

(1948) 09 CAL CK 0028
In the Calcutta High Court
Case No : Sales Tax Reference No. 64 of 1947

Bata Shoe Co., Ltd.

APPELLANT

Vs

Member, Board of Revenue, West Bengal

RESPONDENT

Date of Decision : 07-09-1948

Acts Referred:

Citation : (1948) 09 CAL CK 0028

Judgement

Harries, C.J.—This is a Reference made by the Board of Revenue, West Bengal, under sec. 21 (I) of the Bengal Finance (Sales Tax) Act, 1941, in which the Court is asked to give its answers to the following questions:--

(i) Whether the sale price as defined in sec. 2(h) of the Bengal Finance (Sales Tax) Act 1941, will include any amount charged and realised separately as "Sales Tax" by the dealer or not?

(ii) Has the gross turnover to be ascertained by taking the aggregate of the amounts of sale prices and parts of Bale prices received by the dealer with the inclusion of all amounts charged and realised as "sales tax" by the dealer during the period in question.?

(iii) Does the deduction provided in sec. 5(2)(b) entail the consequence that any amount charged and realised separately as sales tax by the dealer should be regarded as a part of the sale price received by the dealer and be included in the gross turnover of the dealer?

Before discussing the facts in this case, I must point out that the questions as framed, are not satisfactory. In the first question the Court is asked to say whether or not the sale price as defined in sec. 2 (h) of the Bengal Finance (Sales Tax) Act, 1941, will include any amount charged and realised separately as "sales tax" by the dealer. That is not the way to pro-pound a question. The question should be in my view in this form:

Does the sale price as denned in S 2(h) of the Bengal Finance (Bale Tax)" Act, 1941, include any amount charged and realised separately as sales tax?.

2. In that form the answer of the Court can be in the affirmative or the negative. An alternative question should not be framed as has been done here.

3. The second question is really a repetition of the first, because if sale price is to include an amount charged and realised separately as sales tax by the dealer, then clearly gross turnover must be ascertained by taking the aggregate of the amounts of sale prices and parts of the sale prices received by the dealer with the inclusion of all amounts charged and realised as sales tax by the dealer during the period in question.

4. The third question is wholly unnecessary and that is realised by the Board in the order which it made. Further it is purely academic and in answering it the Court could only indulge in speculation. An answer to this question is not necessary to dispose of the case before the Board, and, therefore, I do not think it would be right for the Court to answer it. The Privy Council have on a number of occasions laid down that hypothetical or academic questions must not be submitted to or answered by the Court.

5. The assessees in this case are the well-known company, Messrs. Bata Shoe Co., Ltd. They are registered dealers under the Act and were required to submit quarterly returns in Form IIIA. They filed returns for the four quarters ending December, 1945, but these returns were not accepted on their face value. On March 9, 1946, the Assistant Commissioner of Commercial Taxes, Calcutta (North) issued a notice in Form VI calling upon the assessees to produce their books of account for inspection by the assessing authorities at their place of business at Batanagar between two dates in the month of June, 1946. An examination of these accounts showed that the amounts charged and realised through their retail shops by the assessees as sales tax during the period in question were not added to the amounts of sale prices or parts of sale prices received by the assessees during that period for ascertaining the gross turnover of the assessees. The amounts thus omitted were brought into assessment by the Assistant Commissioner who by his order dated September 26, 1946, assessed the company to an additional tax of Rs. 10,414-5-9. From the order of the Assistant Commissioner the assessees appealed to the Commissioner of Commercial Taxes who upheld the order of the Assistant Commissioner and dismissed the appeal. A petition for revision filed before the Board of Revenue was rejected and an application was made to the Board to state a case under sec. 21 (I) of the Bengal Finance (Sales Tax) Act, 1941. The Board duly stated the case and propounded the three questions, which I have set out for answers by this Court.

6. Mr. Atul Chandra Gupta who has appeared on behalf of the assessees has urged that the sale price, as defined, in sec. 2 (h) of the Act does not include any amount charged and realised separately as sales tax by the dealer. It is common knowledge that all dealers now make an addition to the price of most classes of goods sold--such additions being described as the amount of sales tax payable. Mr. Gupta's argument is that that amount shown as sales tax does not form part

of the sale price and should not be taken into consideration when the turnover of the assessee is computed.

