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**(1976) 02 BOM CK 0051**

**Bombay High Court**

**Case No:** Sales Tax Reference No. 25 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

M.A. Hoosein and Bros.

RESPONDENT

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**Date of Decision:** Feb. 16, 1976

**Acts Referred:**

- Bombay Sales Tax Act, 1946 - Section 46
- Bombay Sales Tax Act, 1953 - Section 34(1), 8, 9(1)

**Citation:** (1976) 5 CTR 250 : (1976) 384 STC 487

**Hon'ble Judges:** M.H. Kania, J; D.P. Madon, J

**Bench:** Division Bench

**Advocate:** C.A. Phadkar, for the Appellant; V.H. Patil and V.J. Pandit, for the Respondent

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**Judgement**

Kania, J.

This is a reference u/s 34(1) of the Bombay Sales Tax Act, 1953 (hereinafter referred to as "the said Act"), made at the instance of the Commissioner of Sales Tax.

2. The facts giving rise to this reference are, briefly, as follows : At the relevant time, the respondents, who were a registered dealer under the said Act, carried on business as importers and, inter alia, imported from Italy woollen rugs (hereinafter referred to as "the said goods"). On 19th November, 1956, the said goods landed at Bombay and on 30th November, 1956, the same were cleared from the customs. On 18th December, 1956, the respondents made out a bill on M/s. Beharilal Dewanchand, Bombay, in regard to the said goods for Rs. 29,585-11-0 (hereinafter referred to as "the said amount"). This bill shows that the said goods were sold under K and N forms and that delivery of the said goods was effected. In their assessment for the period 1st April, 1956, to 31st March, 1957, the said amount was shown by the respondent-assesses in their total turnover, but a deduction or exemption was claimed in respect thereof under the provisions of section 8(b) and the proviso (1) to section 9 of the said Act. A perusal of the provisions of section 8(b)

and the said proviso to section 9 of the said Act and the K and N forms shows that the deduction or exemption has been asked for on the footing that the said goods were sold by the respondents in Bombay to a dealer who held an authorisation under the said Act and furnished to the respondents a certificate declaring, inter alia, that the goods sold to him were intended for sale in the course of inter-State trade or commerce or in the course of the export of goods out of the territory of India or that such purchasing dealer held a licence and furnished to the respondents a certificate declaring, inter alia, that the goods so sold to him were intended for resale by him. The Sales Tax Officer, who assessed the respondents granted the deduction or exemption claimed by the respondents in respect of the said amount and excluded the same from the taxable turnover of the respondents. It was subsequently found that M/s. Beharilal Dewanchand did not possess the authorisation or a licence as required by the provisions of section 8(b) and the proviso (1) to section 9 of the said Act respectively. In view of this, the Sales Tax Officer by his order dated 21st December, 1962, assessed the said amount as the escaped turnover of the respondents in reassessment proceedings. The respondents preferred an appeal to the Assistant Commissioner of Sales Tax contending that the said amount represented the sale proceeds of a sale made by the respondents in the course of import. This contention was negatived by the Assistant Commissioner, and the revision application preferred by the respondents to the Deputy Commissioner was dismissed. In that revision application also the same contention was taken up by the respondents. The respondents then went by way of further revision to the Sales Tax Tribunal in which they repeated the same contention but took up a further alternative contention that the sale resulting in the receipt of the said amount by the respondents was a sale outside the State and was, therefore, not liable to tax under the said Act. The Tribunal upheld this alternative contention of the respondents, that the sale was an outside State sale, on consideration of a letter from the Allahabad Bank Limited, Amritsar, to the respondents dated 13th July, 1963, the respondents' letter to the Allahabad Bank Limited, Amritsar, dated 21st September, 1956, and a letter dated 17th December, 1964, addressed by the Indian Clearing and Forwarding Company to the respondents. On the basis of this conclusion, the revision application was allowed by the Tribunal and the orders of the lower authorities with regard to the levy of sales tax in respect of the said amount were set aside. Arising from this judgment and order of the Tribunal, the following question has been referred to us for our determination :

"Whether, on the facts and in the circumstances of the case and on true and proper interpretation of the documents governing the impugned transactions between the respondent and his buyer at Bombay, the Tribunal was correct in law in holding that the sales of Rs. 29,585-11-0 had taken place outside the State of Bombay and were, therefore, exempt under the provisions of section 46 of the Bombay Sales Tax Act, 1946 ?"

