

(1965) 10 GUJ CK 0010
In the Gujarat High Court
Case No : Sales Tax Reference No. 19 of 1963

Arvind Mills Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-10-1965

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 10

Citation : (1966) GLR 156 : (1966) 18 STC 311

Hon'ble Judges : P.N. Bhagwati, J; J.M. Shelat, J

Bench : Division Bench

Advocate : C.C. Gandhi, for the Appellant; A.D. Desai, Assistant Government Pleader and M.G. Doshit, Additional Government Pleader, for the Respondent

Judgement

Bhagwati, J.—Though there are four questions referred to us for our opinion, they raise only three points for our consideration and each one of the points is covered by a decision binding on us. It will, therefore, be sufficient if we refer to the facts giving rise to the reference and then proceed to dispose of the points in accordance with the decision relevant to each point. The assessment period with which we are concerned in this reference is 1st April, 1954, to 31st March, 1955. The assessee is a limited liability company which at the material period carried on business of manufacturing and selling cotton textile goods. During the relevant assessment period the assessee inter alia sold diverse kinds of stores, materials and other goods as also some old looms and machinery as per particulars set out in the list, annexure 2 to the statement of the case. The sale price received by the assessee in respect of stores, materials and other goods was Rs. 1,20,199 while the sale price received in respect of old looms and machinery was Rs. 2,10,275. The assessee recovered sales tax from the purchases in respect of all these sales on the assumption that the assessee would in its turn be liable to pay sales tax to the State. Whether these sales were taxable or not formed one of the points in dispute before the Revenue Authorities assessing the assessee to sales tax for the relevant assessment period. The second point in dispute between the parties arose out of certain sales of cotton

waste effected by the assessee during the relevant assessment period. According to the assessee the sales of cotton waste fell within entry 1 of Schedule B to the Bombay Sales Tax Act, 1953, while according to the Revenue Authorities they fell within the residuary entry 80 of Schedule B. The last point in controversy related to the purchases of certain raw materials and stores effected by the assessee during the relevant assessment period. The assessee contended that the purchases were casual purchases not in the course of business and were, therefore, not liable to purchase tax u/s 10 of the Act whereas the stand taken by the Revenue was that the purchases were in the course of the business of the assessee and were, therefore, liable to purchase tax under that section. On all these three points the assessee lost before the Sales Tax Officer and in appeal, the view taken by the Sales Tax Officer was confirmed by the Assistant Collector of Sales Tax. This was followed by a revision application to the Deputy Commissioner of Sales Tax and that revision application being unsuccessful, the assessee preferred further revision application to the Tribunal. The Tribunal also negated the contentions of the assessee and upheld the claim of the Revenue in regard to all the three points. The Tribunal held that the sales of stores, materials and other goods and old looms and machinery set out in annexure 2 to the statement of the case were sales in the course of the assessee's business and were, therefore, liable to sales tax under the provisions of the Act; that the sales of cotton waste were taxable under the residuary entry 80 of Schedule B and not under entry 1 of Schedule B and that the purchases of the raw materials and stores effected by the assessee were in the course of assessee's business and were, therefore, liable to purchase tax u/s 10 of the Act. The assessee being aggrieved by this decision of the Tribunal made an application for a reference and on the application the Tribunal referred the following four questions, namely :-

"(1) Whether on the facts and in the circumstances of the case the Tribunal could hold that the applicant-mill company was carrying on business in the different items of stores and miscellaneous goods described as waste materials and other goods in annexure 2 hereto ?

(2) Whether on the facts and in the circumstances of the case the Tribunal was right in turning down the applicant-mill company's contention that it was not a dealer in machinery and other different kinds of stores and miscellaneous goods taking each category separately ?

(3) Whether on the facts and in the circumstances of the case the Tribunal was correct in holding that cotton waste sold by the applicant-mill company during the year of assessment was not covered by entry 1 in Schedule B to the Bombay Sales Tax Act, 1953 ?

(4) Whether on the facts and in the circumstances of the case the Tribunal was right in confirming the levy of the purchase tax on the purchase of the items mentioned in annexure 3 hereto taking each item separately ?"

for the opinion of the Court. The first two questions relate to the sales of stores,

materials and other goods and old looms and machinery, the third question relates to the sales of cotton waste and the last question relates to the purchases of raw materials and stores.

