

(1959) 10 STC 543

Bombay High Court

Case No: Sales Tax References No's. 18 and 21 of 1958

R.S. Maniar

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision: July 22, 1959**Acts Referred:**

- Bombay Sales Tax Act, 1953 - Section 11(5)

Citation: (1959) 10 STC 543**Hon'ble Judges:** Shah, J; S.T. Desai, J**Bench:** Division Bench**Advocate:** R.V. Patel, for the Appellant; H.D. Banaji, for the Respondent

Judgement

Shah, J.

These are two references in which the same assessee Rasulbhai Sakurbhai Maniar is concerned. The assessee had two places of business one at Ahemdabad and another at Dholka. In August, 1946, the assessee applied for registration of both these places of business. One application was submitted to the Sales Tax Officer, Ahemdabad, for registration of his place of business at Ahemdabad and in that application he stated that he had another place of business at Dholka. He estimated the turnover of his Ahemdabad shop at Rs. 46,000 for the year 1944-45. That application for registration was granted by the Sales Tax Officer. For the Dholka shop, the assessee estimated the turnover at Rs. 14,095 for the year 1944-45. In that application he stated that he was carrying on business also at Ahemdabad. As the gross turnover of the Dholka business did not exceed Rs. 30,000 no registration certificate was issued in respect of that place of business. In December, 1949, the Sales Tax Officer of Ahemdabad District who had jurisdiction over Dholka made enquiries regarding the registration and liability of the assessee's shop at Dholka and issued notices from time to time requiring the assessee to produce his books of accounts of the Dholka shop, but the assessee failed to appear before the Sales tax Office. On the 24th of March, 1951, the assessee was called upon to submit an application for registration of his Dholka shop and accordingly he submitted an

application on the 20th of October, 1952, on which registration was granted to him on the same date. He was, however, made liable to pay sales tax as from the 1st of October, 1946. Against that order, appeals were preferred to the Collector of Sales Tax and ultimately, the matter was brought before the Sales Tax Tribunal.

2. Before the Tribunal, it was contended by the assessee that as he was refused registration for the Dholka shop, he was misled into believing that no registration was required for that shop and he having been compelled to pay tax on the purchases made by him for acquiring the stock-in-trade for that shop, was not liable to pay sales tax on his turnover. The plea was one substantially of estoppel against the Sales Tax Department. The Tribunal purporting to follow its judgment in *Bombay Film Laboratories Ltd. v. The State of Bombay* (1954) 3 S.T.D. 73, held the Sales Tax Department was estopped from claiming sales tax prior of the date on which the assessee was required to remain present before the Sales Tax Officer, Ahmedabad District, but for the period subsequent to 23rd of March, 1950, the assessee was liable to pay sales tax. The Department and the assessee having partially succeeded, applications were made for references to this Court and on the application of the Sales Tax Department, the following four questions have been referred :-

"(1) Whether the Tribunal was right in holding that the applicant was estopped from claiming the sales tax for the period from 1st October, 1946, to 21st March, 1950, in respect of the turnover of the sales of the opponents at their shop at Dholka ?

(2) Whether in Form 11 of the Bombay Sales Tax Rules (as it stood in August, 1946) the opponents were bound to show their total turnover of sales at both their places of business, viz., at Ahmedabad and at Dholka, in their application for registration.

(3) If question (2) be answered in the affirmative, whether by reason of the opponents' failure to reveal their aggregate turnover at both the places of business they are liable to tax on their turnover of sales at their shop at Dholka from the 1st October, 1946, to 21st March, 1950 ?

(4) Whether the opponents are liable to pay the sales tax on the facts and in the circumstances of the case in respect of their business at Dholka for the period from 1st October, 1946, to 21st March, 1950 ?"

3. In the application submitted by the assessee for reference, the Tribunal has referred the following questions :-

"(1) Whether the Sales Tax Department should be held to be estopped from recovering any tax from the applicants in respect of their business at their shop at Dholka upto the date of registration ?

(2) Whether the assessment in this case should have been made u/s 11A instead of section 11(5) of the Bombay Sales Tax Act, 1953 ?

(3) If so, whether the assessment made on a notice issued u/s 11(5) should be held to be illegal and contrary to the provisions of the Act ?"

4. Mr. R. V. Patel on behalf of the assessee contends that when the Act was passed in the year 1946 and the Rules were framed thereunder, by the Form prescribed under rule 6 for application for registration u/s 8 of the Bombay Sales Tax Act, 1946, no obligation was imposed upon the assessee to disclose the turnover in respect of the entire business of the assessee for the relevant year, and, therefore, when the assessee in the two applications submitted by him to the Sales Tax Officer at Ahmedabad District and the Sales Tax Officer, Dholka, set out the places at which he conducted his business and applied for registration without setting out the aggregate gross turnover in respect of the two shops, he was not guilty of withholding material information and that the applications submitted by the assessee were proper applications under the Act and the Rules framed thereunder Mr. R. V. Patel then contends on the hypothesis that the two applications were properly submitted before the Sales Tax Officer, that if in pursuance of an application submitted by the assessee, the Sales Tax Officer, Ahmedabad District, failed to grant him registration, it was not then open to the Sales Tax Officer to impose a tax upon the assessee on the footing that he was liable to be registered under the Sales Tax Act in respect of the shop for which the assessee was not registered and to pay sales tax on his turnover even in respect of that shop. The form as originally prescribed was Form No. 11 for an application for registration u/s 8 of the Bombay Sales Tax Act, 1946, and that Form was :-

"To

The Sales Tax Officer,

I, carrying on the business known as whereof the only/chief place of business within jurisdiction of the Sales Tax Officer in the district of is situated at Room/Flat No. Name of Building Municipal No. of Building Ward/Locality Road Village Post Office Taluka hereby apply for registration in respect of the said business under the Bombay Sales Tax Act."

