
(1958) 07 BOM CK 0033

Bombay High Court

Case No: Criminal Appeal No"s. 281 to 285 of 1958

State

APPELLANT

Vs

R.M. Shah and Co.

RESPONDENT

Date of Decision: July 15, 1958

Acts Referred:

- Bombay Sales Tax Act, 1959 - Section 13, 36
- Constitution of India, 1950 - Article 20(1)

Citation: (1958) 9 STC 683

Hon'ble Judges: Patel, J; H.K. Chainani, J

Bench: Division Bench

Judgement

Patel, J.

These appeals are brought by the State from the order of acquittal made by the learned Presidency Magistrate, 25th Court, Mazgaon, Bombay, for an offence under the Sales Tax Act and the Sales Tax Ordinance, one of 1946 and the other of 1952. It was alleged that the two accused persons, Rasiklal Manilal Shah and Navinchandra Ratilal were the partners of a firm named M/s. R. M. Shah & Co., doing business at 135 Masjid Bunder Road, Bombay 3. It was alleged that they were registered as dealers under the Registration Certificate No. BB-1634, dated 21st September, 1946, which is exhibited in the case as Ex. 1.

2. It was alleged that u/s 13 of the Bombay Sales Tax Act read with rule 22 made under the Bombay Sales Tax Ordinance return was required to be submitted within a certain date of each quarter ending on 31st January, 1953, and 31st March, 1953. It was stated that though it was required to be furnished within one month from the end of the quarter, the returns for both these quarters were made on 18th July, 1953, and it is for this delay in filing of the returns of the sales as required under the Sales Tax Act that the prosecution is launched u/s 36(b) of the Bombay Sales Tax Act after obtaining sanction from the Collector as required by the Act.

3. The three Appeals Nos. 281 to 283 of 1958 relate to the delay in the filing of the returns as required by the Act for different quarters. The first of the cases relates to the quarter ending 31st January, 1953, and 31st March, 1953. The second matter relates to the quarters ending on 30th June and 30th September, 1953, and the third matter relates to the quarters ending on 31st December, 1953, and 31st March, 1954. With regard to all these matters, the allegation was that the firm R. M. Shah & Co. was a registered dealer and, therefore, it was bound to furnish returns within time and it was stated that the two accused persons being partners in this firm were liable for not filing the returns as required by law. The accused-respondents raised several contentions in the Court below. The chief amongst them being that the accused are not registered dealers under Ex. 1, the registration certificate, and, therefore, there was no obligation on them to furnish the quarterly returns as such. The second contention relates to the sanction that was granted by the Sales Tax Collector, Bombay State, and they challenged the validity of that sanction. They also challenged the Rules, the Ordinance of 1952 and the Rules made thereunder, as being ultra vires of Article 20, sub-clause (1), of the Constitution of India. At the time of argument, it appears that two points were argued, one was whether the sanction granted by the Collector of Sales Tax, Bombay State, was valid and proper and, secondly, whether the accused were the registered dealers under Ex. No. 1, registration certificate, and whether they were liable to furnish quarterly returns as registered dealers or otherwise under Ordinance No. 2 of 1952. As to the sanction, the learned Magistrate held that it was a valid sanction. But on the second point, the learned Magistrate held that the respondents were not the registered dealers under the Act concluding therefrom that they were not liable to furnish any returns under the provision of the Ordinance. He, therefore, acquitted them. The learned Magistrate while dealing with this question has observed that the definition of the word "dealer" speaks of a person and it does not appear to include a partnership firm and that in view of this position in law and which is the correct position according to him, he must hold that that accused were not liable to furnish the returns. This appears to be one of the grounds on which the learned Magistrate has come to that conclusion. The main ground seems to be that the certificate was not issued in the name of the partnership firm nor were the accused named as registered dealers. He, therefore, held that the accused were not liable to furnish the returns. It appears to us that the second ground given by the learned Magistrate that the definition of the word "dealer" would not include a partnership firm is not correct. Prima facie the word "dealer", meaning any person who carried on the business of selling or buying goods, would mean and include an association or a club whether registered or not, in view of the definition of the word "person" as given in section 3(35) of the Bombay General Clauses Act. It appears that the learned Magistrate's attention was drawn to this particular provision. But, in his opinion, because there is a special reference in the definition of the word "dealer" to any society club, or association, which sells goods to or buys goods from its members, the application of the Bombay General Clauses Act was excluded from the