7. Mr. Gupta had to concede that under the Act the sales tax is not levied on the purchaser and is not collected from the purchaser by the dealer. It is clear that the Act does not contemplate any direct payment of the sales tax by a purchaser.

8. The charging section is sec. 4 of the Act, sub-sec. (I) of that section provided :--

Subject to the provisions of sections 5 and 6 and with effect from such date as the provincial Government may, by notification in the Official Gazette, appoint being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act, exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the date so notified;

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the Commissioner to have been entered into on or before the date so notified.

9. Sub-sec. (2) of sec. 4 deals with the dealers to whom sub-sec. (1) does not apply, and they become liable to pay tax under the Act with effect from three months after the commencement of the year immediately following that during which their gross turnover first exceeded the taxable quantum.

10. Sub-sec. (3) deals with cases where a dealer may cease to be liable to pay this tax, and sub-sec. (4) deals with a case where a dealer has ceased to be liable, but again becomes liable to pay the tax.

11. Sub-sec. (5) of sec. 4 defines "taxable quantum" which means:--

(a) In relation to any dealer who imports for sale any goods into Bengal or himself manufactures or procures any goods for sale, 10,000/-rupees; or

(b) in relation to particular classes of dealers not falling within clause (1) such a sum as may be prescribed; or

(c) in relation to any other dealer, 50,000/-rupees.

12. Sec. 5 of the Act deals with the rate of tax and at present the first sub-section reads:--

The tax payable by a dealer under this Act shall be levied at the rate of three quarters of an anna in the rupee on his taxable turnover.

13. Sub-sec. (2) deals with certain deductions which are to be made from the gross turnover to arrive at the taxable turnover and one of these deductions must be referred to, namely, (2) (b) which at present reads:--

four and a half per centum of the balance remaining after making the deductions

allowed by sub-clauses (i) to (vi) of clause (a),

14. It will be seen that the tax is levied in terms upon a registered dealer, that is, upon persons whose gross turnover exceeds the taxable quantum as defined by the Act. There is nothing in these two sections which suggests that the consumer is the person upon whom the tax is levied. On the contrary, it is clear from the plain words of the sections that the tax is levied upon the dealer, that is, upon the person who ordinarily sells to the consumer.

15. It is common knowledge that the dealers in selling to the consumers charge the consumers the amount of sales tax payable on such sale and doubtless the legislature must have been aware that this tax, like every other tax, would be passed on to the consumer, if possible. The assessees in this case, like most other dealers, charged the consumer not only the true price of the article sold but also an additional sum, representing the sale tax payable on such an amount. In their returns to the taxing authorities they merely showed the aggregate of the real sale prices, not the aggregate of the amounts which they had in fact received from the purchasers. Their contention was that what the purchaser paid was not only the sale price of the article, but also the amount of sales tax payable on such a price. That being so, it was said that the amount payable by way of sale price should not be included in their returns showing their gross turnover or totality of their sales.

16. It appears to me that the argument addressed to us by Mr. Gupta on behalf of the applicants which was the contention put forward by the assessees before the taxing authority is quite untenable. The gross turnover must, of course, include the aggregate of the various sale prices charged for the total amount of goods sold during the period in question. The term "sale price" is defined in sec. 2 (h) of the Act in these terms:--

Sale price means the amount payable to a dealer as valuable consideration for"

(i) the sale of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of, or before, delivery thereof, other than the cost of freight or delivery or the cost of installation when such cost is separately charged; or.

(ii) the carrying out of any contract, less such portion as may be prescribed of such amount, representing usual proportion of the cost of labour to the cost of materials.....

17. From this definition it is clear that what the seller receives as valuable consideration from the buyer for the article is the sale price. As I have said, the sellers now-a-days make out a bill showing what they describe as the price of the article and the amount of sales tax and the buyer has to pay the total amount. If the dealers were authorised to collect the sales tax from the purchasers, then the sale price would clearly be the amount paid less the sales tax; but the total

amount paid by the buyer in the present case must be the sale price. It is the consideration payable in respect of the article sold. The total amount paid cannot be split up. As I have said the purchaser is not liable to pay the sales tax and the same cannot be levied upon him by the dealer. What actually happens is that the dealer in passing on his liability to the purchaser, increases the price of the article by the amount payable as tax on such a sale. He does not levy a tax on the purchaser or collect a tax from the purchaser. What he does is to increase the price of the article so as to ensure that he, the dealer, will not be the loser by having to pay the sales tax levied upon him by the Act. Once it is held that the total amount which the purchaser pays is the sale price under the Act, then quite clearly the dealers cannot deduct from the aggregate of the amounts received the amounts representing the sales tax payable. The dealers must include all they have received as consideration for sales in computing the actual gross turnover.