3. In order to determine the question raised before us, in our opinion, the most important documents to be considered are the returns filed by the respondents and the K and N forms signed by M/s. Beharilal Dewanchand of Bombay, which have been relied upon by the assesseees in the assessment proceedings. These documents clearly suggest that the transaction between the respondents and M/s. Beharilal Dewanchand of Bombay in respect of the goods in question was a transaction of sale. Had that not been so, there was no reason at all why the respondents should have requested M/s. Beharilal Dewanchand of Bombay to sign and hand over the K and N forms to the respondents or why M/s. Beharilal Dewanchand of Bombay should have done so. The case of the respondents right up to the stage of the Tribunal never was that the sale in question was a sale outside the State. These documents clearly show, prima facie, that the said amount represented the sale proceeds of the said goods which were sold by the respondents to the said M/s. Beharilal Dewanchand in Bombay. This is further supported by the bill dated 18th December, 1956, drawn by the respondents on the firm of M/s. Beharilal Dewanchand at Bombay. This bill contains a statement "Goods delivered", which would show that the goods were delivered by the respondents to the said firm of M/s. Beharilal Dewanchand at Bombay. In our opinion, the reliance placed by the Tribunal on the letter dated 13th July, 1963, addressed by the Allahabad Bank Limited, Amritsar, to the respondents is somewhat misplaced. That letter does contain the following statement :

"The documents and/or goods were delivered to M/s. Beharilal Dewanchand as per your letter dated 21st September, 1956, a copy of which is enclosed."

4. This statement, however, does in no manner necessarily lead to the conclusion that the document or goods were delivered by the Allahabad Bank Limited, Amritsar, to M/s. Beharilal Dewanchand at Amritsar. Similarly, the letter dated 21st September, 1956, addressed by the respondents to the agent of the Allahabad Bank Limited, Amritsar, also, in our opinion, does not help the respondents very much. This letter does contain a request to the Allahabad Bank Limited, Amritsar, to deliver the goods and documents in question to M/s. Beharilal Dewanchand against payment. However, this letter has been addressed before the goods arrived at Bombay and hence does no more than represent the intention of the parties prior to the time the goods arrived in Bombay. Moreover, the instructions given in this letter would be quite consistent with the case of the goods or the railway receipt in respect of the goods being delivered by the respondents at Bombay to the Allahabad Bank Limited. In these circumstances, it appears to us that the Tribunal was in error in holding that the sales resulting in the receipt of the said amount of Rs. 29,585-11-0 had taken place outside the State.

5. Mr. Patil, the learned counsel for the respondents, urged that we should not interfere with the conclusion of the Tribunal as that conclusion had been arrived at by the Tribunal by drawing certain inferences from the documents on record and it

was, according to him, a conclusion of fact, which was not liable to be interfered with in this reference. We are unable to accept this submission. It is settled law that an assessee or the department can contend in a tax reference that an inference has been drawn by the Tribunal on considering inadmissible evidence or after excluding admissible and relevant evidence; and if the High Court is satisfied that the inference is the result of improper admission or exclusion of evidence, it would be justified in examining the correctness of the conclusion : see [G. Venkataswami Naidu and Co. Vs. The Commissioner of Income Tax,](#) . In the present case, we find that the Tribunal has in the statement of facts referred to the K and N forms executed by the firm of M/s. Beharilal Dewanchand at Bombay and also referred to some of the contents of the returns filed by the respondents. But, in considering the aforesaid question, the Tribunal has given no weight or consideration to these documents at all. In our opinion, as we have already observed, these are the most material documents on record from the point of view of determining the question before us, and as the Tribunal has in effect ignored these documents, we are entitled to examine for ourselves the correctness of the conclusion reached by the Tribunal. Such a conclusion reached by the Tribunal without having regard to the material documents on record can, in our opinion, be challenged in a reference u/s 34(1) of the said Act.

6. In the result, the question raised before us must be answered in the negative. The respondents to pay the costs of this reference fixed at Rs. 250.

7. Reference answered in the negative.