definition of the word "dealer" as contained in section 2(6) of the Sales Tax Act. Here again it is difficult to agree with the learned Magistrate. The reference to any society, club or association, which sells goods to or buys goods from its members in the definition of the word "dealer" has a special purpose of its own and that is to include within the definition of the word "sales" made as mentioned therein which otherwise may not amount to sales and could not have been intended to exclude the operation of the definition as given in the General Clauses Act. That also appears to be abundantly clear from the fact that dealings between the members of the club, society or an association, which normally may not amount to sales are intended to be included in the definition of "sale". We are, therefore, so far as at present advised, of the opinion that a partnership firm would be included in the definition of the word "dealer" as given in section 2, sub-section (6), of the Bombay Sales Tax Act and the Ordinance.

4. We, however, agree with the learned Magistrate that neither of the accused was a registered dealer nor was the partnership. The learned Additional Assistant Government Pleader has invited our attention to the application form, Ex. D, for registration. The application was made by Ratilal Dahyabhai Shah, one of the partners of M/s. R. M. Shah & Co. He has given the details of the place of business and the commodities in which the firm deals. He has also given the names of two persons as partners, one being his name and the other being Rasiklal Manilal Shah. Mr. Gumaste, therefore, says that when the certificate was issued in the name of Ratilal Dahyabhai Shah/Messrs R. M. Shah & Co., it means that it was issued in the name of Ratilal Dahyabhai Shah and/or Messrs R. M. Shah & Co. On a reading of the certificate without anything more it is possible to read it in that manner. In this case, that is not the only thing. If we turn to the evidence of two officers who have been examined in the case, it appears that it is not possible to read the certificate as the learned Additional Assistant Government Pleader will have us to read. It appears that what is produced as Ex. 1 is a true copy of an office copy of the certificate that was issued and the original was undertaken to be produced on the next day, and we might say that it has not been produced. Even this difficulty might have been one that was not difficult to overcome. But the evidence of witness Ramchandra Vishnu Gharpure shows that Ex. 1 was issued in favour of Ratilal Dahyabhai Shah of Messrs R. M. Shah & Co. This witness has further stated that Ratilal Dahyabhai Shah a registered dealer under Ex. 1. He has stated that in Ex. 1 none of the accused is a registered dealer. The other witness is one Vishnu Vaman Gadkari, who is a Sales Tax Officer and apparently a responsible officer at that. He says in his cross-examination : "It is true that Ex. 1 is issued in favour of Ratilal Dahyabhai Shah of Messrs R. M. Shah & Co. None of the names of the accused appears in Ex. 1". Mr. Gumaste says that this is merely a mistake and that this evidence should be discarded. It is difficult to accept this argument. The evidence that has been given is by a responsible person who has been dealing with a large number of partnership cases and it appears that he knew the meaning of the bar which has been put in

between Ratilal Dahyabhai Shah and Messrs R. M. Shah & Co. If, in any case, it was a mistake, they could have corrected the same during the time they were in the box or the prosecution could have examined higher officers, who could have thrown light on the certificate issued in like form. It is now too late to say that these are mistakes committed in the course of giving evidence and that these should be discarded. In view of this evidence, we cannot say that the learned Magistrate was in error when he observed that neither of the accused persons was a registered dealer in respect of the business known as Messrs R. M. Shah & Co. When once we accept the interpretation that the name of Messrs R. M. Shah & Co. was not there as its being a registered dealer but merely as part of description of Ratilal Dahyabhai Shah, in view of what I have stated above, the learned Magistrate was right in acquitting the accused in all the three appeals. The appeals, therefore, fail and are dismissed.

5. The other two appeals (Nos. 284 and 285 of 1958) relate to prosecutions for furnishing incorrect returns. In the first case, with regard to three quarterly returns of 30th June, 1953, 30th September, 1953, and 31st December, 1953, the learned Magistrate while dealing with these cases held that the prosecution has not proved that the returns are false, in that the prosecution was not able to prove any sales or purchases made under the purchase vouchers referred to in the prosecution. Mr. Gumaste has conceded, and we think rightly, that there is not merit in the case. It appears from the evidence of Ramchandra Vishnu Gharpure that he had no proof to prove the fact of sales and the respective dates of the so-called goods purchased by the accused. In this view of the matter, the appeals must fail and are dismissed.

6. Appeals dismissed.