
(1982) 12 BOM CK 0026
In the Bombay High Court
Case No : Sales Tax Reference No. 71 of 1979

Basf India Limited

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-12-1982

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 32, 43, 55(4), 61(1), 62
Central Sales Tax Act, 1956 — Section 2, 8A, 8A(1), 9, 9(2)

Citation : (1983) 52 STC 345

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

Bench : Division Bench

Judgement

Sujata V. Manohar, J.—The applicant is a public limited company carrying on business of manufacturing and selling, among other things, leather chemicals and polystyrene products. The applicant is a registered dealer both under the Bombay Sales Tax Act, 1959, and the Central Sales Tax Act, 1956. During the assessment year 1968-69 covering the period from 1st July, 1968, to 30th June, 1969, the applicant sold, inter alia, certain goods worth Rs. 16,680, which were liable to be included in his turnover under the Central Sales Tax Act, 1956. These goods were returned by the purchaser to the applicant during the assessment year 1969-70 covering the period from 1st July, 1969, to 30th June, 1970. The applicant claimed a deduction of Rs. 16,680 in respect of the goods so returned from his turnover under the Central Sales Tax Act for the assessment year 1969-70. This deduction was allowed at the time of the assessment by the Sales Tax Officer by his order dated 7th March, 1975. The Assistant Commissioner, while scrutinising the assessment records, found that goods worth Rs. 16,680 which were returned during the assessment year 1969-70 were sold during the previous assessment year 1968-69. He, thereupon, revised the assessment order passed by the Sales Tax Officer for the assessment year 1969-70 and disallowed the deduction made by the Sales Tax Officer of this amount of Rs. 16,680. An appeal filed by the applicant from this order before the Deputy Commissioner of Sales Tax was dismissed. Thereupon the applicant filed

a revision application before the Tribunal. The Tribunal dismissed the revision application. Thereupon, at the instance of the applicant, the following questions have been referred to us u/s 61(1) of the Bombay Sales Tax Act, 1959, read with section 9, sub-section (2), of the Central Sales Tax Act, 1956, for our determination :

"(1) Whether, on the facts and circumstances of the case, the Tribunal was justified in law in holding that Rs. 16,680 was not an allowable deduction as per section 8A(1)(b) of the Central Sales Tax Act, 1956 ?

(2) Whether the Tribunal misdirected itself in law in holding that the deduction of goods returned is available u/s 8A(1)(b) of the Central Sales Tax Act, 1956, only if such deduction is claimed from the turnover of the year in which the relevant sale has taken place ?"

2. The claim for deduction which is the subject-matter of dispute in this reference is a claim which arises in respect of sales effected and goods returned under the Central Sales Tax Act, 1956. In this connection the relevant provisions of section 8A(1)(b) of the Central Sales Tax Act, 1956, are as follows :

"Section 8A(1). In determining the turnover of a dealer for the purposes of this Act, the following deductions shall be made from the aggregate of the sale price, namely :

(a)

(b) the sale price of all goods returned to the dealer by the purchasers of such goods, -

(i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May, 1966;

(ii) within a period of six months from the date of delivery of the goods, in the case of goods returned on or after the 14th day of May, 1966 :

Provided that satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, reassess the tax payable by the dealer under this Act; and

(c)

(2) Save as otherwise provided in sub-section (1), in determining the turnover of a dealer for the purposes of this Act, no deduction shall be made from the aggregate of the sale prices."

This section deals with the manner in which turnover of a dealer has to be calculated and determined for the purposes of payment of tax under the Central Sales Tax Act. Turnover is defined u/s 2(j) of the Central Sales Tax Act, 1956, as follows :

"(j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the rules made thereunder."