2. So far as the first question is concerned, the point it raises is whether the sales of stores, materials and other goods and old looms and machinery effected by the assessee during the relevant assessment period were taxable under the provisions of the Act. Now it is settled by the decision of this Court in *Ambica Mills Ltd. v. State of Gujarat* ([1964] 15 S.T.C. 367), that the sales which are amenable to tax under the Act are not all sales but only those sales which can be said to have been effected as part of the business of the assessee or in the course of a business activity. Now the word "business" is a word of wide connotation covering a vast and indefinite field of activity and it is therefore not possible to lay down any hard and fast rule or any straight-jacket formula applicable in all cases for the purpose of determining whether a particular sale made by the assessee can be said to be a sale in the course of business. The Courts have evolved different tests applicable in different sets of circumstances, such as, volume and degree of frequency, continuity and regularity of transactions, the nature of the goods sold, the initial intention at the time of manufacture or purchase, etc., but each of these tests must be taken as governing the facts to which it was applied and at best, only affording an indication which would be liable to be offset by other circumstances existing in a given case. The proper way, therefore, in such cases is to examine the facts and circumstances of each case and then ascertain whether the sales in question were effected in the course of business of selling or in other words as business activity and whether there are circumstances which lend to the sales the distinctive character of business. Now there can be no doubt and indeed that was not disputed on behalf of the Revenue, that the initial or original intention with which the stores, materials and other goods and old looms and machinery were purchased by the assessee was to use them for manufacturing cotton textile goods and not to sell them at a profit at some future date as and when a proper opportunity came by and a higher price could be obtained. This initial or original intention would remain unless the Revenue established circumstances offsetting it and showing that at some point of time subsequent to the purchase, the assessee entertained the intention of selling these articles with a view to making profit and the sales were effected in pursuance of a design or scheme of profit-making. No such circumstances have been brought on record by the Revenue and it cannot, therefore, be held that the sales were effected with any profit-motive so as to lend the character of business to the sales. The only test by reference to which the Tribunal came to a contrary conclusion was the test of volume and degree of frequency and here there is certainly some amount of volume and frequency in the sales - but this test, as pointed out by us in *Ambica Mills* case ([1964] 15 S.T.C. 367) is not a conclusive or determinative test and it can at best be only indicative of a profit-making motive behind the sales but where the commodity sold is in the nature of a fixed capital asset such as old

looms and machinery or consists of stores, materials and other goods purchased with the intention of using in the manufacture of cotton textile goods and not selling at a profit at some future time, this test would break down for it would not furnish any indication of a profit-making motive behind the sales. The profit-making motive would be excluded by the nature of the commodity and the initial or original intention at the time of purchase. Moreover, in the present case the evidence shows that the sales were effected not from any profit-motive but because the old looms and machinery as also the stores, materials and other goods sold by the assessee had become old, useless and unserviceable and were no longer required by the assessee. The sales of these articles were, therefore, not part of the business of the assessee nor were they effected by way of business activity. It is no doubt true that the assessee collected sales tax from the purchasers in respect of the sales of these articles, but that circumstance cannot be determinative of the character of the sales since the sales tax might have been collected by the assessee on an erroneous assumption that the assessee in its turn might be held liable to pay sales tax to the State. All these circumstances relied on by the Revenue were present in *Ambica Mills case* ([1964] 15 S.T.C. 367), and yet this Court held that sales of old machinery as also sales of stores and other articles which had become old and unserviceable were not sales in the course of business which were liable to sales tax. This decision completely covers the first two questions which have been referred to us and in view of this decision, both the questions must be answered in the negative.

3. That takes us to the third question which raises the point as to whether sales of cotton waste effected by the assessee were taxable under entry 1 of Schedule B or under the residuary entry 80 of Schedule B. The determination of this question is also concluded by a decision given by us on 18th November, 1963, in *Ahmedabad New Cotton Mills Co. Ltd. v. State of Gujarat* (Sales Tax Reference No. 13 of 1961 (Gujarat High Court)). In that case we held after analysing the entries and examining the true nature of what constitutes cotton waste, that cotton waste is a bye-product which comes out in the process of manufacture as a result of raw cotton being subjected to various processes and cannot, therefore, be regarded as "raw cotton (whether ginned or unginned)" within the meaning of entry 1 of Schedule B and since there is no other specific entry covering cotton waste, it must fall within the residuary entry 80 of Schedule B and sales of cotton waste must be held taxable under that entry. In view of this decision our answer to the third question must be in the affirmative.

4. The last question relates to the purchases of raw materials and consumable stores effected by the assessee during the relevant assessment period. Now it is indisputable that the purchases of these articles made by the assessee would attract purchase tax u/s 10 of the Act only if the purchases could be said to be made in the course of the business of the assessee. The business of the assessee consisted of manufacture and sale of cotton textile goods and for the purpose of manufacturing cotton textile goods for sale, the assessee required raw materials