18. Mr. Gupta had to concede that the Act in terms levied the tax upon the dealer, but his argument was that in effect the tax was levied upon the consumer or purchaser and he urged that we should construe the Act to give it that effect.

19. In the first place, he relied upon the English statute which brought into existence a somewhat similar tax. By sub-sec. (I) of sec. 18 of the Finance (No. 2) Act, 1940, it was provided that a tax to be called purchase tax, should be charged, subject to and in accordance with the provisions of that part of the Act on the wholesale value of all chargeable goods bought under chargeable purchases.

20. Sec. 21 of the Act defines the wholesale value in these terms:--

The wholesale value of any goods in respect of which tax is chargeable shall be taken to be the price which in the opinion of the Commissioners the goods would fetch, on a sale made at the time when the tax in respect of the goods becomes due by a person selling by wholesale in the open market in the United Kingdom to a retail trader carrying on business in the United Kingdom only, if no tax were chargeable in respect of the sale and it were made in the circumstances specified in the Eighth Schedule to this Act.

21. Mr. Gupta's contention was that in the English Act a provision was made to exclude the amount of purchase tax in assessing the wholesale value of any goods. He contended that the same procedure should be followed in India and that in arriving at the sale price for goods, the amount representing the sales tax paid by the consumer to the dealer should be deducted from the total amount paid and that the balance only would represent the sale price. The English statute provides for such a deduction, but the Indian statute does not. As I have already pointed out sec. 2 (h) of the Bengal Finance (Sales Tax) Act, 1941, defines "sale-price" as the amount payable to the dealer as valuable consideration on the sale of any goods. That being so, Mr. Gupta can obtain no assistance from the terms of the English Act.

22. Mr. Gupta then contended that the terms of secs. 4 and 5 of the Act suggested that in arriving at the gross turnover the amount payable by the consumers to dealers as sales tax should be excluded. He pointed out that sub-sec. (1) of sec. 4 dealt with cases of dealers first becoming assessable or taxable and what decided the question was whether the gross turnover of such dealer during the year immediately preceding the commencement of the Act exceeded the taxable quantum. Mr. Gupta very rightly pointed out that the gross turnover during the year immediately preceding the Act could of course include no amounts which had been paid by the consumers as sales tax. That is so. But in all probability the legislature had overlooked the refinements which Mr. Gupta stressed in this part of his argument. Sub-sec. (2) of sec. 4 deals with dealers to whom sub-sec. (1) does not apply and it provides that they should be liable to pay tax under this Act with effect from three months after the commencement of the year immediately following that during which such dealers' gross turnover first exceeded the taxable quantum. It is clear that the gross turnover of such a dealer would not include any sums paid as sales tax when he was first assessed.

23. Sub-secs, (3) and (4) which follow deal with dealers who were liable to pay tax and have ceased to be liable and also with dealers who had ceased to be liable but again became liable to pay. Mr. Gupta's contention is that if the argument of the taxing authorities is well founded, then the gross turnover referred to in sub-secs. (5) and (4) would include amounts payable by consumers as sales tax and therefore, the term in sub-secs. (5) and (4) would mean something different from the term as used in sub-sees. (1) and (2). That may well be so and as I have already said, the explanation may well be that these refinements were not noticed or regarded by the legislature. What appears to me to be the determining factor is the statutory definition of sale price and the statutory definition of turnover which is the aggregate of the amounts of sale prices and parts of sale prices received by any dealer during a given period. Applying those definitions, it may well be that the gross turn-over in sub-secs. (1) and (2) of sec. 4 does not include anything paid as sales tax, whereas it does include such amounts in sub-secs. (3) and (4). There is no real difference in the meaning of the term "gross turnover" in any of these subsections. It means the aggregate of the sale prices. Obviously, before the Act came into force or before a dealer first became taxable, the sale price could not include anything paid by way of sales tax. On the other hand, after the Act came into force and a dealer became taxable the purchaser would pay an amount over and above the old sale price to recoup the dealer. As I have already said, what the purchaser pays over and above the old sale price to prevent the dealer bearing the burden of the tax is not the tax. It is merely an increase of the purchase price, such increase being calculated as sufficient to save the dealer from bearing the burden of the tax which the Act imposes upon him.

