

(1984) 11 BOM CK 0072

Bombay High Court

Case No: Sales Tax Reference No. 45 of 1979 in Reference Application No. 152 of 1975

Commissioner of Sales Tax,
Maharashtra State, Bombay

APPELLANT

Vs

Daulatram Rameshwarlal

RESPONDENT

Date of Decision: Nov. 30, 1984

Citation: (1985) 59 STC 122

Hon'ble Judges: Sujata V. Manohar, J; M.H. Kania, J

Bench: Division Bench

Judgement

Smt. Sujata V. Manohar, J.

M/s. Dalatram, Rameshwarlal, who are the respondents in this reference, are dealers registered under the Bombay Sales Tax Act, 1959. For the assessment period 12th December, 1967 to 30th September, 1968 an assessment order was passed by the Sales Tax Officer as a result of which an amount of Rs. 2,36,544.14 was included in the turnover of sales of the assessee and was subjected to sales tax. This amount of Rs. 2,36,544.14 is the amount covered by 7 invoices all dated 12th July, 1968 issued by the assessee in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. The respondent-assessee contended before the Sales Tax Officer that these invoices did not represent any sales made by the assessee to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. This contention of the assessee was, however, rejected by the Sales Tax Officer.

2. The respondents filed an appeal from this decision before the Assistant Commissioner of Sales Tax Act. The respondents contended that (1) the invoices in question did not represent sales; (2) if these transactions were treated as sales, they were inter-State sales not liable to tax under the Bombay Sales Tax Act, 1959. The Assistant Commissioner of Sales Tax rejected the first contention. He also rejected the second contention on the ground that no evidence was produced in support of the same. The appeal, therefore, was dismissed.

3. The respondents filed a second appeal before the Tribunal being Second Appeal No. 479 of 1971. The same two contentions were raised before the Tribunal. The Tribunal felt that the Assistant Commissioner of Sales Tax ought to have decided the second contention on merits. It therefore, remanded the matter to the Assistant Commissioner of Sales Tax for determination of the second contention under an order dated 4th January, 1973. The Tribunal did not give any decision on the first contention, but kept it open.

4. Accordingly, the Assistant Commissioner of Sales Tax considered the second contention raised by the respondents. By his order dated 18th June, 1974 the Assistant Commissioner of Sales Tax, after examining the evidence before him, held that the sales were not in the course of inter-State trade and commerce. This was the only aspect examined by the Assistant Commissioner of Sales Tax. In view of his finding he dismissed the appeal once again.

5. Thereupon the assessee filed another second appeal before the Tribunal being Second Appeal No. 1380 of 1974. In the second appeal both the contentions were once again raised before the Tribunal. The Tribunal came to the conclusion that the assessee's first contention was correct and it should be accepted. It, therefore, held by its order dated 9th January, 1975 that the 7 invoices for a total sum of Rs. 2,36,544.14 did not represent any transactions of sale. In view of this finding the Tribunal considered it unnecessary to decide the second contention. In respect of this decision the following question has been referred to us for our determination :

Whether having regard to the facts of this case and on a true and proper interpretation of the contract between the assessee and M/s. Bharat Barrel & Drum Manufacturing Co. Ltd., as evidenced by the contract dated 28th July, 1964 and other documents produced before the authorities the Tribunal was correct in holding that the seven invoices dated 12th July, 1964 for the total amount of Rs. 2,36,544.14 did not represent sales by the assessee to the said company ?

6. In order to decide this question it is necessary to examine the facts pertaining to the disputed transaction. The assessee-respondents deal in cotton, oil, oil-seeds, etc., as resellers as well as commission agents. In or about July, 1964 the respondents wanted to export certain quantity of castor oil. They required barrels for being filled with the castor oil which was to be exported. The respondents thereupon entered into a contract dated 20th July, 1964 with Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. Under the contract Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. agreed to supply to the respondents 8,000 barrels at a price of Rs. 48 per barrel on the terms and conditions which are set out in the contract. The terms of payment stipulated that payment was by cash before delivery of barrels. The contract further provided that barrels so supplied to the respondents will be utilised for export purposes. A rebate of Rs. 6 per barrel will be paid to the respondents by Bharat Barrel and Drum Manufacturing Company Private Limited after receipt of a quota certificate for steel sheets made out in their favour which

