

Commissioner of Sales Tax Vs New Great Eastern Spinning and Weaving Company Limited

Court: Bombay High Court

Date of Decision: Nov. 11, 1975

Acts Referred: Bombay Sales Tax Act, 1959 " Section 13(1), 41, 61(1)

Citation: (1976) 37 STC 290

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

Bench: Division Bench

Advocate: M.S. Sanghavi, for the Appellant; B.C. Joshi and P.C. Joshi, for the Respondent

Judgement

Madon, J.

This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959, in which the following question is submitted to us for our

determination :

Whether, having regard to the facts and circumstances of the present case, the interpretation put by the Tribunal regarding effective date of

Notification No. ECO-1060/A-2380(a)-62 - XIII dated 7th April, 1964, amended by the notification issued on 28th December, 1959, is justified

in law ?

2. This question is not happily worded and does not bring out the real question of law which falls to be decided in this reference. Accordingly, we

reframe the question as follows :

Whether, having regard to the facts and circumstances of the present case, the interpretation put by the Tribunal with respect to the operative date

of the certificate issued to the respondents under Notification No. ECO-1060/A-2380(a)-62 - XIII dated 7th April, 1964, amending Notification

No. STA. 1059-(iii)-G-1 dated 28th December, 1959, is correct in law ?

3. The notification dated 28th December, 1959, was issued by the State Government in exercise of the powers conferred by section 41 of the

Bombay Sales Tax Act, 1959. The material provisions of the said section as operative at the relevant time were :

Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest, by notification in the

official Gazette, exempt any specified class of sales or purchases from payment of the whole or any part of any tax payable under the provisions of

this Act.

4. The notification dated 28th December, 1959, contained four columns : column 1 for the serial number of the entries therein, column 2 for the

classes of sales or purchases which were exempted from tax, column 3 for setting out whether the exemption was to be of whole or part of the tax,

and column 4 for the conditions subject to which the exemptions were granted. By notification dated 7th April, 1964, entry No. 39 was inserted in

the said notification dated 28th December, 1959. The said entry No. 39 exempted from payment of the whole of general sales tax and retail sales

tax ""sales of (1) machinery and its component parts and accessories and (2) dyes and chemicals, by a registered dealer to any other registered

dealer who manufactures any of the goods specified below and is so certified for the purpose by the Commissioner"". The goods specified were

certain classes of textiles, sugar and tobacco described in items (a) to (g) in column 2 of the said entry. Two conditions are set out in column 4 as

being the conditions subject to which the said exemption is granted. The first condition is that the manufacturer must furnish to the selling dealer a

declaration in form T appended to the said notification declaring inter alia that the goods are required for use by him in the manufacture of any of

the goods specified in items (a) to (g) in column 2 for sale. The second condition is that if the manufacturer fails to use the goods in accordance

with the terms of the said declaration or contravenes any of the provisions of the Act or the Rules made thereunder, the certificate issued by the

Commissioner should be liable to be cancelled.

5. The respondents were registered as dealers under the Bombay Sales Tax Act, 1959. After the notification dated 7th April, 1964, was issued,

the respondents made an application on 29th May, 1964, for issue to them of a certificate under the said entry No. 39. This application was

received in the office of the Commissioner of Sales Tax on 2nd June, 1964, and on 16th June, 1964, the Sales Tax Officer, B Ward, Unit I, issued

to the respondents the certificate applied for. By clause 1 of the said certificate it was made effective from 2nd June, 1964. The respondents filed

an appeal before the Assistant Commissioner of Sales Tax contending that the Sales Tax Officer should have issued to them a certificate effective

from 7th April, 1964, that is, the date of the said notification. The Assistant Commissioner dismissed the said appeal. The respondents thereupon

filed a second appeal to the Sales Tax Tribunal, Bombay, which was allowed. The Tribunal deleted from the certificate clause (1) thereof, which

provided that the said certificate was to be effective from 2nd June, 1964. The judgment of the Tribunal shows that, according to the Tribunal, the

said certificate would operate from the date of the said amending notification, namely, the notification dated 7th April, 1964.

