

**(1995) 02 BOM CK 0047**

**Bombay High Court**

**Case No:** Sales Tax Reference No. 65 of 1987

Tata Engineering and  
Locomotive Company Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision:** Feb. 21, 1995

**Acts Referred:**

- Bombay Sales Tax Act, 1959 - Section 11, 12, 14, 2(26), 24

**Hon'ble Judges:** D.K. Trivedi, J; B.P. Saraf, J

**Bench:** Division Bench

**Advocate:** A. M. Setalvad, D.J. Dwarkadas, S. J. Shah and H.N. Vakil, instructed by M/s. Mulla and Mulla, Craigie Blunt and Caroe, for the Appellant; V. Rajgopal and R.V. Desai, for the Respondent

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### **Judgement**

Dr. B.P. Saraf, J.

By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the assessee, the Maharashtra Sales Tax Tribunal has referred the following questions of law to this Court for opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the applicant had contravened the conditions/ recitals of declaration in form 14 so as to render itself liable for purchase tax u/s 14 of the said Act; and

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the applicant was a "manufacturer" of bus bodies (sic) and should be held as "manufacturer" of buses ?"

2. The material facts of the case, relevant for determination of the controversy raised in the above questions, briefly stated, are as follows :

The assessee, M/s. Tata Engineering and Locomotive Co. Ltd., Bombay, carries on the business of manufacture and sale of motor vehicle chassis. The assessee often gets orders from its customers for supply of complete buses of particular specifications. The assessee does not construct bus bodies. On receipt of such orders for supply of complete buses, it gets bus bodies constructed by outside parties on the chassis provided by it. Such bus bodies are purchased by the assessee against declaration furnished in form No. 14 as prescribed u/s 12(a) of the Bombay Sales Tax Act, 1959 ("the Act"), without paying any tax on sales of bus bodies by the manufacturer or supplier of bus bodies to the assessee. During the period April 1, 1968 to March 31, 1969, the assessee purchased from one M/s. Ruby Coach Builders Pvt. Ltd. ("Ruby Coach Builders") bus bodies worth Rs. 9,16,805 without payment of any sales tax thereon by furnishing declarations in form No. 14 prescribed under the Bombay Sales Tax Rules, 1959 ("the Rules").

3. The assessee had received an order from one M/s. Miser Car Trading Company of Egypt for supply of Mercedes Benz diesel engine complete bus with aluminium superstructure and/or of steel body with 54 passenger seats of the sizes specified in the purchase order complete with wheels and bars of the sizes mentioned therein. The value of each complete bus was fixed at Rs. 71,039 f.o.b. Bombay. In pursuance of the above order, the assessee supplied to the said firm complete buses of the description and specifications contained in the above purchase order. The sales of buses effected by the assessee to the said firm in Egypt, being export sales, were not subject to any tax under the Bombay Sales Tax Act or the Central Sales Tax Act.

4. At the time of assessment of the assessee under the Bombay Sales Tax Act for the above period, i.e., April 1, 1968 to March 31, 1969, the Sales Tax Officer levied purchase tax u/s 14 of the Act on the turnover of purchases of bus bodies made by the assessee from Ruby Coach Builders without payment of tax under declarations in form No. 14 on the ground that the said bus bodies were not resold by the assessee. According to the Sales Tax Officer what was sold by the assessee was a complete bus which was distinct and different from the bus body purchased by it on the strength of the declaration. The Sales Tax Officer was, therefore, of the opinion that there was no resale of the bus bodies by the assessee within the meaning of section 2(26) of the Act.

5. The assessee appealed to the Assistant Commissioner of Sales Tax (Appeals) against the levy of purchase tax on the value of bus bodies by the Sales Tax Officer. The Assistant Commissioner (Appeals) dismissed the appeal of the assessee and confirmed the order of the Sales Tax Officer. The assessee went in further appeal to the Maharashtra Sales Tax Tribunal ("the Tribunal"). The Tribunal also dismissed the appeal of the assessee and confirmed the order of the Sales Tax Officer and the Assistant Commissioner. Hence this reference at the instance of the assessee.