quota certificate was to be obtained by the respondents against their own exports. The contract further stated : "We (Bharat Barrel and Drum Manufacturing Company Pvt. Ltd.) are sending you herewith a copy of the application form to be made by you to the sponsoring authorities for the advance quota for steel sheets, for the above sale of barrels to you. At the time of submitting your application you should please write to the sponsoring authorities that the quota certificate should please be issued in our favour, the fabricators of barrels, and that the quantity of 18 gauge cold rolled sheets in coils be 20,000 tonnes, equivalent to 8,000 barrels." There was also a condition in the contract regarding an increase in the price of the barrels to be supplied if there was an increase in the price of steel sheets to be obtained under the quota certificate.

7. Accordingly the respondents purchased from Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. 8,000 barrels under the said contract and used the barrels for filling castor oil which was exported by them during the period from July 10 December, 1964.

8. The respondents however did not obtain any advance quota of steel sheets as stipulated. There was correspondence in this connection between the contracting parties. The respondents had written a letter dated 4th August, 1964 to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., setting out that as per the Government procedure, quota certificates are issued in the name of shippers and not in the name of the manufacturers. They stated that as per the suggestion of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., they would apply for steel sheets in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., but if they cannot get quota certificate in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. they should not be held respondents. They also pointed out that quota certificates are issued under export promotion scheme to the customers only at a concessional rate. The price however is charged according to the prevailing concessional price when the goods are taken delivery of. There should not be any variation in the rebate of Rs. 6 per barrel which they were entitled to under the contract, even if there is any fluctuation in the steel price. In the letter the respondents also stated that they would mention the name of Bharat Barrel and Drum Manufacturing Company Private Ltd. as their fabricators and would pass on the whole quota to them.

9. In March, 1965 the respondents made two applications to the Joint Chief Controller of Exports and Imports for the allotment of steel on the basis of their past exports for two quarters, July to September, 1964 and October to December, 1964. In the application for allotment of steel on the basis of their exports the respondents had mentioned the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. as fabricators of the barrels. On 26th February, 1966 the respondents received a quota certificate under the Iron and Steel Control Order, 1966 as a result of which the respondents were entitled to purchase certain

quantities of iron and steel sheets as set out in the quota certificate. The quota certificate contained, inter alia, the following term :

"1. (a) The materials acquired under this certificate shall be used for reimbursement of steel utilised for manufacture of containers against export of non-essential vegetable castor oil; period Oct.-Dec., 1964."

10. After the quota certificate was issued to the respondents, they wrote to Hindustan Steel Ltd., directing them to supply the steel under the quota to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. on their behalf and to receive payment for the goods supplied from Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. on their behalf. Railway receipts relating to the supply of steel by Hindustan Steel Limited to the respondents were retired by Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. on behalf of the respondents and the price for the same was paid by Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. to Hindustan Steel Limited on behalf of the respondent.

11. After the receipt of the goods Bharat Barrel and Drum Manufacturing Company Private Ltd. issued seven invoices (debit notes) on 12th July, 1968 debiting the price paid by them in respect of the said goods to the respondents. There are corresponding journal entries in the books of account of the respondents.

12. On these facts we have to determine whether the seven invoices and or debit notes dated 12th July, 1968 represent sales of steel effected by the assessee to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd.

13. A transaction of sale required that there should be a transfer of title to the goods from one party to another for money consideration. The transaction which is in dispute arises out of the original contract between the parties which is dated 28th July, 1964. This contract between the respondent-assessee and Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. related to sale by Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. of 8,000 barrels to the assessee at a price of Rs. 48 per barrel. The contract of 28th July, 1964 contained two separate transactions. One was a transaction of sale simpliciter of 8,000 barrels for Rs. 48 per barrel. The second transaction gave the assessee a right to claim a rebate of Rs. 6 per barrel if he could obtain a quota certificate in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. The assessee, however, could obtain a quota certificate in his own name only. Thus it was clear that the assessee could not get his own quota rights transferred in the name of Bharat Barrel and Drum Manufacturing Company. In order to avail himself of the rebate, however, the assessee transferred the steel which the assessee obtained under the quota certificate to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. at cost.