6. We are unable to accept this interpretation placed by the Tribunal on the said notification dated 7th April, 1964. What section 41 does is to

confer powers upon the State Government to exempt any specified class of sales or purchases from payment of the tax either wholly or in part and

to make such exemption subject to such conditions as the State Government may impose. The specified class of sales which have been exempted

by entry No. 39 is sales of certain goods specified therein, namely, machinery and its component parts and accessories and dyes and chemicals, by

a registered dealer to any other registered dealer provided that the purchasing dealer (1) is a dealer who manufactures any of the goods specified

in items (a) to (g) of the second column in that entry and (2) is so certified for the purpose by the Commissioner, that is, provided the

Commissioner of Sales Tax has certified that the purchasing dealer is a registered dealer who manufactures such goods. Thus, the class of sales

exempted under entry 39 are not sales of machinery and its component parts and accessories and dyes and chemicals by one registered dealer to

another registered dealer who manufactures certain types of goods, but sales of these goods by one registered dealer to another registered dealer

who is a manufacturer of such goods and in addition holds a certificate issued by the Commissioner of Sales Tax certifying this fact. Unless and

until, therefore, the sale is to a dealer who holds such a certificate, the transaction of sale does not fall within entry No. 39 at all. In order to attract

the provisions of entry No. 39 the purchaser must be a registered dealer who holds a requisite certificate. The liability of the selling dealer to pay

tax arises at the point of time when the sale is effected. Such a sale would only be exempt from tax provided the purchaser held the requisite

certificate. Subsequent obtaining of the requisite certificate by the purchasing dealer cannot operate so as to destroy a liability to pay general sales

tax or retail sales tax which had already accrued to the selling dealer.

7. Mr. Joshi, the learned Advocate for the respondents, in supporting the interpretation placed by the Tribunal relied upon three authorities. The

first case relied upon by Mr. Joshi is the judgment of a Division Bench of this Court consisting of Abhyankar and Vimadalal, JJ., in Commissioner

of Sales Tax v. Cooper & Co. [1968] 22 S.T.C. 111. That was a case under the Central Sales Tax Act, 1956, and the court held that under that

Act the year being the unit both for the purpose of chargeability and assessment proceedings under the Central Sales Tax Act, 1956, if any

notification granting a deduction comes into force during the year, it must be given effect to as from the beginning of the assessment year. The

charging section under that Act came into force on 1st July, 1957. Section 13(1) of that Act empowered the Central Government to make rules

providing inter alia for the period of turnover and the manner in which the turnover in relation to the sale of any goods under the said Act was to be

determined and the deductions which were to be made in the process of such determination. By an amendment to the rules made in exercise of the

said powers, in determining the turnover of a dealer a certain amount was allowed to be deducted from the aggregate of sale prices, namely, the

amount arrived at by applying a formula which consisted of multiplying the rate of tax by the aggregate of sale prices and dividing the same by a

figure arrived at by adding the rate of tax to one hundred. The question before the Division Bench in that case, therefore, was of how the turnover

was to be determined and the part of the turnover that was to be deducted therefrom. "Turnover" was defined by the said Act as the aggregate of

the sale prices received and receivable by a dealer in respect of sales of any goods in the course of inter-State trade or commerce "made during

any prescribed period and determined" in the prescribed manner. Therefore, "turnover" under the said Act meant the aggregate of sale prices for a

particular assessment period. If turnover was to be determined, it could only be determined in respect of the assessment period. Similarly, if a

portion of the turnover was to be deducted, it could only be a portion of the aggregate of the sale prices for that particular assessment period. We

fail to see how that judgment in any way helps the respondents, for here we are concerned with whether the sale to the respondents was the type

of sale specified in entry No. 39.

