

(1963) 04 BOM CK 0024

In the Bombay High Court

Case No : Sales Tax Reference No. 14 of 1962

Babulal Onkarmal and Co.

APPELLANT

Vs

The State of Bombay

RESPONDENT

Date of Decision : 04-04-1963

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 2(6)

Citation : (1964) 15 STC 598

Hon'ble Judges : Y.S. Tambe, J; V.S. Desai, J

Bench : Division Bench

Advocate : B.C. Joshi, for the Appellant; N.A. Palkhivala and F.N. Kaka, for the Respondent

Judgement

Desai, J.—The question involved in this reference is whether the applicants are dealers as defined in section 2(6) of the Bombay Sales Tax Act, 1953, and liable to registration.

2. The applicants M/s. Babulal Onkarmal & Co. are a concern engaged in the business of ginning and pressing cotton in the factory owned by them. In the process of ginning and pressing of the cotton and converting it into bales of cotton, they utilise hessian and iron hoops, which they purchase. These hessian and iron hoops used in the pressing and making of the cotton bales go to the customers along with the bales. The turnover of the purchases of hessian and iron hoops made by the applicants and utilized in their business exceeded the limit of Rs. 25,000 a year. The applicants u/s 27 of the Bombay Sales Tax Act of 1953 applied to the Additional Collector of Sales Tax to determine whether the applicants were dealers within the meaning of section 2(6) of the said Act and whether they were liable for registration. The Additional Collector held that the applicants were dealers liable for registration. The applicants then took an appeal before the Tribunal, but the said appeal was also dismissed. Thereafter at the instance of the applicants, the Sales Tax Tribunal has made the present reference to this Court raising therein the following two questions :-

"(1) Whether on the facts and circumstances of the case, the applicants can be said to be carrying on the business of buying and selling hessian and iron hoops so as to make them dealers as defined in section 2(6) of the Bombay Sales Tax Act, 1953, liable to registration when the turnover of such transactions exceeded the prescribed limit.

(2) Whether on the facts and circumstances of the case, the transactions of hessian and iron hoops are purchases and sales as defined in section 2(13) of the Bombay Sales Tax Act, 1953 and if so whether such purchases and sale are effected in the course of business of the applicants."

3. Mr. Joshi, the learned counsel appearing for the applicants, has conceded that question No. (2) is not really a separate question but is involved in question No. (1) itself and it is not necessary to consider it as a separate question and answer it. We will, therefore, proceed only to deal with and answer the first question.

4. Now, the contentions urged on behalf of the applicants are two fold : The first contention is that the applicants are not carrying on the business of purchasing hessian and iron hoops and, therefore, are not dealers quo the said purchases. Secondly, it is contended that the business activity of the applicants does not involve any purchase or sale of goods, but only consists of rendering services. Since the goods purchased, viz., the hessian and iron hoops, are not purchased with a view to resell them in the course of its business or in its business activity, but are only consumed by the applicants in the course of their business, which is rendering of services by supply of labour and not supply of goods, the applicants are not dealers in respect of their turnover of the purchases of hessian and iron hoops.

5. It appears to us unnecessary to deal with the first of the contentions, because in view of a decision of a Division Bench of this Court, there can be no doubt that the business activity carried on by the applicants is such as would involved the sale of the hessian and iron hoops to its customers. Since it is undisputed that the aggregate price of the hessian and iron hoops utilized in the pressing and ginning work done for the customers by the applicants exceeds the limit of Rs. 25,000 there would be no doubt that the applicants would be dealers liable to registration even on the sale of the hessian and iron hoops used by the applicants in the business carried on by them. In *Gajadar Hiralal Ginning and Pressing Factory v. Sales Tax Officer, Akola & Another* (Special Civil Application No. 296 of 1957 decided by a Division Bench of the Bombay High Court on 16th January, 1958), the question which arose for determination was whether the assessee was liable as a dealer to pay sales tax in respect of the price of the hessian and hoops utilized by the assessee for pressing bales of the value of about Rs. 1,26,075. The assessee in that case was doing exactly the same business as the applicants in the present case and the contention which the assessee had raised before this Court was also the same as is raised by the present applicants. It was contended in that case, as it is contended in the present case, that the business of the assessee did not consist of sale of goods;

that the transactions entered into by the assessee with its customers were contracts of supply of labour and not contracts for the supply of goods and that the hessian and hoops which were used in the execution of the contracts were only incidental to the contracts and did not pass on the customers as on sale of chattels. After having considered the nature of the business activity of the assessee and the nature of the contracts entered into by the assessee with its customers and after having elaborately considered the arguments advanced and the authorities cited, this Court came to the conclusion that the contracts entered into by the assessee with its customers included a contract of supply of hessian and hoops for consideration and that such supply constituted a sale of goods and the assessee was, therefore, a dealer as defined in section 2(6) of the Act.

6. Mr. Joshi for the applicants has urged that the said decision was given by this Court before the decision of the Supreme Court in *State of Madras v. Gannon Dunkerley and Co.* [1958] 9 S.T.C. 353 According to Mr. Joshi, in view of the said decision of the Supreme Court, the view taken by this Court that the service contracts entered into by the applicants with its customers would involve a sale of the hessian and the iron hoops used in the execution of the said contracts, is erroneous.

7. Now, in our opinion, the Supreme Court decision referred to by Mr. Joshi does not in any way affect the view taken by this Court. In the Supreme Court case their Lordships of the Supreme Court were dealing with a building contract, which they held was one and indivisible and did not involve a sale of the material used by the contractors in the execution of the said contract as a sale of a chattel. Apart from the consideration that the contract was one and indivisible, their Lordships also pointed out another difficulty in taking the view that it involved a sale of goods and that was that the material which passed from the contractor to the owner of the building in the execution of the contract did not pass to the other party to the contract as movable property since it formed a part of the building and in accretion to the building and, therefore, immovable property. Their Lordships did not take the view in that case that every service contract was necessarily one and indivisible. As a matter of fact, they made it quite clear in their judgment that even a service contract may be divisible and it is possible that such a contract may be a composite contract consisting of separate and distinct contracts, one for the transfer of the materials for money consideration, and the other for payment of remuneration for service and work done. The Supreme Court decision, therefore, which is referred to by Mr. Joshi, does not affect the decision of this Court. The view taken by this Court is, as we have already stated, that in the business activity of the nature carried on by the applicants and in the transactions entered into by them with their customers for the ginning and pressing of their cotton, there is involved as a severable part of the transaction a sale of the material of hessian and iron hoops used in the execution of the contract. Having regard to the view taken by this Court in the decision referred to above, it must be held that the applicants are dealers within the meaning of section 2(6) of the Bombay Sales Tax Act, 1953.

8. As we have already pointed out earlier, in the view that we are taking, the other contention, which was raised by the applicants, viz., that they are not carrying on the business of purchasing hessian and iron hoops, which they are utilizing in the course of their business activity, need not be considered at the present stage.

9. In the result, therefore, our answer to question No. (1) referred to us is in the affirmative. For reasons which we have already stated, question No. (2) need not be answered. The applicants will pay the costs of the Department.

10. Reference answered accordingly.