Under rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957, "the period of turnover in relation to any dealer liable to pay tax under this Act shall be the same as the period in respect of which he is liable to submit returns under the general sales tax law of the appropriate State". In the present case, therefore, the provisions of the Bombay Sales Tax Act, 1959, must be looked at in order to ascertain the period of turnover under the Central Sales Tax Act, 1956. u/s 32 of the Bombay Sales Tax Act, 1959, every registered dealer shall furnish a return for such period, by such dates and to such authority as may be prescribed. Under rule 22 of the Bombay Sales Tax Rules ordinarily quarterly returns are required to be filed. With the permission of the Commissioner, a dealer can file an annual return. In certain circumstances a monthly return is required to be filed. It is not necessary to go into the details of these provisions. The assessee in the present case was required, by virtue of these provisions to file quarterly returns of sales and purchases covered by the Central Sales Tax Act, 1956.

3. The form of return which is required to be filed by a dealer registered under the provisions of the Central Sales Tax Act is prescribed under the Central Sales Tax (Bombay) Rules, 1957. Under rule 5 of these Rules every dealer is required to file a return in form III(B) in respect of each period for which his turnover is required to be determined under rule 11 of the Central Sales Tax (Registration and Turnover) Rules, 1957. Under form III(B), as prescribed under the Central Sales Tax (Bombay) Rules, 1957, the first column requires the assessee to state the period for which the return is being filed. In the column relating to deductions, column 3, item 2, requires the following to be mentioned :

"Amounts repaid to purchasers whether by way of refund in cash or adjustment in accounts in respect of goods returned by the purchasers, on or after the 14th day of May, 1966, within a period of six months from the date of delivery of the goods." Against column 4 the balance - total turnover of inter-State sales is to be shown. Column 8 refers to the total tax payable. Column 9 requires the amount of tax paid to be stated and column 10 is in respect of balance due/excess paid, if any. Thus a dealer registered under the Central Sales Tax Act, 1956, is required to file a quarterly return in respect of his turnover for that quarter in form III(B) as prescribed under the Central Sales Tax (Bombay) Rules, 1957. In this form he can claim a deduction in respect of the goods returned to him by his purchasers within a period of six months from the date of delivery of the goods in the case of goods returned on or after 14th day of May, 1966. After calculating his turnover he has to show the amount of tax paid or excess payment of tax.

4. Mr. Jetly, who appears for the respondent, has submitted that on a correct

interpretation of these provisions of the Central Sales Tax Act, 1956, and the rules thereunder, a dealer is entitled to claim a deduction in respect of goods returned by the purchasers within the period of six months from the date of delivery only in those cases where such a claim is made in the same assessment year in which goods were sold. According to Mr. Jetly this condition must be read in section 8A of the Central Sales Tax Act, 1956, because unless the turnover of the prescribed period includes the sales of goods subsequently returned by the purchasers, it would not always be possible to deduct the price of such returned goods from the turnover. This can happen, for example, if the total turnover is less than the deduction claimed. To avoid such a contingency, the turnover must include the sale price of goods subsequently returned, i.e., deduction must be claimed from the same turnover which includes the sale of the goods in question. Mr. Jetly also submitted that turnover must be considered as turnover for the assessment year. We, however, do not find anything in the provisions of section 8A of the Central Sales Tax Act or other relevant provisions referred to earlier which requires a dealer to claim such a deduction in the same assessment year in which the goods were sold. The substantive provision for such deduction is in section 8A of the Central Sales Tax Act. This section in terms deals with the determination of "the turnover of a dealer for the purposes of this Act." The long title of the Central Sales Tax Act sets out the purposes for which the Central Sales Tax Act, 1956, was enacted. The relevant purpose would be the levy and collection of taxes on sales of goods in the course of inter-State trade or commerce. Chapter III of the Central Sales Tax Act which contains section 8A bears the heading "Inter-State sales tax". Thus the turnover which is to be calculated in the manner prescribed u/s 8A is required to be so ascertained for the purpose of levy and collection of inter-State sales tax. The deduction from turnover prescribed by that section is also for the purpose of ascertaining the inter-State sales tax payable by the dealer. The result of such a deduction would be a reduction in the amount of inter-State sales tax payable by the dealer. Such a reduction in tax can be claimed only when the occasion to claim it arises, namely, when the goods are returned. If the reduction claimed exceeds the inter-State sales tax payable for that period, the excess can be claimed in the last column of form IIIB. There is thus no difficulty in claiming such a deduction in a return subsequent to the return which showed the original sales.

