
(1975) 11 BOM CK 0020
In the Bombay High Court
Case No : S.T. Ref. No. 17 of 1970

Azad Crown Works

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-11-1975

Acts Referred:

Bombay Sales Tax Rules, 1959 — Rule 2, 68

Citation : (1976) 37 STC 570

Hon'ble Judges : Kania, J;D.P. Madan, J

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant; C.A. Phadkar, for the Respondent

Judgement

Kania, J.—This is a reference under s. 61 (1) of the Bombay Sales Act, 1959 (hereinafter referred to as "the said Act") made at the instance of the assesseees.

2. The question referred to us for our consideration is as follows :

"Whether on the facts and in the circumstances of the case there was proper compliance of the provisions of Rule 68 of the Bombay Sales Tax Rules, 1959 ?"

The facts giving rise to this question are as follows : By an order dated 12th September 1964 the assesseees were assessed ex parte by the Sales Tax Officer, B Ward, unit III, Bombay, for the period from 1-4-1962 to 31-3-1963 under the said Act. The assesseees filed an appeal against this order before the Assistant Commissioner of Sales Tax. It was contended by the assesseees in the appeal that the notice for assessment was not properly served on the proprietor of the assesseees. This contention was rejected by the Assistant Commissioner, who dismissed the appeal of the assesseees. The assesseees then preferred a second appeal before the Sales Tax Tribunal, which met with the same fate. Before the Tribunal it was contended by the assesseees that as notice for assessment, which was in Form 27, was not served either on the proprietor of the assesseees, the requirement of Rule 68 of the Bombay Sales Tax Rules, 1959 was not complied with. From the facts found by the Tribunal it appears that this notice of

assessment was served on some person at the business premises of the assesseees on 4th July 1964 and his signature obtained in token of receipt. It further appears that on 18th January 1964 the notice of assessment in respect of the earlier assessment period, addressed to the assesseees, was served on the very same person on whom the present notice has been served. This notice was accepted by that person under the rubber stamp of the assesseees' works and assessment was made pursuant to this notice and the amount which the assesseees were required to pay under this assessment order was paid thereafter in respect of that period viz. the earlier period. Similarly, another assessment notice in respect of the said earlier period addressed to the assesseees, was served on the very same person on 4th July 1964 and an assessment order made in pursuance thereof. The assessee went in appeal against this assessment order and got the same set aside on the ground that there was already an assessment order and got the same set aside on the ground that there was already an assessment order in respect of same period in pursuance of the notice served on 18th January 1964. On these facts the Tribunal came to the conclusion that the notice in question in the present case was served on the agent of the proprietor of the assesseees and that the assessee would not have accepted the assessment order passed in respect of the said earlier period without making a grievance about the service of the notice which was served on the same person had that notice not been properly served. The Tribunal came to the conclusion that there was sufficient material on the record to conclude that the person on whom the notice in the present case was served was the duly authorised agent of the assesseees.

3. Since the argument, to some extent turns on the provisions of rule 68 of the Bombay Sales Tax Rules, 1959, it may be useful to take note of the relevant part thereof. Rule 68, which deals with the question of service of the notices under the said Act, inter alia provides that notices under the said Act or the Rules shall be served by delivery by hand of a copy of the notice to the addressee or to a person declared by him in Form 13 or to any other agent duly authorised by him in this behalf by him or to a person regularly employed by him in connection with the business in respect of which he is registered as a dealer or to any adult male member of his family residing with the dealer. In the present case, the Tribunal has held that the notice was served on an agent duly authorised by the assesseees.

4. At the outset, we may make it clear that it was common ground before us that the agent duly authorised by the assesseees referred to Rule 68 need not be the same as the agent referred to in Rule 2(b) of the Rules, it being conceded that for the purpose of Rule 68 an agent can be duly authorised by the assesseees to receive the service of notices either orally or in writing. What was submitted by Mr. Jetly the learned counsel for the applicants, was that in the present case there was no material on which an inference could be drawn that the person on whom the notice had been served had been duly authorised by the assesseees to receive the notice. In this connection, as we have pointed out above, the Tribunal

has come to the conclusion that the previous conduct of the assessee in accepting the assessment order made pursuant to the notice served on the very same person in respect of the previous assessment period as well as the conduct of the assessee in preferring an appeal against another assessment order arising out of a notice served on the very same person, without making any grievance about the service of the notice constituted sufficient material on which an inference could be drawn that the person on whom that notice was served had been duly authorised to receive notices addressed to the assessee. It was submitted by Mr. Jetly that these circumstances were irrelevant in considering the question whether the person receiving the notice had been duly authorised by the assessee to receive the same. In support of this contention, Mr. Jetly relied on the decision of the Allahabad High Court in *Singhal Electric Works Vs. Commissioner, Sales Tax*, In that case, the dispute was whether one Ram Swarup was an agent of the assessee, P. D. Singhal, for receipt of notices, the issue before the Court being whether Ram Swarup received the assessment order and the notice of demand in March 1964 as an agent of P. D. Singhal. The Allahabad High Court has pointed out that an agency could be created only by a bilateral agreement and there was no evidence on the record to show that P. D. Singhal had consented to the act of receiving his correspondence by Ram Swarup. The mere circumstance that Ram Swarup had voluntarily accepted the notices on two previous occasions could not lead to an inference that the assessee had consented to his so doing. In our view, this decision lends no support to the contention of Mr. Jetly at all, because in the case before us, the Tribunal has come to the conclusion that the person receiving the notice was duly authorised, not because he received the notice in question on any previous notices but because the assessee acted on certain notice served on the very person showing that they had authorised him to receive such service Mr. Jetly next relied on the decision of the Mysore High Court in *Public Prosecutor Vs. Mullangi Soolappa*, . That case related to a criminal prosecution for failure to pay the sales tax assessed under the final assessment and the provisional assessment on or before the specified date. The accused (assessee) contended that he had not been duly served with copies of the notices in respect of the final and provisional assessments in question in accordance with the provisions of rule 28 of the Madras General Sales Tax Rules, 1939. It was found that the notices were served on one Maranna, a clerk of the accused. It was, inter alia, urged by the Advocate General on behalf of the Public Prosecutor that as the assessee had appealed from the order of assessment based on the notice in question it should be inferred that the assessee had accepted the service as sufficient and this contention was rejected by the Mysore High Court. This case again, in our view, is distinguishable from the case before us, because in that case there was an appeal from the very order of assessment based on the notice, the service of which was disputed, and it was not as if the assessee had acted pursuant to any notice served on Maranna, his clerk. This decision also does not help Mr. Jetly in the present case. Mr. Jetly finally relied on the decision of the Rangoon High Court in *Comm. of Income Tax, Burma vs. Dey Brothers* (1935) 3 ITR 213). In

this case, the notice was required to be served as prescribed u/s 63(1) of the Indian Income Tax Act, 1922, which required that a notice under that Act may be served either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908. The notice in question was not served by post. It is beyond dispute that the procedure required for serving a summons of the Court, under the Code of Civil Procedure, 1908, is more stringent than the provisions contained in Rule 68 of the Bombay Sales Tax Rules, 1959. In view of this, the decision in that case is of no help to us in deciding the present case. In our opinion, the Tribunal was justified in coming to the conclusion on the facts and circumstances of the present case that there was sufficient material on record which made it legitimate to infer that the person on whom the notice in question was served was the agent of the assesseees.

5. In the result, the question referred to us must be answered in the affirmative. The assesseees to pay the costs of the reference fixed at Rs. 150/-.