
(1977) 02 BOM CK 0001

In the Bombay High Court

Case No : S.T.R. No. 12 of 1975 & Sales Tax Reference No. 12 of 1975

Bowen Press

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 16-02-1977

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 12, 25, 61(1)
Bombay Sales Tax Rules, 1959 — Rule 13
Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 5
Central Sales Tax Act, 1956 — Section 8(1), 8(3)

Citation : (1978) 7 CTR 52 : (1977) 39 STC 367

Hon'ble Judges : Madon, J;Kania, J

Bench : Division Bench

Judgement

Kania, J.—This is a reference under S. 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act"). the question referred to us for our determination are as follows :

Whether the Tribunal was correct in law in holding that the printed wrappers sold by the applicants could be said to be covered by the words "paper adapted for use in packing foods" within the meaning of entry 6 of Schedule C to the said Act ?

2. Whether the Tribunal was justified in disallowing the sales of Rs. 2,86,061/- even though the applicants satisfied that the buyer is a recognised dealer and has issued the required certificate in Form 15 and that the goods purchased by him were specified in his recognition certificate ?

3. The relevant facts giving rise to this question are as follows : The applicants are registered dealers and are running a printing press. They supplied packing labels to Parle products private Limited (hereinafter referred to as "Parle Products" against certificates in Form 15. Parle Products are also registered dealers and had obtained a recognition certificate as provided under S. 25 of the said Act, as it stood at the relevant time, in which one of the items specified in

the list of appended was packing labels. The Assistant Commissioner of Sales Tax issued a notice in Form 40 to the Parle Products alleging that certain admissible items were included in the recognition certificate of the Parle Products and stated therein that it was proposed to delete those items. One of these items, referred to in this notice was packing labels. After hearing the Parle Products the Assistant Commissioner of Sales Tax by his order dated 25th April 1961 directed that the said packing labels which were said to be actually printed wrappers were to be retained in the recognition certificate. In the assessment of the applicants for period from 1-7-1961 to 30-6-1962 the Sales Tax Officer assessing the applicants did not allow as deduction from the turnover of sales of the applicants a sum of Rs. 2,86,061/- being the amount representing the price of the packing labels sold by the applicants to the Parle Products during the relevant period. This deduction was disallowed by the Sales Tax Officer on the ground that the question were covered by entry 6 of Schedule C to the said Act as it then stood, and hence could not be sold against Form 15.

4. The appeal preferred by the applicants this order of the Sales Tax Officer was dismissed by the Assistant Commissioner of Sales Tax. The applicants then went by way of second appeal to the Sales Tax Tribunal. The said appeal was dismissed by the Tribunal on the ground that once it is held that the article in question are covered by entry 6 of Schedule C the fact that they were mentioned in the recognition certificate would not entitle the purchasing dealer to issue a certificate in respect of such goods, which were clearly prohibited from being purchased on the strength of the recognition certificate. It may be mentioned that the Tribunal held that the said articles were covered by entry 6 of Schedule C to the said Act, as it stood at the relevant time. It is the correctness of this decision of the Tribunal which is sought to be tested by way of the questions raised before us.

5. We propose to consider first the second question which has been set out earlier. Under the provisions of S. 12 of the said Act, as it stood at the relevant time to obtain a deduction from the turnover of sales a selling dealer had to produce a certificate from the purchasing dealer, who must be a recognised dealer, certifying in the prescribed form that the goods not being goods described in Schedule B, or at entries 1 to 11 (Both inclusive) and 15 in Schedule C or at entries 1 to 4 (both inclusive) in Schedule D and at entries 1 and 2 in Schedule E or specified in the notification issued under S. 25 sold to him were goods of the class specified in his Recognition and were purchased by him for use by him in the manufacture or packing of taxable goods for sale by him S. 25 of the said Act at the relevant time read thus :

"Where during the previous or current year, the value of all taxable goods manufactured by a Registered dealer for sale by him exceeds Rs. 2,500/- he may apply for Recognition to the Commissioner. Subject to the provisions of S. 27, the Commissioner shall in respect of goods (other than those described in Schedule B, and at entries 1, to 11 (both inclusive) and 15 of Schedule C, or at entries 1 to

4 (both inclusive) in Schedule D, and at entries 1 and 2 in Schedule E and those which the State Government may from time to time by notification in Official Gazette specify, if the dealer satisfied such further requirements (including the furnishing of adequate security) as may be prescribed issued to him a Recognition in such form, and on such conditions, as may be prescribed."

6. In the present case, the Parle Products were registered dealers and manufacturers and held a recognition certificate under S. 25 of the said Act, as we have already pointed out. One of the items mentioned in the list offended to the recognition certificate of the Parle Products was packing labels and the Parle Products had issued a certificate as required by S. 12 to the applicants in respect of the sales of the aforesaid articles by the applicants to the Parle Products. What we have to consider is whether in these circumstances it was at all open to the Sales Tax Officer assessing the applicants to go into the question as to whether the item of packing labels had been correctly mentioned in the recognition certificate of the Parle Products.