5. Section 8A does not prescribe a further condition for claiming such deduction to the effect that this deduction must be claimed in the same assessment year in which the sale took place. In fact section 8A does not speak of an assessment year at all. It speaks of the turnover of a dealer for the purposes of that Act. Hence if at all any condition of the type suggested by Mr. Jetly is to be read into section 8A, it would have to be a condition to the effect that the deduction must be claimed in respect of the same turnover which includes the sales of goods which have been subsequently returned by the purchasers and on account of which, deductions are claimed. The respondent has submitted that in section 8A "the turnover of a dealer" must be construed as the turnover of a dealer for the

relevant assessment year. This submission is not borne out by the definition of the word "turnover" under the Central Sales Tax Act. Section 2, sub-section (j), of the Central Sales Tax Act defines "turnover" as the aggregate of sale prices received and receivable by a dealer in respect of sales of goods, in the course of inter-State trade or commerce made during any prescribed period, and determined in accordance with the provisions of the Central Sales Tax Act and the rules made thereunder. The period prescribed for a dealer registered in the State of Maharashtra is a quarter. If Mr. Jetly's submission were to be accepted, a dealer must claim deduction in respect of the goods returned by the purchaser in the same quarterly turnover in which the original sales of these goods is shown. This would require that the goods should have been returned within the period of three months, because only in such a case both the sales and the return of the goods sold could be shown in the return dealing with the same turnover. Such a construction would deprive a dealer of his statutory right to claim a deduction in respect of goods returned to him within a period of six months. The respondent has however, not gone to the length of urging that the returned goods should be shown in the same quarterly return in which the goods were originally shown as sold. According to the respondent such returned goods can be shown in a different return for a different quarter provided it pertains to the same assessment year. This submission, however, is not supported by the language of section 8A. If turnover is taken to mean turnover as defined under the provisions of the Central Sales Tax Act, it would refer to a quarterly turnover and not the turnover for the assessment year as submitted by the respondent. Such a narrow interpretation of section 8A would result in a dealer being deprived of the deduction granted u/s 8A in a large number of cases. A deduction in respect of the goods which have been returned by the purchasers cannot be claimed until the goods sold are returned. A dealer when he sells the goods cannot predict whether the goods will be returned to him by the purchaser or not. It is only when such goods are returned that he can claim a deduction. Section 8A prescribes a period of six months from the date of delivery as the period within which goods should have been returned. Therefore, in all cases where a purchaser returns to the dealer goods purchased within a period of six months from the date of delivery, a dealer is entitled to claim a deduction and a consequent refund and/or set-off of taxes in respect of the goods so returned. In a case, e.g., where the goods are sold by a dealer in the last quarter of the assessment year, it is possible that the purchaser may return the goods in the next assessment year, although such a return may be within the prescribed period of six months from the date of delivery of the goods. There is nothing in the provisions of section 8A of the Central Sales Tax Act or the Rules framed thereunder which would deprive a dealer of such a deduction, which he is entitled to under the provisions of section 8A.

6. We do not see any difficulty in a dealer claiming a deduction in an assessment year which is different from the assessment year in which the goods were originally sold. According to the respondent difficulty would arise in a case where

the turnover in the assessment year in which deduction was claimed was less than the deduction. It was submitted that in such a case it would not be possible to grant to the dealer the full deduction that he was entitled to. This argument does not appeal to us. Such a difficulty can arise even in a case where such a deduction is claimed in a quarter different from the quarter in which the goods were sold, although both these quarters are within the same assessment year. In such a case under column 10 of form III(B) the assessee can claim a refund of excess amount paid against the tax payable in respect of such subsequent period. In the same manner if, in a subsequent assessment year, the total turnover is less than the turnover in respect of which deduction is claimed u/s 8A the excess amount of tax paid in respect of such turnover which is liable to be deduction can be either set-off against the tax payable for a subsequent assessment year or in a case where there is excess even after such a set-off, the same can be refunded to the dealer. Section 43 of the Bombay Sales Tax Act, 1959 (which is applicable by virtue of the provisions of section 9 of the Central Sales Tax Act, 1956) provides for refund by the Commissioner to a person of such excess amount of tax paid by him. Such a refund may be either by cash payment or at the option of the person, by deduction of such excess from the amount of tax and penalty due in respect of any other period. In our view the deduction which is granted u/s 8A(1)(b) is for the purpose of determining the amount of inter-State sales tax payable by a dealer on his turnover of sales and he is entitled under the provisions of section 8A to claim a refund and/or adjustment or set-off of tax paid on such sales in respect of those goods which have been returned to him by the purchaser within six months from the date of delivery of the goods.