6. The submission of Mr. A. M. Setalvad, learned counsel appearing for the assessee, is that the assessee is a manufacturer of chassis for buses and it does not

manufacture bus bodies. As the assessee had received orders from a customer in Egypt for supply of Mercedes Benz buses of certain specifications, the assessee purchased bus bodies from Ruby Coach Builders and issued declaration in form No. 14 in respect of the same, as the buses were intended to be sold in the course of export. The submission of the learned counsel for the assessee is that these bus bodies were in fact sold by the assessee in execution of the order from the purchaser in Egypt and hence there was no violation of the conditions of form No. 14 in the instant case. According to the learned counsel, the Sales Tax Officer was not correct in holding that there was violation of the conditions of form No. 14, because the assessee had sold two commodities, viz., the chassis and the bus bodies, without doing anything thereto. It was submitted that the Assistant Commissioner of Sales Tax (Appeals) as well as the Tribunal fell into error in holding that the assessee sold complete buses and not chassis and bus bodies. According to the learned counsel, the assessee had purchased the bus bodies from Ruby Coach Builders which were fitted on the chassis belonging to it and supplied the same in the same form in which they were received from the body builders to its customers in Egypt. His submission is that the assessee had sold the very same goods which it had purchased on the strength of the declaration in form No. 14 without making any change whatsoever and hence there is no violation of the conditions of form No. 14. Reliance is placed in support of the above contentions on the decisions of the Supreme Court in *Patnaik and Company v. State of Orissa* [1965] 16 STC 364 and *T. V. Sundram Iyengar & Sons v. State of Madras* [1975] 35 STC 24. Our attention was also drawn to the decision of the Supreme Court in *State of Maharashtra v. Shiv Datt & Sons* [1992] 84 STC 497 and the decision of the Allahabad High Court in *Commissioner, Sales Tax v. Girdhari Lal Football Maker* [1987] 65 STC 287. The submission of the learned counsel for the Revenue, on the other hand, is that the assessee did not sell the bus bodies which were purchased by it without payment of sales tax on the strength of form No. 14. What was sold by it was a complete bus and not chassis and bus body. He, therefore, submitted that the assessee did not sell the bus bodies purchased by him and hence there was a clear violation of the requirements of form 14 which attracted the levy of purchase tax. He, therefore, submits that the authorities below are justified in levying purchase tax on the turnover of purchase of bus bodies made by the assessee on the strength of declaration in form No. 14.

7. We have carefully considered the rival submissions. There is no dispute about the purchase of bus bodies by the assessee from Ruby Body Builders without payment of sales tax on the strength of form 14. There is also no dispute about the fact that form 14 can be issued only in cases where the commodity in question is purchased for resale. There is also no controversy in regard to the fact that on non-compliance of the conditions, recitals and undertakings of such declaration in form 14, purchase tax u/s 14 of the Act is attracted. The only controversy in this case is whether on the facts and in the circumstances of this case, there is a contravention of declaration in

form 14. According to the Revenue, there is a clear contravention, because the assessee who purchased the bus bodies did not resell bus bodies. What he sold was a complete bus which was different and distinct from bus body.

8. The case of the assessee, on the other hand, is that there is no contravention as alleged, because what was sold by it was not a bus but the chassis and the bus body, the bus body being sold in the same form in which it was received by it from body-builders and hence no purchase tax was leviable u/s 14 of the Act on the purchase price of the bus bodies. The sole question for determination, therefore, is whether the assessee resold the bus bodies purchased by it under declaration in form 14 or it sold complete bus, which was different and distinct commercial commodity.

9. For a proper appreciation of the controversy, it is expedient to peruse section 14 of the Act and form 14 of the Rules. Section 14 makes a dealer liable to purchase tax for contravention of the terms of the certificate. This section, so far as relevant, as it stood at the material time, read as follows :

"Section 14. Liability to purchase tax for contravention of terms of certificate. - (1) Where any dealer or commission agent has purchased any taxable goods under a certificate given by him u/s 11 or 12 and contrary to such certificate, the goods are used for another purpose, or are not resold or despatched in the manner and within the period certified, then such dealer or commission agent shall be liable to pay purchase tax on the purchase price of the goods purchased, under such certificate; and accordingly he shall include the purchase price thereof, in his turnover of purchases in his return u/s 32 which he is to furnish next thereafter :

....."