and consumable stores. Raw materials and consumable stores were commodities essential for manufacture of cotton textile goods for sale, and purchases of raw materials and consumable stores were an essential and integral part of the business activity of the assessee which was one integrated activity consisting of buying of raw materials and consumable stores, manufacturing cotton textile goods out of raw materials by using consumable stores in the process of manufacture and selling cotton textile goods so manufactured with the object of making profit. It was essential in the carrying on of the business of the assessee that raw materials and consumable stores should be purchased and the purchases of raw materials and consumable stores made by the assessee were, therefore, clearly in the course of the business of the assessee. This view which we are inclined to take on principle is amply supported by the decision of the Supreme Court in *State of Andhra Pradesh v. Abdul Bakshi & Bros.* ([1964] 15 S.T.C. 644) The question that arose in that case was whether a dealer who carried on the business of tanning hides and skins and selling the tanned skins could be said to be carrying on the business of buying tanning bark required in the tannery for the purpose of business of tanning. The argument on behalf of the assessee which was accepted by the Andhra Pradesh High Court was that a purchaser was liable to pay tax under the relevant rules framed under the Hyderabad General Sales Tax Act only when he was buying and selling a commodity specified in the relevant rules and not when he bought it for consumption for manufacturing an article to be sold by him. This argument was, however, negated by the Supreme Court and Shah, J., delivering the judgment of the Supreme Court said :-

"... A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression "business" though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e., without a profit-motive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer; the definition merely requires that the buying of the commodity mentioned in rule 5(2) must be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another salable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such salable commodity."

5. It is clear from these observations that in order that a dealer may be said to

be carrying on the business of buying goods, it is not necessary that he should be buying goods for the purpose of selling them. Even if he buys goods for use in manufacturing other goods for sale, he would still be a dealer buying goods if the integrated activity of buying and disposal was pursued with the object of making profit. In the case before the Supreme Court, tanning bark was purchased by the assessee for use in manufacture of dressed hides and skins for sale with a view to making profit and the Supreme Court, therefore, held that the purchases of tanning bark made by the assessee were purchases in the course of the assessee's business. The principle formulated and applied by the Supreme Court in this case must apply equally in the determination of the problem before us. The raw materials and consumable stores having been purchased by the assessee for use in manufacturing cotton textile goods for sale, they must be held to have been purchased in the course of the business of the assessee.

6. Mr. Kaji, who appears for the assessee in another reference which is on our Board today and whom we allowed to intervene since the point involved in his reference is an identical one, submitted that the decision of the Supreme Court in Abdul Bakshi's case ([1964] 15 S.T.C. 644) must be limited to the facts of that case where the purchases made by the assessee were of raw materials and should not be extended to a case of purchases of consumable stores. Where consumable stores are purchased by the assessee, he argued, it cannot be said that the purchases are made in the course of the business of the assessee, for consumable stores do not go in the making up of the manufactured article. We do not see any reason for making the distinction suggested by Mr. Kaji. The principle laid down by the Supreme Court is not limited in its application to a case where raw materials are purchased by the assessee and must equally apply where the goods purchased by the assessee are consumable stores. As observed by the Supreme Court the test which has to be applied for the purpose of determining whether the purchase of a commodity is in the course of business is whether the commodity is purchased for sale or for consumption in the course of trade or for use in manufacturing another commodity for sale. The commodity may itself be converted into another salable commodity or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such salable commodity. Consumable stores required in the production of cotton textile goods for sale certainly satisfy this test. Our attention was invited to a decision given by us on 30th November, 1964, in Sayaji Mills Ltd., Baroda v. State of Gujarat (Special Civil Application No. 193 of 1963; [1966] 18 S.T.C. 287), where this decision of the Supreme Court was cited before us in support of the contention that the ratio of our decision in Ambica Mills Case ([1964] 15 S.T.C. 367) must be regarded as overruled by the Supreme Court decision. The question which was involved in this case was whether certain sales of old machinery effected by the assessee were sales in the course of business and if the decision in Ambica Mills case ([1964] 15 S.T.C. 367) were still good law, these sales would not be in the course of business and would, therefore, not be taxable. Reliance was, therefore, placed on the Supreme Court decision on behalf

of the Revenue and it was contended that the decision in Ambica Mills case (Special Civil Application No. 193 of 1963; [1966] 18 S.T.C. 287) must be held to be overruled by the Supreme Court decision. We considered the Supreme Court decision and pointed out that what we had stated in Ambica Mills case ([1964] 15 S.T.C. 367) was in no way different from what was held by the Supreme Court and the decision of the Supreme Court did not throw any doubt on the validity of the ratio in Ambica Mills case ([1964] 15 S.T.C. 367). There is nothing in the decision given by us in this case which would suggest that the test formulated by the Supreme Court should be limited only to purchases of raw materials and should not be held to extend to purchases of consumable stores. We are therefore of the view that the purchases of raw materials and consumable stores effected by the assessee were in the course of the assessee's business and were, therefore, liable to purchase tax u/s 10 of the Act. Our answer to the last question is consequently in the affirmative.

7. There will be no order as to costs of the reference.

8. Reference answered accordingly.