

(1977) 12 BOM CK 0026

Bombay High Court

Case No: Sales Tax Reference No. 144 of 1976

Commissioner of Sales Tax

APPELLANT

Vs

Bombay Commercial Traders

RESPONDENT

Date of Decision: Dec. 9, 1977**Acts Referred:**

- Bombay Sales Tax Act, 1959 - Section 36(3), 61(1)
- Central Sales Tax Act, 1956 - Section 10, 10A, 6, 9, 9(2)

Citation: (1978) 41 STC 215**Hon'ble Judges:** M.H. Kania, J; D.P. Madon, J**Bench:** Division Bench**Advocate:** M.S. Sanghvi, for the Appellant;

Judgement

Madon, J.

This is a reference u/s 9(2) of the Central Sales Tax Act, 1956, read with section 61(1) of the Bombay Sales Tax Act, 1959. The question submitted to us for our determination in this reference is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the provisions of section 36(3) of the Bombay Sales Tax Act, 1959, could not be imported in the assessment under the Central Sales Tax Act, 1956, to levy penalty for late payment of Central sales tax and that such penalty was without the authority of law ?"

2. The brief facts necessary to be related for the purpose of this reference are that the respondents were registered as a dealer under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). In respect of the assessment period 1st April, 1965, to 31st March, 1966, the respondents were assessed to tax under the Central Act by the Sales Tax Officer, A Ward, Unit IV, Bombay, on 18th February, 1969. The Sales Tax Officer also imposed upon the respondents a penalty in the sum of Rs. 1,190.60 for delay in payment of tax under the Central Act for the quarter

ended 30th September, 1965, and for non-payment of tax for the quarter ended 31st December, 1965, which amounts were shown as payable in the returns filed by the respondents. The Sales Tax Officer imposed this penalty purporting to do so u/s 9(3) of the Central Act, as it then stood, read with section 36(3) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the Bombay Act"). Against this order imposing penalty, the respondents filed an appeal to the Assistant Commissioner of Sales Tax. One of the contentions of the respondents was that no such penalty could be imposed upon them under the Central Act and the provisions of the Bombay Act relating to imposition of penalty for late payment or non-payment of tax could not be invoked for the imposition of a penalty under the Central Act. The Assistant Commissioner of Sales Tax negated this and other contentions and dismissed the respondents' appeal. Against this order of dismissal the respondents filed a second appeal to the Tribunal. The Tribunal, following its earlier decision, allowed the appeal and set aside the penalty imposed upon the respondents.

3. From this judgment and order of the Tribunal, this reference has been made at the instance of the Commissioner of Sales Tax.

4. A similar question fell for consideration before the Supreme Court in [Khemka and Co. \(Agencies\) Pvt. Ltd. Vs. State of Maharashtra](#). By a majority judgment the Supreme Court held that there was no provision in the Central Act for imposition of penalty for delay or default in payment of tax and the provision in a State Sales Tax Act imposing penalty for non-payment of tax within the prescribed time was not attracted to impose penalty on dealers under the Central Act in respect of tax payable under the Central Act. In view of this judgment of the Supreme Court, the question referred to us would have to be completely changed by virtue of a recent legislative enactment, namely, the Central Sales Tax (Amendment) Act, 1976 (No. 103 of 1976), which received the assent of the President on 7th September, 1976. By section 6 of the amending Act, a new sub-section, namely, sub-section (2A), was inserted in section 9 of the Central Act. The said sub-section (2A) is as follows :

"(2A) All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, reassessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, reassessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law."

5. Section 9 of the amending Act is a validating section and makes the provisions of sub-section (2A) of section 9 inserted by the amending Act to operate with retrospective effect. It also validates the imposition and collection of penalties levied before the commencement of the amending Act which were invalid by reason of the

aforesaid decision of the Supreme Court. In view of the provisions of section 9 of the amending Act, it must be held that the imposition of penalty upon the respondents by the Sales Tax Officer for late payment and non-payment of tax under the Central Act was valid.

6. We accordingly answer the question submitted to us in the negative.

7. There will no order as to costs of this reference.

8. Reference answered in the negative.