The certificate given by the registered dealer in the instant case, is certificate in form 14, which, at the material time, was in the following terms :

"FORM 14

(See rule 21)

Certificate by an authorised dealer purchasing goods for the purpose referred to in clause (a) of section 12 of the Bombay Sales Tax Act, 1959.

I, ..... of Messrs ..... (address) ..... do certify that I/the said ..... am/is a registered dealer holding certificate of registration No ..... dated ..... and an authorization u/s 24 of the Bombay Sales Tax Act, 1959, No ..... dated ..... and that the goods specified in ..... No .... dated ..... of Messrs ..... will be resold, within nine months from the date of the purchase, by me/the said ..... or by an authorised dealer to whom I/the said ..... sell/sells the goods, in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India.

I further certify that the said authorization was in force on the date of the aforesaid purchase of goods.

Place ..... Signature .....

Date ..... Status ....."

The above form was substituted by Government notification of June 25, 1981. We are, however, not concerned with the substituted form as the controversy in the present case pertains to the period April 1, 1968 to March 31, 1969.

It is clear from the above that the certificate in form 14 (also referred to as "declaration") is to the effect that the goods purchased by furnishing the said certificate would be resold. It is on the basis of the above declaration that the assessee could purchase the goods free of tax. If this declaration is violated, the assessee becomes liable to pay purchase tax on the purchase value thereof. The case of the Revenue is that this declaration has been violated by the assessee as it did not at all resell the goods purchased by it. According to the assessee, there is no such violation which might attract liability of purchase tax u/s 14 of the Act.

10. We now turn to the facts of the case to know whether the assessee resold the bus bodies which it had purchased. The assessee received orders from its customer in Egypt for supply of eight "Mercedes Benz diesel complete buses". The description of the goods to be supplied, as set out in the letter of the customer dated November 23, 1968, is as follows :

"Quantity	Description
8 (eight)	Mercedes Benz - 110 BHP left-hand drive, diesel engine aluminium superstructure and all steel body with 54 passenger seats 3 x 2 to the drawing No. 200/412 complete with 7 wheels size 7 x 20 and 7 tyres size 9 x 20 - 12 ply. The bus will have two doors besides a driver's door and emergency exit. (a) Normal seats with foam rubber. (b) No luggage carrier required. (c) Doors to be open outside with key and lock arrangement. (d) Roof to be painted in cream and body in grey."

The price payable was set out in the following terms :

"Price f.o.b. Bombay	
per unit	71,039
Price f.o.b. Bombay	
for 8 units	1rs 568,312."

As the assessee was manufacturing only bus chassis and the order received by it was for supply of complete buses with aluminium superstructure and all steel bodies with passenger seats, etc., specified therein, the assessee placed an order for building bus bodies on the chassis belonging to it with Ruby Coach Builders. The specimen purchase order issued by the assessee to Ruby Coach Builders, which is annexed as exhibit "E" to the paper book, shows that the purchase order was for :

"Building and mounting passenger bus bodies on the assessee's LP 1210/52 T.M.B. chassis for export to U.A.R. at the rate of Rs. 28,000 each."

After the bus bodies were built by the said Ruby Coach Builders and the buses of the specifications set out in the order of the purchaser Egyptian firm were ready for delivery, they were supplied by the assessee to its said customer. One of the sale invoices issued by the assessee to its customer in Egypt, which is annexed as exhibit F, contained the following description of the goods supplied by the assessee and the price payable for the same :

"Two buses - Mercedes Benz

Two complete buses type LP 1210/52

LHD 110 BHP diesel engine with wheel-base 5195 mm. with aluminium super-structure and all steel body with 52 passenger seats as per drawing No. 200/423 complete with 7 wheels size 7 x 20 and 7 tyres size 9 x 20 - 12 ply. Bus will have 2 doors for passenger besides a driver's door and an emergency exit.

Price f.o.b. Bombay for

1 unit	.....	Rs.	71,039
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Total	.....	Rs.	1,42,078
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(Indian rupees one lac forty-two thousand seventy-eight only).

Chassis Nos.

Engine Nos.

342 050 L 96 09951

312 978 L 96 10173 10787."

