

(1950) 05 BOM CK 0002

Bombay High Court (Nagpur Bench)

Case No: None

Punamchand Ganeshdas

APPELLANT

Vs

King-Emperor

RESPONDENT

Date of Decision: May 4, 1950

Acts Referred:

- Central Provinces and Berar Sales Tax Act, 1947 - Section 21(1)(a)

Citation: (1951) CriLJ 96

Hon'ble Judges: Mudholkar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Mudholkar, J.

The applicant has been convicted of an offence u/s 21 (1)(a). C. P. and Berar Sales Tax Act, 1947 (XXI 21. of 1947) and sentenced to pay a fine of as. 10.

2. The applicant is the owner of a printing press in Arvi. He does job work only. According to the prosecution he is a "dealer" within the definition of the expression contained in Section 3 (0), Sales Tax Act, that the turnover of his business for the year 1945-46 was in excess of Rs. 5,000, that he was bound to obtain a registration certificate u/s 8 (1) of the Act, and that he contravened the provisions of this section. According to the applicant he is not a dealer within the definition of the expression contained in the Act and that the work he does, does not amount to sale of goods. Further, according to him, the turnover for the year 1945-46 was not Rs. 5,000 because he was entitled to deduct from the value of orders placed with him during that year a sum of Rs. 367-14-0, which represented his bill for certain pamphlets published by him but delivery of which was not taken by the person who placed the order for printing. According to him, after deducting this amount his turnover for the year 1945-46 would come to Rs. 4,981-10-0 only and thus would be below the taxable quantum prescribed by the Act.

3. It is not necessary for the purposes of this case to decide whether the applicant is a dealer or whether the work he does amounts to sale of goods, because, in my opinion, he must succeed on the third point raised by him. It is not every dealer who is required by Section 8 (1) to obtain a registration certificate. The provision requires only a dealer who is liable to pay a tax under the Act to obtain such a certificate. According to the Act every dealer whose turnover during the year preceding the commencement of the Act exceeded the taxable quantum is liable to pay tax. The word "turnover" is defined in Clause (j) of Section 2, The definition is as follows:

"Turnover" means the aggregate of the amounts of sale prices and parts of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract, effected or made during the prescribed period;.... This definition clearly contemplates the sale or supply of goods, and so we must go to the definition of sale contained in the Act. Clause (g) of Section 2 defines "sale" as follows:

"Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in course of the execution of a contract but does not include a mortgage, hypothecation, charge or pledge....

From this definition, it is clear that for a transaction to be regarded as a sale there must be a transfer of property in the goods. Where goods are merely ordered but delivery is not given or taken and there is nothing from which it can be ascertained that the property in the goods has actually been transferred from the seller to the buyer it cannot be said that there was a sale. A contract of sale is not the same thing as sale, it may be that here the applicant would be entitled to sue the person who placed the particular order with him for damages and may be able to recover damages from him, but what he receives by way of damages would not be regarded as sale price.

4. For these reasons I hold that the particular transaction does not amount to a sale and that therefore the applicant was not bound to obtain a registration certificate. Since he was not bound to obtain a registration certificate his failure to obtain one does not render him liable u/s 24 (1)(a) of the Act. His conviction is bad in law and is accordingly set aside, so also the sentence. The fine, if paid, is ordered to be refunded.