14. In these circumstances, can it be said that there was only a transfer of quota rights by the assessee in favour of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. ? In our view there is clearly no transfer of any quota rights from the

assessee to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. The assessee was entitled to obtain a certain quota of steel by virtue of his own export performance. These quota rights were granted to the assessee. They were not granted to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. In fact the correspondence between the parties makes it clear that the assessee could not get their right to obtain a quota transferred to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., and could not obtain a quota certificate in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. What the assessee therefore did, was to transfer to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., the steel obtained under the quota certificate at the same concessional rate available to the assessee as a quota holder. There was, therefore, no transfer of quota rights as submitted by Mr. P. C. Joshi, learned Advocate for the assessee.

15. It was urged that in the application for a quota, the assessee had mentioned Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. as fabricators. Hence Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. had a right to obtain steel under the quota certificate. This submission must be rejected because the quota certificate is issued only to the assessee. It is by way of reimbursement to the assessee for containers already exported by him. It mentioned the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. Hence Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. had no right to obtain any steel under this quota certificate.

16. It was next contended that the assessee was merely an agent of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. in respect of the supply of steel. In this connection Mr. P. C. Joshi relied upon the following facts :

(i) That the assessee directed the suppliers Hindustan Steel Ltd. to send the goods to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. (ii) The original railway receipt was made out in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. on the instructions of the assessee. (iii) The delivery of the steel sheets was given by Hindustan Steel Ltd. to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. under the instructions of the assessee. (iv) The price of steel sheets was paid by Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. to Hindustan Steel Limited on behalf of the assessee.

17. In our view these facts far from supporting Mr. P. C. Joshi, in fact go against the assessee's case that he was the agent of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. in respect of the supply of steel. The suppliers, Hindustan Steel Limited, have supplied the goods as per the order placed with them by the assessee who was the quota holder. Everything in connection with the supply of steel which has been done by Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. has been done on behalf of the assessee. Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., therefore, cannot be considered as having purchased the said goods from Hindustan Steel Limited at all. On the contrary, it is Bharat Barrel and

Drum Manufacturing Company Pvt. Ltd., who is the agent of the assessee in this connection and not the other way round. Under the quota certificate the assessee alone could have obtained steel. The transaction, therefore, of sale of steel was a transaction between the suppliers, Hindustan Steel Limited, and the assessee.

18. It was next submitted by Mr. P. C. Joshi, learned counsel for the assessee, that the assessee was merely a trustee for Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. in obtaining the steel, Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. was the real beneficiary in respect of the transaction of purchase of steel in view of the contract between the parties. This submission also cannot be accepted. If the assessee had transferred his quota rights to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., then it would have been possible to say that Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. had a beneficial interest in the transaction of supply of steel. Both the assessee as well as Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., however, proceeded on the assumption that the rights under the quota certificate as well as the right to obtain a quota certificate by virtue of the export performance of the assessee could not have been transferred to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. at all. They have accordingly shaped their transaction. The assessee obtained the quota certificate in his own name and thereafter transferred the steel which he obtained under the quota certificate to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. at the same price at which the assessee obtained it from Hindustan Steel Limited. Looking to the transaction it is not possible to say that Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. had any beneficial interest in the quota certificates at all.

19. Secondly even under the contract of 28th July, 1964 there was no right created in favour of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. to obtain a quota certificate from the assessee or to utilise any quota certificate of the assessee. The assessee, however, was given a right to claim a rebate if he got his quota certificate in the name of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. Since this was not possible, he transferred the steel obtained by him under the quota certificate at cost to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., in order to claim the rebate which he was entitled to. There was no obligation on the assessee to so transfer the steel. If he had not so transferred the steel, he would not have obtained the rebate. There was, therefore, no prior right created in respect of the steel in question in favour of Bharat Barrel and Drum Manufacturing Company Pvt. Ltd.

20. Therefore, in the present case the assessee has first purchased steel from Hindustan Steel Limited under the quota certificate issued to him and has thereafter transferred the steel to Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., at the same price at which he obtained it from Hindustan Steel Limited. In order to constitute a sale it is not necessary that the seller must earn some profit for himself.

In the present case, the motive for not charging anything in excess of cost price is that of claiming the rebate under the contract of 28th July, 1964.

21. The very form of the transaction between the assessee and Bharat Barrel and Drum Manufacturing Company Pvt. Ltd., also supports the view that we have taken. Since Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. had paid the price on behalf of the assessee, they have issued a debit note to the assessee in respect of the price; and there are cross journal entries made accordingly. This also indicates that the transaction between the assessee and Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. was a transaction of sale.

