of the dealer under the said Act and whether or not they are in their original form or in the form of second hand goods, unserviceable goods, obsolete or discarded goods, mere scrap or waste material; and

(ii) goods which are obtained as waste products or by-products in the course of manufacture or processing of other goods or mining or generation of or distribution of electrical energy or any other form of power;”

M.P. Commercial Tax Act, 1994 also defines “Dealer” in Section

2(h) as under :-

“(h) Dealer means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment or for commission, remuneration or other valuable consideration and includes -

(i) a local authority, a company, an undivided Hindu family or any society (including a co-operative society), club, firm or association which carries on such business;

(ii) a society (including a co-operative

society), club, firm or association which buys goods from, or sells, supplies or distributes goods to, its members;

(iii) a commission agent, broker, a del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of the principal;

(iv) any person who transfers the right to use any goods for any purpose, (whether or not for a specified period) in the course of business to any other person;

Explanation - (I) Every person who acts as an agent of a non-resident dealer, that is as an agent on behalf of a dealer residing outside the State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as -

(i) a mercantile agent as defined in the Indian Sale of Goods Act, 1930 (III of 1930); or

(ii) an agent for handling goods or documents of title relating to goods; or

(iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment, and every local branch of a firm or company situated outside the State.

shall be deemed to be a dealer for the purpose of this Act.

(II) The Central or a State Government or any of their departments or offices which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purpose of this Act."

7. In view of such definition, it is apparent that since there is an endorsement in the registration certificate showing that Deepak Fireworks to be a branch, the dealer will be treated to be M/s. Anil Hardware Stores as it is branch of Anil Hardware Store till it attained independent identity by getting itself a provisional

registration certificate in August, 1999, and therefore, by virtue of a branch of the dealer namely M/s. Anil Hardware Stores, it had no independent exclusive right to sell the crackers and it was assessable alongwith the principal i.e. M/s. Anil Hardware Stores, and therefore, irrespective of the fact that the office of the branch was outside the municipal limits, for the purpose of accounting the branch is to be clubbed with the principal and the principal was within the territorial jurisdiction of the municipality, and therefore, the assessment was rightly made and demand was rightly raised by the municipality which has not been appreciated by the Court below.

8. On the anvil of the above discussion, this Court is of the opinion that trial Court has erred in appreciating the evidence and documents on record and has wrongly decided issues No.1 and 2. Accordingly, the judgment and decree passed by the court below deserves to be set aside inasmuch as trial Court has failed to take into consideration the fact that M/s. Deepak Fireworks had no independent identity for the purpose of assessment for the period under consideration and it being a branch of M/s. Anil Hardware Stores, merely physical location of branch outside municipality limit could not have been construed to deem it to be independent identity since for all accounting purposes accounts of the branch are to be accounted with the dealer i.e. principal which is M/s. Anil Hardware Stores, the location of branch was immaterial and it will be deemed that any transaction made by the branch was in the capacity of the agent of the principal whose office was located within the municipal limits, and therefore, the export will be deemed to have been made from the local limits of the municipality. Therefore, bill raised for the recovery cannot be said to be illegal and without jurisdiction. Thus, the appeal is allowed. Impugned judgment and decree is set aside.

**(Vivek Agarwal)**  
**Judge**