5. Thereafter, the entire business was required to be set out. Then follows the statement that "the accounts of the business had been kept in the language and its gross turnover during the year ending the 31st of March, 19 , was Rs." Thereafter, certain information relating to the purposes of manufacture; for re-sale; for use in the execution of a contract etc., was required to be furnished. This Form was altered by Government Notification, Finance Department No. 6506/33-S.T., dated the 29th of April, 1948, and the assessee were required to state their gross turnover of sales and supplies of goods for all their places of business in the Province of Bombay and also to state their turnover in respect of the goods brought within the Province of Bombay during the past three years and for the current year from the 1st of April, 19 to there set out. Mr.

Patel contends that, whereas in the form as originally prescribed there was only an obligation to set out the gross turnover in respect of the business conducted at a particular place, by the amended form, obligation was for the first time imposed to include the gross turnover of all sales and supplies for all the places of business in the Province of Bombay. This argument, Mr. Patel seeks to support by reference to the requirement of separate registration of the business conducted by the assessee at different places under the Rules framed under the Act and also by reference to provisions relating to the submission of separate returns for business conducted at different places and separately registered Mr. Patel contends that the scheme of the Sales Tax Act is that every business conducted at a place is required to be separately registered provided its gross turnover exceeds the prescribed limit and there is no obligation to get it registered at a place where the gross turnover does not exceed the prescribed limit. We are unable to accept that argument. It is true registration of business for the purposes of sales tax may be made at different places where branches of the same business are conducted, and that returns are required to be furnished by the assesseees in respect of different branches of the same business conducted at different places and separate assessment is to be made separately in respect of each of those branches. But this does not, in our judgment justify the inference that in an application submitted for registration of a business at a particular place, all the relevant information relating to the gross turnover of entire business was not required, before the amendment of the Form in 1948, to be furnished. u/s 5 of the Sales Tax Act, as it stood, it was provided in so far as it is material :

"Subject to the provisions of section 6 and 7 every dealer whose gross turnover during the year immediately preceding the commencement of this Act in respect of sales or supplies of goods exceeds -

* * *

shall be liable to pay tax under this Act on his turnover in respect of sales or other supplies of goods effected after the date so notified."

6. The liability to pay sales tax is therefore in respect of the entire business and if that liability is to be made effective, it is necessary in an application for registration to set out the gross turnover in respect of the entire business even though the business is conducted at different places. The assessee has not in his application, submitted to the Sales Tax Authorities, set out his total turnover for the relevant year, and the Sales Tax Officer, Ahmedabad District, was not bound to issue a Certificate of Registration to the assessee, because the turnover did not exceed the prescribed limit. If the assessee misled the Sales Tax Officer into not granting him registration by failing to disclose all the material facts which he was obliged to disclose, he cannot hold up the plea that by reason of the action of the Sales Tax Officer in refusing to grant him registration, he (the assessee) has been prejudiced and, therefore, the Sales Tax Department was estopped from assessing him to sales tax for the period between the 1st of October, 1946, and the 21st of March, 1950. If notwithstanding a full disclosure of all material facts, the Sales Tax

Officer had failed to grant the assessee registration, the question whether the Sales Tax Department was estopped from assessing the assessee may have fallen to be determined. But, in the present case, the failure on the part of the Sales Tax Department to register the business of the assessee at Dholka being directly attributable to his own conduct, even assuming that a plea of estopped can be set up, the circumstances in our view do not justify such a plea.

7. On that view of the case, in Sales Tax Reference No. 18 of 1958, the questions submitted will be answered as follows :-

(1) In the negative.

(2) In the affirmative.

(3) In the affirmative.

(4) In the affirmative.

8. Turning to Reference No. 21 of 1958, the question which falls to be determined is whether having regard to the circumstances, the Sales Tax Officer was competent to make a "best judgment assessment" relying upon the provisions of section 11(5). On behalf of the assessee, it is urged that an application was in fact submitted for registration by him to the Sales Tax Officer and even if the application did not set out all the material facts, the Sales Tax Authority had no power to make a best judgment assessment u/s 11(5). It is further urged that if at all power to assess could be exercised u/s 11A which was inserted by Bombay Act 1 of 1949. Mr. H. D. Banaji for the Department has stated that having regard to the small amount in dispute, we may not answer questions (2) and (3) which have been referred to us in this reference. On the submission made by counsel, we therefore proceed not to answer question (2) and (3) in Sales Tax Reference No. 21 of 1958.

9. The first question will be answered in the negative.

10. As to questions (2) and (3) there will be no answer.

11. In Sales Tax Reference No. 18 of 1958, the assessee will pay the costs of the State. Costs quantified at Rs. 250.

12. There will be no order as to costs in Sales Tax Reference No. 21 of 1958. Fees deposited by the assessee in this reference to be refunded.

13. References answered accordingly.