7. We do not find any other provision in the Central Sales Tax Act enabling a dealer whose goods are returned in the next assessment year, to include a claim for deduction in respect of such goods in his previous year's turnover. Our attention was drawn to section 62 of the Bombay Sales Tax Act, 1959, which applies to proceedings under the Central Sales Tax Act, 1956. u/s 62 of the Bombay Sales Tax Act, 1959, the Commissioner may at any time within two years from the date of any order passed by him, on his own motion, rectify any mistake apparent from the record and shall within a like period, rectify any such mistake which was brought to his notice by any person affected by such order. This section deals with the rectification of mistakes apparent from the record. In the case of a dealer whose goods have been returned by the purchaser in the next assessment year, the record of the previous assessment year cannot possibly show that the goods have been returned by the purchaser. From the record therefore, no deduction can be granted to the dealer under this section as no mistake would be apparent on the record. The provision relating to rectification of mistakes cannot, therefore, apply in a case where the goods are returned in the next assessment year. Admittedly provisions relating to revision are also not applicable in such a case. Mr. Jetly submitted that in the alternative a dealer in such a case can file an appeal from the order of assessment and claim

such deduction in the appeal. u/s 55, sub-section (4), of the Bombay Sales Tax Act, 1959, an appeal is required to be filed within 60 days from the date of the communication of the order appealed against. It was submitted that the dealer whose goods have been returned in the next assessment year after the appeal period has expired, can ask for condonation of delay. In our view this submission has no merit. Section 8A cannot be interpreted in a manner which would require the dealer to obtain condonation of delay for filing an appeal, then file an appeal and claim deduction which he could not have claimed originally because the goods were returned in a subsequent assessment year. Thus if the submission made by the respondent is accepted by us, in the case of a dealer whose goods have been returned by the purchaser within the period of six months from the date of delivery but such return of goods happens to be in the next assessment year, the dealer is deprived of the benefit of tax deduction which he has been granted by virtue of section 8A. There is no warrant for interpreting section 8A in this manner. As seen earlier such an interpretation of "turnover" would also lead to absurdity when returns of turnover are required to be filed quarterly.

8. Our attention was drawn to a decision of the Full Bench of the Madras High Court in the case of *Traders and Traders v. State of Tamil Nadu* reported in [1977] 40 STC 289 (FB). The decision in that case turned upon the provisions of section 13(5) of the Tamil Nadu General Sales Tax Act, 1959, before its amendment and rule 5-A(b)(1) of the Tamil Nadu General Sales Tax Rules, 1959. The language of this section is different from the language of section 8A. The decision of the Full Bench turned entirely upon the language of section 13(5) and the rules framed under the Tamil Nadu General Sales Tax Act, 1959. In view of the provisions of section 5 of that Act the Madras High Court held that deduction in respect of the price of articles returned by the customers had to be claimed within a period of six months from the date of the sale. In the case which was under consideration before the Madras High Court such a claim for deduction had been made beyond the period of six months and the claim was therefore rejected. The case had been referred to the Full Bench because there had been a difference of opinion relating to the interpretation of section 13(5) of the Tamil Nadu General Sales Tax Act and rule 5-A(b)(i) of the Tamil Nadu General Sales Tax Rules. In an earlier decision the Madras High Court had held that section 13(5) and rule 5-A(b)(i) dealt with different rights of a dealer. The entire question before the Full Bench turned on the interpretation of this section and this rule. The decision in that case therefore is of no assistance to us in interpreting the present provisions under the Central Sales Tax Act read with the Bombay Sales Tax Act, 1959, and the various rules framed thereunder and referred to earlier.