It is evident from the specimen purchase order from the overseas buyer and the specimen sale invoice issued by the assessee that the contract between the overseas buyer and the assessee was for "sale and supply of eight Mercedes Benz buses". Thus what was purchased by the overseas buyer and what was sold by the assessee was "Mercedes Benz bus". The price fixed was also for the each unit of complete bus. It was one indivisible contract for sale and supply of complete buses. There is nothing to show that there were two agreements between the assessee and its customer - one for the supply of chassis and the other for supply of bus bodies. Had that been so, the position might have been different. But that is not so. In fact, though the assessee purchased "bus body", it did not sell the same. What was sold by it was a complete bus, the "body" purchased by it being merely one of

the components of bus sold by it. In such a case, it cannot be said that there was sale of the component, i.e., bus bodies. Neither the customer intended to purchase the bus body nor the assessee intended to sell the same. What was sold by the assessee and purchased by the purchaser in Egypt was a commodity known as "bus", complete in all respects and the consideration paid by the purchaser was also fixed for each unit of "the complete bus".

11. In view of the above, we are of the clear opinion that the assessee did not sell the bus bodies which it had purchased free of tax under declaration in form No. 14. What was sold by it was a different commodity altogether and hence there was clear non-compliance of the conditions of form 14. The authorities were, therefore, justified in holding that section 14 was attracted and in levying purchase tax on the basis thereof.

12. So far as the decisions referred to by the learned counsel for the assessee are concerned, we do not find that the ratio of these decisions have any application to the facts of the present case. The controversy before the Supreme Court in Patnaik and Company [1965] 16 STC 364 was whether a contract for construction of bus bodies on the chassis supplied by the customers was a contract for work or a contract for sale of goods. On consideration of the terms and conditions of the contract, the Supreme Court held that the contract as a whole was a contract for sale of goods and not a works contract. This decision, in our opinion, is of no assistance to the assessee in resolving the controversy in the case before us. To the same effect is the decision of the Supreme Court in T. V. Sundram Iyengar & Sons v. State of Madras [1975] 35 STC 24. The Supreme Court in that case followed its decision in Patnaik and Company [1965] 16 STC 364 and held that the materials used by the body builder in the construction of the bus bodies never passed on to their customers during the course of their construction. It was only when the bus body fitted on the chassis was delivered to the customer that the property in the bus body passed on to the customer. We also do not find any relevance of the decision of the Supreme Court in Kailash Nath v. State of U.P. [1957] 8 STC 358 in the present case. In that case, the assessee, a textile mill in Uttar Pradesh, sold cotton cloth manufactured by it to their constituents, who dyed and printed the same. At the material time, the cotton cloth or yarn manufactured in Uttar Pradesh with a view to export such cloth or yarn outside the territories of India was exempt from levy of sales tax under the U.P. Sales Tax Act on the condition that the cloth or yarn was actually exported. The sales tax authorities denied the exemption to the assessee on the ground that what was exported by the assessee was not the same cloth purchased by it. It was held by the Supreme Court that the cloth exported remained the same cloth which was purchased despite the change of colour of the cloth by printing and processing. It is obvious that this decision has no application to the facts of the present case where admittedly the bus bodies purchased by the assessee were not sold as bus bodies. We have also perused the other decisions referred by the learned counsel for the assessee, which according to us, are equally

inapplicable.

13. In view of the above, we are of the clear opinion that the assessee did not sell the bus bodies purchased by it. What was sold by it was complete bus of which the bus body formed one of the components. The customer did not purchase the bus bodies nor the assessee sold the bus bodies. The customer intended to purchase complete bus for the agreed consideration and the assessee sold the same. This is evident from the order placed by the customer and the invoice issued by the assessee.

14. In that view of the matter, in our opinion, the Tribunal was right in holding that there was contravention of the condition of declaration in form 14 and hence the assessee was liable to pay purchase tax u/s 14 of the Act.

15. Accordingly, we answer the first question in the affirmative and in favour of the Revenue.

16. So far as the second question is concerned, there appears to be some mistake in the said question. The question as framed is vague and does not bring out the real controversy. However, in view of our finding that the assessee did not resell the "bus bodies" purchased by it and the discussion made above, it is not necessary to answer the same. We, therefore, decline to answer question No. 2.

17. In the result this reference is answered in favour of the Revenue and against the assessee. In the facts and circumstances of the case, we make no order as to costs.

18. Reference answered accordingly.