
**Commissioner of Sales Tax, Maharashtra State, Bombay Vs Roopchand
Tarachand**

Sales Tax Reference No. 23 of 1978 in Reference Application No. 36 of 1975

Court: Bombay High Court

Date of Decision: April 6, 1984

Acts Referred:

Bombay Sales Tax Act, 1959 " Section 14, 46, 46(2), 61

Citation: (1984) 57 STC 145(1)

Hon'ble Judges: P.S. Shah, J; M.H. Kania, J

Bench: Division Bench

Judgement

Shah, J.

On a case stated u/s 61 of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the Act"), the Maharashtra Sales Tax

Tribunal has referred the following question for our determination :

Whether on the facts and circumstances of the case and having regard to the provisions of the latter part of sub-section (2) of section 46, B.S.T.

Act, 1959, the Tribunal was correct in setting aside the order of forfeiture of tax of Rs. 1,347.53 on the ground that the tax collected was less than

the total amount of tax including purchase tax found payable ?

2. The assessee is a re-seller of plastic bangles. For the assessment period April 1, 1968, to March 31, 1969, the Sales Tax Officer held that the

purchases made by the assessee worth Rs. 23,953 were of goods purchased on form 14. There was a contravention of the recitals contained in

the declaration and hence the Sales Tax Officer proceeded to levy purchase tax on the abovesaid purchases. He found that the goods were sold in

contravention of the undertakings in the declaration and unauthorisedly collected tax amounting to Rs. 1,347.53. The Sales Tax Officer levied

purchase tax u/s 14 of the Act at Rs. 1,197.65 (which was modified to Rs. 1,916.24 in appeal) and also directed forfeiture of the amount of Rs.

1,347.53 unauthorisedly collected by the dealer as tax. The appeal against the assessment order forfeiting Rs. 1,347.53 was rejected by the

Assistant Commissioner. In the second appeal filed before the Tribunal it was contended that the amount directed to be forfeited should have been

adjusted towards the amount of total tax found payable by the assessee having regard to the provisions of sub-section (2) of section 46 of the said

Act. Relying on the decision of the Special Bench of the Tribunal in the case of M/s. Kasam Valimohamed in Second Appeal No. 571 of 1971

where it was held that the proper mode of determining the applicability of the provision regarding forfeiture u/s 46(2), latter part, is to find out the

aggregate amount collected by the registered dealer by way of tax during the particular year and to ascertain whether it exceeds the amount of tax

payable by the dealer on his turnover of sales during the said year and when there is an excess then the excess would be liable to be forfeited, the

Tribunal set aside the order of forfeiture of the amount of Rs. 1,347.53.

3. The interpretation put by the Special Bench of the Tribunal on section 46(2) of the said Act is not correct in view of the decision of this Court in

Ramkrishan Kulwantrai v. Commissioner of Sales Tax [1979] 44 STC 117, as also another decision of this Court in Commissioner of Sales Tax v.

Automobile Products of India Limited [1983] 52 STC 314. Section 46(2) of the Act provides :

No person, who is not a registered dealer and liable to pay tax in respect of any sale or purchase, shall collect on the sale of any goods any sum

by way of tax from any other person and no registered dealer shall collect any amount by way of tax in excess of the amount of tax payable by him

under the provisions of this Act :

Provided that, this sub-section shall not apply where a person is required to collect such amount of the tax separately in order to comply with the

conditions and restrictions imposed on him under the provisions of any law for the time being in force.

4. In Ramkrishan Kulwantrai's case [1979] 44 STC 117, the Court held :

To take, however, merely, the aggregate of the amounts collected by a registered dealer by way of tax and deduct from it the amount of tax

payable by him and to forfeit the balance would be, as we have pointed out above, doing violence to the language and the meaning of section

46(2), as also to make a mockery of the intention of the legislature in enacting section 46.

In that case the Court held that the intention of the legislature was to prohibit collection of tax on every transaction of sale or purchase which was

not exigible to tax.

5. In the case of Automobile Products of India Limited [1983] 52 STC 314, a similar view has been taken after pointing out the decision in

Ramkrishan Kulwantrai's case [1979] 44 STC 117.

6. The question referred to us, therefore, will have to be answered in the negative and in favour of the department.

7. Respondent-assessee to pay the costs.