

(2008) 03 BOM CK 0132

Bombay High Court

Case No: Sales Tax Application No. 7 of 2006 in Reference Application No. 131 of 2003

The Commissioner of Sales Tax APPELLANT
Vs
Gharda Chemicals Ltd. RESPONDENT

Date of Decision: March 14, 2008

Acts Referred:

- Bombay Sales Tax Act, 1959 - Section 33(4A), 43A

Citation: (2008) 14 VST 418

Hon'ble Judges: R.S. Mohite, J; F.I. Rebello, J

Bench: Division Bench

Advocate: V.A. Sonpal, AGP, for the Appellant; C.B. Thakkar, instructed by C.B. Thakkar and Company, for the Respondent

Judgement

R.S. Mohite, I.

This is an application preferred by the Commissioner of Sales Tax (hereinafter referred to as the "applicant") against Gharda Chemicals Ltd. (hereinafter referred to as the "respondent"). The applicant is aggrieved by the judgment and order dated 15.10.2005 passed by the Maharashtra Sales Tax Tribunal in Reference Application No. 131 of 2003. By the impugned judgment and order the Tribunal rejected the applicant's request for referring the questions as framed by the applicant in his reference application for answer by this Court.

2. The brief facts of the case are as under.

a) The respondent filed its return before the Sales Tax authorities for the period from 1.4.1993 to 31.3.1994. The return filed for the aforesaid period was a Nil return and there was no claim for refund in the return as filed.

b) The return came to be assessed by the Assistant Commissioner of Sale Tax (Adm) (M-85) Ratnagiri. Below the assessment order, the date of making of the assessment order was typed as 31.3.1997. On the right hand column, below the order, was the

signature of the aforesaid Asstt. Commissioner with no date there under. On the left hand side yet another date was shown as 10.4.1997 without any signature. The Assessing Officer, after assessment on merits, came to the conclusion that the respondent herein was entitled to a refund of Rs. 79,00,000/-. On 22.9.1997 the Revisional Authority, being Commissioner of Sales Tax, Maharashtra State issued a suo moto show cause notice calling upon the respondent to show cause as to why the assessment order should not be revised. After hearing the respondent, ultimately by an order dated 16.1.1998 the Dy. Commissioner of Sales Tax, Kolhapur Division, Kolhapur allowed the revision. He observed that main issue involved was as to whether the assessment order was without jurisdiction as it was time barred. He decided this issue against the respondent.

He also observed that on the other claims were also not correctly allowed and the admissible sales were not properly determined. He therefore, set aside the assessment order and directed the Assessing officer to take action according to law.

c) Being aggrieved by this order dated 16.1.1998 the respondent preferred an appeal before the Maharashtra Sales Tax Tribunal being Appeal No. 18 of 1998. This, appeal came to be allowed by the Tribunal by their judgment and order dated 13.6.2003. The Tribunal held that the assessment order was passed on 31.3.1997 and it would have to be presumed that the assessment order was not passed on 10.4.1997. It further held that the assessment order was thus passed within the period of limitation. It directed the Assessing officer to grant refund to the appellant expeditiously with interest u/s 43A of the B.S.T. Act. It also directed the Assessing Officer to pay the costs of Rs. 500/- to the respondent.

d) That thereafter, the applicant preferred an application before the Tribunal for referring the two questions of law as stated in the application. This application came to be rejected by the Tribunal by its judgment and order dated 15.10.2005. In these circumstances, the present application came to be filed in this Court by the applicant.

3. The present application came to be admitted by this Court on 30.6.2006 on the following substantial questions of law.

1. Whether on the facts and in the circumstances of the case, it is within the jurisdiction of the Tribunal to change the facts regarding the date of passing assessment order from 10.4.1997 to 31.3.1997?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in granting interest u/s 43A of the B.S.T. Act, 1959 even when said section is incorporated w.e.f. 1.4.1995 and was not operating during the assessment period 1993-94?

4. We have heard both the parties and perused the record. The Advocate for the respondent fairly states that the applicant would not press for interest on amount of

refund u/s 43A as the provision relating to the same was enacted with effect from 1.10.1995 and would not be applicable to the assessment year in question. In view of this concession the second question as framed by this Court is answered in favour of the revenue.

5. As far as first question is concerned, as observed herein above, there are two dates just below the body of the assessment order. A date 31.3.1997 is typed. The signature of the Assessing officer does not contain any date there under. Yet, another date is shown as 10.4.1997 on the left hand side below the judgment but there is no signature therein above. In this regard the Tribunal has concluded that the Assessing officer must have known that the period of limitation would expire on 31.3.1997 and therefore, he passed his order before that date. It is further concluded that the date 10.4.1997 was probably made to defeat the refund claim. In our view, only a disputed question of fact and no question of law arises in this case. The second date 10.4.1997 as shown below the judgment is not below the signature of the Assessing officer. There is no date below the signature of the Assessing officer. On facts, the view taken by the Tribunal is a possible view and therefore, in our view, the first substantial question of law as framed does not arise.

6. Before parting of the matter, we would like to observe that an attempt appears to have been made by the Assessing Officer to deprive the assessee of the benefit of a refund. He must have had knowledge of the fact that if his order was made after 31.3.1997, the effect would be to render the assessment order without jurisdiction as by virtue of operation of Section 33(4A) of the Bombay Sales Act the Nil return filed by the respondent would be deemed to be accepted. *Prima facie*, this appears to have been done to deprive the respondent from claiming the refund as assessed. This is a very serious matter and therefore, we direct the Commissioner of Sales Tax, Maharashtra State to conduct an enquiry into the matter and take steps to fix the responsibility and initiate departmental proceeding against the erring officer. He is further directed to file a report in this regards in respect of the steps taken within a period of six months from today. Office is directed to send the copy of this order to the Commissioner of Sales Tax, Maharashtra State.

7. In the light of above discussion, the reference application is answered and stands disposed of accordingly.