22. In the case of Joint [The Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association \(Regd.\), Madras and Others](#), the Supreme Court has observed that in a taxing statute the strict legal position is disclosed by the form and not by the substance so as to determine its taxability. In the present case both the form as well as the substance of the transaction indicate that it was a sale and not any other type of transaction.

23. Mr. Joshi drew our attention to a decision in the case of [The Bhopal Sugar Industries Ltd. Vs. Sales Tax Officer, Bhopal](#), . This was a case where the Supreme Court was required to consider whether the contract in question before the Supreme Court was a contract of sale or a contract of agency. The Supreme Court observed that a mere formal description of a person in a contract as an agent or a buyer is not conclusive, unless the context shows that the parties clearly intended to treat a buyer as a buyer and not as an agent. These observations were made by the Supreme Court in connection with the interpretation of a contract. The Supreme Court said that one must look to the substance of the transaction as disclosed in the contract in order to determine the nature of the contract. These observations have no relevance in the present case. The substance of the transaction as well as the form in which it is effected show in the present case that the transaction was a transaction of sale.

24. Mr. Joshi has cited a number of authority before us where the Supreme Court was required to examine the transaction in order to decide whether the transaction in question was a transaction of sale. All these cases turn upon the nature of the transaction involved in the case concerned. We will refer to them briefly. Thus, in the case of [Khedut Sahakari Ginning and Pressing Society Ltd. Vs. The State of Gujarat](#), the Supreme Court was required to consider a case where a co-operative society carried on the business of ginning and pressing the cotton brought by its members. During the relevant period it received a large quantity of cotton from its members and sold it after ginning and pressing or without ginning and pressing. The question was whether the co-operative society was liable to tax on the purchase turnover of the cotton received from its members. The Supreme Court held that the society did not purchase the cotton received from its members and was not liable to pay the purchase tax. This decision has no application to the present case where the

transaction is of a very different nature.

25. In the case of T. P. Sokkalal Ramsait Factory Private Limited v. Deputy Commercial Tax Officer, Ambasamudram, reported in [1967] 20 STC 419 the Madras High Court considered a case where the assessee-company was a registered dealer and carried on the business of manufacture and sale of beedies. The assessee supplied raw materials for manufacture of beedies to its branch managers and debited against them in its books of account, a certain sum purported to be the cost of the material. The branch managers got the beedies rolled from the material supplied and delivered the manufactured beedies to the assessee-company. The got payment from the assessee-company on the basis of the quantity delivered. The Madras High Court held that the use of the word "sale" in the account books without a reference to the other relevant facts was not conclusive. The assessing officer should find out whether, apart from the use of the word "sale" in the account books, there was any transfer of property in the goods under an agreement for a price. There was a second category of transactions where the assessee-company similarly delivered raw material to its branch managers. But instead of showing the price of the raw material in their books, they showed only the quantity supplied. In this category of transactions, the Madras High Court held that there was no element of sale at all. This case also does not assist us in any manner.

26. Mr. Joshi similarly cited decisions in the cases of Dean and Webber Mills Stores Company v. State of Maharashtra reported in [1977] 39 STC 161, Cementation Patel (Durgapur) v. Commissioner of Commercial Taxes, West Bengal, Calcutta reported in [1981] 47 STC 385, Sri Rani Lakshmi Ginning, Spinning and Weaving Mills Private Limited v. State of Tamil Nadu reported in [1981] 48 STC 406 and an unreported judgment of a Division Bench of this Court consisting of Chagla, C.J., and Dixit, J., dated 26th July, 1955 and delivered by Chagla, C.J., in Civil Reference No. 5 of 1955. It is not necessary to examine the facts of each of these cases. The transactions involved in these cases are in no way similar to the present transaction. In our view, for the reasons set out earlier, the present transaction is a transaction of sale.

27. Before the Tribunal there were other points urged by the assessee, apart from the point which has been referred to us. These other points have not been decided by the Tribunal. It will therefore be open to the assessee to urge other points which may be open to the assessee, when the reference goes back before the Tribunal.

28. In the premises the question is answered in the negative and against the assessee.

29. The respondents will pay to the applicants costs of the reference.