7. In connection with the above question, we find it useful to refer the decision of the Supreme Court in *State of Madras vs. Radio & Electrical Ltd.* That was a case under the Central Sales Tax Act, 1956 and the Central Sales Tax (Registration and Turnover) Rules, 1957. It was held that reading S. 8(1) and S. 8(3)(b) of the Central Sales Tax Act, it was clear that the Legislature intended to grant the benefit of concessional rates of tax under that Act to registered dealers provided that the goods sold were of the class or classes specified in the certificate of registration of the purchasing dealer and the goods were intended to be used for resale by him or for use in the manufacture of goods for sale, or for use in the execution of contracts or for packing of goods for resale. It was also held by the Supreme Court there that the authority issuing the certificate of registration under R. 5(1) has, before issuing a registration certificate, to be satisfied after making such inquiry as it thinks necessary that the particulars contained in the application are correct and complete. Satisfaction which is contemplated by rule 5 is objective, and may be arrived at upon a quasi-judicial inquiry. On the plain words used in S. 7 of that Act and the Rules it is contemplated that the certificate of registration may only be issued after an objective satisfaction of the notified authority that the specified goods are likely to be needed for the purpose of the business of the registered dealer and that satisfaction is open to challenge in an appropriate proceeding before the High Court and even before the Supreme Court. It was held that the correctness or propriety of satisfaction of the notified authority in issuing the certificate in Form B that the goods are likely to be required for the purpose of the business would not however be again open to challenge before another taxing authority in proceedings for assessment of tax. If, therefore, goods are specified in the certificate of registration in Form B, it is not open, when a claim is made in respect of the purchase of those goods for the application of concessional rate of tax, to the Sales Tax Officer to deny to selling dealer of those goods the benefit on the ground that the goods specified cannot be used by the purchasing dealer for the purpose of his business. It was, further

held that it is open to the Tax Officer to ascertain whether the goods in respect of which a claim for concessional rate is made are specified in the certificate of registration, but if the class of goods is included in the certificate of registration in Form B he cannot say that the class of goods should not have been specified. Applying the principles laid down in this decision, we find that when an application is made for recognition by a registered dealer to the Commissioner, has to determine whether the dealer is entitled to get the certificate of recognition. Form 7 which is the form recognition u/S. 2 of the said Act show that the list of goods in respect of which recognition is granted is also appended to the certificate of recognition. Hence before granting the recognition certificate the Commissioner would have necessarily to determine as to whether the good mentioned in the list were goods in respect of which a recognition certificate could be granted. R. 13 of the Bombay Sales Tax Rules, 1959, show that before granting a recognition certificate the Commissioner has to make such enquiry as he thinks fit. Therefore, when a recognition certificate is granted by the Commissioner of the authority to whom the power in that regard is delegated any particular goods are included in the list appended to the recognition certificate, the grant of this certificate implies a finding by the Commissioner or such authority as aforesaid that the goods listed are goods in respect of which recognition can be granted. This could be as a result of quasi-judicial enquiry. In the present case, the Sales Tax Officer, to whom the powers in this regard were delegated, had initially issued a certificate of recognition to Parle Products in which the item of packing labels was included in the list appended. The Assistant Commissioners of sales Tax commenced proceedings for suo motu revisions and in those proceedings the said item has been retained after hearing Parle Products while some other items were directed to be deleted. If it was felt that the decision of the Asstt. Commr. to retain this item was incorrect, this decision could have been revised by an it was not open to the Sales Tax Officer assessing the applicants, a third party, who had sold the goods to the Parle Products a registered dealer holding a recognition certificate, to the Parle Products, a registered dealer holding a recognition certificate, to dispute the inclusion of any particular item in the recognition certificate and to come to a conclusion that to that extent the recognition certificate was incorrectly granted. If this were permitted it would lead to confusion and chaos, because different Sales Tax Officer assessing different third parties who had sold goods to such a dealer holding a recognition certificate might come to different conclusions regarding the same item. Moreover, the result of allowing the said assessing Sales Tax Officers to do this would be that the recognition certificate would have hardly any binding value at all and the holder of a recognition certificate might find it liable to be altered in effect in proceedings in which he would not even be heard.

8. It is contended by Mr. Sanghavi, the learned Advocate for the respondents, that the Assistant Commissioner of Sales Tax had no jurisdiction or authority to grant recognition in respect of any of the them mentioned in S. 25 of the said Act as being excluded from the scope of a recognition certificate. It was urged by

him that the Assistant Commissioner of Sales Tax here had not authority or jurisdiction to grant recognition regarding the packing lables because the same were covered under entry 6 of Schedule C of the said Act. In our opinion, this contention is not well founded. It is true that no recognition can be granted in respect of the aforesaid items mentioned in S. 25 of the said Act. It is, however, for the Commissioner of the Officer to whom the power is delegated in that behalf to decide whether an item regarding which recognition is sought falls within those excluded categories or not. Once that determination is made it is not open to an assessing Sales Tax Officer to question the correctness of the same.

9. It was next urged by Mr. Sanghavi that even if the recognition certificate of the Parle Products was taken as correct and binding on the Sales Tax Officer, the packing labels or printed wrappers such as were sold by the applicants to the Parle Products could not be said to be packing labels at all. In the first place, this is not the question referred to us at all. Secondly, in the aforesaid order dated 25th April 1961 passed by the Assistant Commissioner of Sales Tax in revision it has been clearly stated that these packing labels were actually printed wrappers and it is with this in mind that the Assistant Commissioner of Sales Tax in revision, it has been clearly stated that these packing labels were actually printed wrappers and it is with this in mind that the Assistant Commissioner determined that this item was to be retained in the recognition certificates of Parle Products. Moreover, even the sales Tax Officer, who has disallowed the claim of applicants for deduction has referred to this item as labels sold to the Parle Products. In view of this, in our view it is not open to Mr. Sanghavi to raise this contention at all.

10. In the result, we, answer the second question referred to us in the negative. As far as the first question is concerned, for the reason which we have already given in connection with the second question we are of the view that the Tribunal ought not to have determined this question at all and it is unnecessary for us to determine the same. The respondent to pay to the applicants the costs of this reference fixed at Rs. 300/-.