8. The second case relied upon by Mr. Joshi, the learned Advocate for the respondents, was a decision of the Supreme Court in Mathra Prashad

and Sons Vs. State of Punjab, . That was a case under the East Punjab General Sales Tax Act, 1948. The exempting notification issued by the

Government under the said Act was amended by the State Government so as to include therein "manufactured tobacco as defined in the Punjab

Tobacco Vend Fees Act, 1954". The Supreme Court held that as the tax under the said Act was yearly and was to be paid on the taxable

turnover of a dealer, the exemption, whenever it came in, in the year for which the tax was payable, would exempt sales of those goods throughout

the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the

exemption. It is pertinent to note that what was exempted by the amending notification in that case was sales of certain class of goods. It was not

sales of a certain class of goods to a particular class of dealers. In the case before us what is, however, exempted by entry No. 39 is sales of

certain class of goods by a certain class of dealers, namely, registered dealers, to a particular class of dealers, namely, a registered dealer, who is a

manufacturer of certain types of goods and who holds a certificate from the Commissioner of Sales Tax certifying this fact. On the principle laid

down in this Supreme Court case *Mathra Prashad and Sons Vs. State of Punjab*, the exemption would operate from the date of the notification,

but it would only operate in those cases to which it is attracted, namely, where the conditions laid down therein are fulfilled. If at the date of the

notification the purchasing dealer did not hold the requisite certificate, then sales made to him on the date of the notification or for the period up to

the date he obtains such certificate would not fall under entry No. 39 and would not be entitled to any exemption.

9. The third case relied upon by Mr. Joshi, the learned Advocate for the respondents, is a decision of the High Court of Orissa in *Commissioner of*

Sales Tax, Orissa v. Abdul Ghaffar and Co. [1960] 11 S.T.C. 462. The Orissa Sales Tax Act, 1947, exempted sales to registered dealers who

gave certain types of declarations. It also provided for renewal of registration of certificate. The exemption of sales against declarations was

provided for by rule 27(2) of the Orissa Sales Tax Rules, 1947, and the proviso to that sub-rule was as follows :

Provided that no dealer whose certificate of registration has not been renewed for the year during which the purchase is made, shall make such a

declaration and that the selling dealer shall not be entitled to claim any deduction of sales to such a dealer.

10. The Orissa High Court held that if an application for renewal of registration was made by a purchasing dealer within the prescribed period, the

renewal took effect from the commencement of the financial year for the purpose of claiming the said exemption, irrespective of the date on which

the order of renewal was passed. In arriving at its decision, the Orissa High Court laid particular emphasis on the words used in the proviso to the

said sub-rule, namely, "'has not been renewed for the year during which the purchase is made'", and it held that so long as the renewal took place

for the year in question, the proviso to the said sub-rule had no application irrespective of the actual date of renewal. We are unable to see how

this judgment helps Mr. Joshi. It would have helped him had the wordings of entry 39 were "'sales to any other registered dealer who

manufacturers any of the goods specified below and is so certified during the year for the purpose by the Commissioner.'" The fact that the entry

does not contain any provision about the period during which the certificate is to be obtained or does not provided that the sale could be to a

dealer who subsequently obtained such a certificate would show that the dealer must possess the certificate when the sale to him is made. We are,

therefore, of the opinion that the certificate issued under the said entry 39 would only operate from the date of its issue.

11. In the present case, realising, however, that a certain time-lag must elapse between the date of the receipt by the Commissioner of the

application for grant of certificate and the actual issue of the certificate, what the Sales Tax Officer has done is to make the certificate operate

retrospectively from the date of the receipt of the application for the grant of the certificate in the office of the Commissioner of Sales Tax. This is

something done for the benefit of the purchasing dealer and his vendor inasmuch as it enables the respondents to make purchases without being

under the liability to have collected from him by his vendor the tax which his vendor would otherwise be liable to pay to the Government. We do

not find in the said entry any bar against the Commissioner of Sales Tax or any officer acting under the authority delegated by him so acting

beneficially to the dealers.

12. For the reasons set out about, we accordingly answer the question as reframed by us in the negative.

13. The respondents will pay to the applicant the costs of the reference.

14. Reference answered in the negative.