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(1983) 52 STC 89

Bombay High Court

Case No: S.T.R. No. 16 of 1980

Commissioner of Sales Tax, Maharashtra State, Bombay	APPELLANT
Vs	
G.M. Apte and Sons	RESPONDENT

Date of Decision: Dec. 3, 1982

Acts Referred:
Bombay Sales Tax Act, 1959 â€" Section 2

Citation: (1983) 52 STC 89

Hon'ble Judges: D.P. Madon, C.J; Sujata V. Manohar, J

Bench: Division Bench

Judgement

Madon, C.J.
The respondents carry on business as building contractors. During the course of their business the respondents purchased

building materials and scaffolding materials, at times, from unregistered dealers. The respondents were assessed by the Sales Tax Officer, Poona

City (III), Poona, as unregistered dealers for the period 1st April, 1957, to 31st December, 1959, u/s 14(6) of the Bombay Sales Tax Act, 1953

(hereinafter referred to as ""the said Act""), and purchases of the above materials were made exigible to payment of purchase tax under clause (a) of

the section 10 of the said Act. The respondents" appeal to the Assistant Commissioner of Sales Tax failed as also their revision application to the

Deputy Commissioner of Sales Tax. They then went in further revision to the Tribunal. The Tribunal held that that the purchases in question were

not purchases made by the respondents in the course of their business and that the respondents were not dealers within the meaning of that term as

defined in clause (6) of section 2 of the said Act.

2. At the instance of the Commissioner of Sales Tax, the Tribunal has referred the following two questions to this Court :

(1) Whether the Tribunal was justified in law in holding that the purchases of building materials and scaffolding materials for the construction of

building were not the purchases in the course of business as a building contractor ?

(2) Whether the Tribunal was justified in law in holding that the respondents were not dealers within the meaning of section 2(6) of the Bombay

Sales Tax Act, 1953 ?

3. In respect of the assessment periods 1st January, 1960, to 31st December, 1963, the same questions had arisen in the assessments of the

respondents and were referred by the Tribunal to this High Court. The High Court judgment in those references is reported in Commissioner of

Sales Tax v. G. M. Apte and Sons [1978] 41 STC 137. Following the earlier judgment of this High Court in Commissioner of Sales Tax v. D. V.

Save [1975] 36 STC 47, it was held that in so far as the respondents purchased building materials in the course of their business as building

contractors and consumed them in the construction of buildings or in carrying out repairs to buildings, they would be dealers within the meaning of

that term as defined in clause (11) of section 2 of the Bombay Sales Tax Act, 1959. For the purpose of this reference there is no difference in the

definition of the term ""dealer"" given in clause (6) of section 2 of the said Act and of that term as defined in clause (11) of section 2 of the 1959 Act,

though the language of the same may not be in pari materia. It must, therefore, be held that the respondents were dealers within the meaning of

clause (6) of section 2 of the said Act. So far as the purchases of building materials by the respondents were concerned, they must also be held to

be purchases in the course of the respondents" business. The scaffolding materials, however, stand on a different footing. In Save"s case [1975]

36 STC 47 the court had held that the purchase of goods by a dealer which he needs for his business would not necessarily be purchases made in

the course of business. The goods purchased must be such as are indispensable for carrying on the business activity of the purchaser and must be

goods without which such business activity would not exist. The court further held that they must not be goods which are adjuncts to the carrying

on of a business or goods which form part of the capital assets of the dealer. Just as in the case of subsequent references which came to be

decided by this Court, so also in respect of this reference the Tribunal has not gone into the question whether the scaffolding materials constitute

capital assets of the respondents or goods of a capital nature. This question, therefore, falls to be determined by the Tribunal, when the case goes

back to it for disposal in the light of our judgment.

For the reasons set out by us above, we answer question No. (1) as follows :

The purchases of building materials made by the respondents for carrying on their business of construction of or repairs to building were purchases

made in the course of their business as building contractors. The purchases of scaffolding materials made by the respondents cannot be said to be

purchases made by the respondents in the course of their business as building contractors in such goods were adjuncts to the carrying on of the

business of the respondents or if those goods formed part of the capital assets of the respondents.

We answer question No. (2) in the negative, that is, in favour of the department and against the assessee. There will be no order as to costs of this

reference.