9. Our attention was also drawn to two decisions of the Allahabad High Court - one in the case of *Commissioner of Sales Tax v. Roorkee Drawing Emporium* reported in [1982] 49 STC 153, and the other in the case of *Commissioner, Sales Tax, U.P., Lucknow v. Santosh Industries* reported in [1980] 45 STC 314. In both these cases the Allahabad High Court held that u/s 8A of the Central Sales Tax

Act the claim for deduction in respect of goods returned by the purchasers should be made in the same assessment year in which the sales took place. On a perusal of these judgments, however, we do not find that any reason has been given by the Allahabad High Court for coming to the conclusion that it reached. These judgments are also, therefore, of no assistance to us. In the case of *Devi Films (Private) Ltd., Madras v. State of Madras* reported in [1961] 12 STC 274 the Madras High Court considered the provisions of rule 5(1)(b) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. Under that rule, in determining the net turnover, all amounts allowed to purchasers in respect of goods returned by them to the dealer could be deducted. No time-limit was prescribed for claiming the deduction. The Madras High Court held that the length of interval between the sale and the return of the goods was not a relevant factor.

It held that "the date of sale decides the inclusion in the assessee's assessable turnover. The date of the allowance determines the exclusion from the gross turnover under rule 5(1)(b)". The facts of that case were somewhat uncommon inasmuch as the case dealt with a hire-purchase agreement and a subsequent return of the goods by the purchaser under that agreement. In the case of *State of Andhra Pradesh v. Vauhini Pictures Private Ltd.* reported in [1962] 13 STC 847, the Andhra Pradesh High Court was required to consider rule 6(1)(b)(i) of the Andhra Pradesh General Sales Tax Rules, 1957, which was somewhat similar to rule 5(1)(b) under the Madras General Sales Tax (Turnover and Assessment) Rules considered in the case of *Devi Films (Pvt.) Ltd.* [1961] 12 STC 274. The Andhra Pradesh High Court held that no time-limit was prescribed for claiming deduction under the rule and the deduction could be claimed in an assessment year different from that in which the sale took place. Both these decisions turned upon the language of the rules which they were required to construe. Section 8A of the Central Sales Tax Act is somewhat different from these rules. Hence the ratio of these decisions does not directly apply to the present case.

10. In the case of *Jay Engineering Works Ltd. v. State of Kerala* reported in [1979] 43 STC 492, the Kerala High Court was required to construe rule 9(b) of the Kerala General Sales Tax Rules, 1963. Rule 9(b) dealt with the determination of taxable turnover. It was as follows :

"9. Determination of taxable turnover. - In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer :

(b)(i) all amounts allowed to purchasers in respect of goods returned by them within a period of 3 months from the date of delivery of the goods, to the dealer when the goods are taxable on the amount for which they have been sold provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made or credit was allowed to the purchaser;

(ii) all amounts received from the sellers in respect of goods returned to them within a period of 3 months from the date of delivery of goods by the dealer when the goods are taxable on the amount for which they have been bought provided that the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received"

In construing this provision the Kerala High Court in that case did not follow the Full Bench decision of the Madras High Court. It observed that the language of the rule and its scope and purpose made it clear that the claim for deduction can be made only subsequent to the return of goods and the refund of their sale price. It would neither be logical nor reasonable to insist on a claim for refund being made in the course of the assessment year during which the sale of the goods had been occasioned, when the goods themselves were returned and the claim for refund itself could arise only beyond the assessment year. We are in respectful agreement with these observations of the Kerala High Court. In the present case neither the language of section 8A nor the relevant provisions of the Rules require the benefit granted u/s 8A to be confined only to those cases where the goods are returned by the purchaser in the same assessment year in which they were sold.

In the circumstances, the questions referred to us are answered as follows :

Question No. (1) in the negative, i.e., in favour of the assessee and against the department.

Question No. (2) in the affirmative, i.e., in favour of the assessee and against the department.

The respondent to pay to the applicant costs of the reference. The fee of Rs. 100 paid by the applicant before the Tribunal to be refunded to him.