(1981) 02 BOM CK 0016

In the Bombay High Court

Case No : Sales Tax Reference No. 34 of 1977

Chandulal and Company — APPELLANT

Vs

State of Maharashtra — RESPONDENT

Date of Decision : 03-02-1981

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 23, 61(3), 9

Citation : (1981) 48 STC 205

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

Bench : Division Bench

Judgement

Madon, J.—The applicants were at all material times registered as a dealer under the Bombay Sales Tax Act, 1959, and also held a licence u/s 23 of the said Act. In their assessment for the period 1st April, 1966, to 31st March, 1967, the assessees claimed to deduct from their total turnover for the purposes of arriving at their taxable turnover for levy of general sales tax the turnover of two sales which they said they had made to one Messrs. H. Amrutlal and Company and in respect of which they had issued bill No. 3842 dated 23rd April, 1966, in the sum of Rs. 1,02,778 and another bill bearing No. 3843 dated 10th May, 1966, in the sum of Rs. 1,20,375, the person billed as shown in the said bills being the said Messrs. H. Amrutlal and Company. The above deductions were claimed by the assessees under clause (iii) of sub-section (1) of section 9 of the said Act on the ground that these were sales of goods made by them to a licensed dealer in respect of which the said licensed dealer, namely, Messrs. H. Amrutlal and Company, had given to the assessees the certificates in the prescribed manner in form No. 16.

2. It appears that the registration certificates issued and the licence granted to the said Messrs. H. Amrutlal and Company were cancelled by the Sales Tax Officer on 30th September, 1966, with effect from 10th November, 1965, on which date, according to the authorities, the said Messrs. H. Amrutlal and Company had discontinued their business.

3. In the assessment order, after referring to various facts which according to him showed that there were no genuine sales by the assessees to Messrs. H. Amrutlal and Company but the sales were to some other party in respect of which the said certificates were procured from the said Messrs. H. Amrutlal and Company in order to evade the incidence of general sales tax at the rate of 3 per cent in respect of the said transactions, the Sales Tax Officer disallowed the claim for deductions made by the assessees. In appeal these findings were confirmed by the Assistant Commissioner of Sales Tax. The applicants then went in second appeal to the Sales Tax Tribunal. It appears that elaborate arguments were addressed to the Tribunal at the hearing of this second appeal, and it was heard along with the second appeal filed by another dealer, Messrs. Girdharilal Aggarwal and Company. While the real point of controversy so far as the assessees before us was concerned was whether the sales which they claimed they had made to Messrs. H. Amrutlal and Company were in fact made to Messrs. H. Amrutlal and Company, the Tribunal held that since the registration certificates and licence of the said Messrs. H. Amrutlal and Company were cancelled with retrospective effect from a date prior to the dates of the two sales the applicants were not entitled to claim any deduction. At least so far as the second appeal filed by the applicants before us was concerned, this question did not fall for determination unless and until the Tribunal had first come to the conclusion that the sales were in fact made by the assessees to the said Messrs. H. Amrutlal and Company. The statement of the case made by the Tribunal does not at all refer to this part of the case. In fact, the question which has been referred to us by the Tribunal at the instance of the applicants does not bring out the real controversy between the parties. That question is as follows :

"Whether the Tribunal was correct in law in holding that the cancellation of the registration certificate and the documents held by Messrs. H. Amrutlal and Company with effect from 10th November, 1965, were operative in respect of the sales of the applicants to Messrs. H. Amrutlal and Company even though the cancellation orders were passed on 30th September, 1966, only ?"

4. With the consent of both the learned counsel we have, therefore, reframed the said question as follows :

"Whether the Tribunal was justified in disallowing the claim for deduction u/s 9(1)(iii) of the Bombay Sales Tax Act, 1959, in respect of the two sales made by the assessees in respect of which the assessees have issued bill No. 3842 dated 23rd April, 1966, for Rs. 1,02,778 and bill No. 3843 dated 10th May, 1966, for Rs. 1,20,375 ?"

5. As mentioned above, for answering the above question as reframed the first point which will have to be determined would be the genuineness of these two transactions in the sense as to whether these were sales made to the said Messrs. H. Amrutlal and Company or made to a third party, the said Messrs. H. Amrutlal and Company merely playing the role of furnishing a certificate to make these two sales not exigible to tax. For this purpose the statement of the case

made by the Tribunal is wholly insufficient and inadequate, and accordingly under sub-section (3) of section 61 of the said Act we refer back this case to the Tribunal and direct it to make a supplemental statement of the case setting out therein the facts on the record having a bearing on the question of the genuineness of these transactions in the sense mentioned above and its finding thereon.

6. Case remanded.

