Commissioner of Sales Tax Vs M.A. Hoosein and Bros.

Court: Bombay High Court

Date of Decision: Feb. 16, 1976

Acts Referred: Bombay Sales Tax Act, 1946 â€" Section 46
Bombay Sales Tax Act, 1953 â€" 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

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 assessees 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.