24. Mr. Gupta also suggested that sec. 5 of the Act pointed to the conclusion that in effect the consumer was the person who was taxed. Sub-sec. (1) of sec. 5 opens with the words: "The tax payable by a dealer under this Act shall be

levied" at a certain rate and this certainly does not support Mr. Gupta's argument that the consumer was the person in fact taxed by the Act. Mr. Gupta, however, laid great stress on sec. 5 which deals with the expression "taxable turnover." That term means that part of the dealer's gross turnover during a taxable period which remains after making certain deductions. A number of these deductions are set out in sub-paragraph (a) of sub-sec. (2) and these include sale of goods declared tax-free, and sales to registered dealers or certain departments of Government and such like. There is, however, another deduction permissible which is set out in sub-sec. (2) (b) and this deduction, according to Mr. Gupta shows that the intention of the legislature must have been to tax the consumer rather than the seller or dealer. Sub-sec. (2) (b) of sec. 5 provides for a deduction of $4\frac{1}{2}$ per centum of the balance remaining after making the deductions allowed by sub-cls, (i) to (vi) of sub-sec. (2) (a) of sec. 5. Mr. Gupta's argument was that this deduction suggests that the gross turnover or the taxable turnover should not include the amounts paid by purchasers to the dealer as sales tax. On the other hand it might well be argued that this deduction shows clearly that the legislature intended that the amounts payable by purchasers to dealers as sales tax should be included in arriving at the amount of the gross turnover and the taxable turnover. It might well be said that the legislature realised that the dealer would, in effect, be made to pay tax on what was paid by the consumer as tax and, therefore to give the dealer some relief a deduction which was first one per centum was allowed.

25. Mr. Gupta showed that if the amounts paid by purchasers as sales tax were not taken into account in arriving at the taxable turnover, the dealer by reason of this deduction in sec. 5 (2) (b) was a little better off though he pointed out that he would be worse off if the amounts payable as sales tax were included in arriving at the gross turnover or taxable turnover. Mr. Gupta's argument was that it must not be assumed that the legislature intended the dealer to be worse off, but rather it should be assumed that the legislature intended that he should be a little better off as a result of these deductions contemplated in sec. 5 (2) (b). Mr. Gupta added that probably the legislature contemplated that he should be a little better off by reason of these deductions to compensate him for all the work and inconvenience caused by the levying of this tax. There is no doubt that dealers are put to considerable trouble in keeping their accounts as a result of this taxation, but it appears to me that Mr. Gupta is merely indulging in pure speculation. It is difficult to say why this deduction in sec. 5 (2) (b) was allowed. But we cannot assume that it was allowed for the reasons suggested by Mr. Gupta. It appears to me quite clear from the working of this Act that the dealer is the person taxed. If the dealer to save himself passes, as it were, the tax on to the consumer, all he does is to increase his price in order that he may be able to pay the tax without loss, to himself. The consumer is not taxed under the Act and cannot be made to pay any tax. What he pays as sales tax is, as I have said, nothing more than an increased price for the goods so that the dealer may pay his tax without loss to himself.

26. Therefore it appears to me clear that the "sale price" as defined in sec. 2 (h) of the Bengal Finance (Sales Tax) Act, 1941, does include any amount charged and realised separately from the buyer by the dealer as sales-tax.

27. That being so, question (i) altered as I have indicated must be answered in the affirmative.

28. As gross turnover is merely the aggregate of the amounts of sale prices, it follows that question (ii) must also be answered in the affirmative.

29. For the reasons which I have given, question (iii) does not arise and does not require an answer. The Board of Revenue are entitled to the costs of this Reference which we assess at a consolidated sum of fifteen gold mohurs.

Chakravartti, J.

I agree.