(1968) 02 BOM CK 0031

In the Bombay High Court

Case No : Sales Tax Reference No. 51 of 1965

Commissioner of Sales Tax — APPELLANT

Vs

Ashok Surgical Co. — RESPONDENT

Date of Decision : 09-02-1968

Acts Referred:
Bombay Sales Tax Act, 1953 — Section 26, 26(1)

Citation : (1969) 23 STC 114

Hon'ble Judges : Vimadalal, J;N.L. Abhyankar, J

Bench : Division Bench

Judgement

Abhyankar, J.—The two questions referred for our decision are as follows :-

"(1) Whether on the facts and in the circumstances of the case the opponent was a transferee within the meaning of Section 26(1) of the Bombay Sales Tax Act, 1953 ?

(2) Whether there was any evidence before the Tribunal to come to the conclusion that the whole object of Shri Nair was to obtain possession of the vacant premises for starting his business as a manufacturer and seller of surgical appliances and that the recitals in that connection in the transfer deed dated 2nd December, 1954, are false ?"

The facts giving rise to this reference are in a short compass, as follows :

The period of assessment concerned is from 2nd December, 1954, to 31st March, 1965. Messrs Pendse and Mandali were running a ration shop in certain premises mentioned in this suit and, after rationing was abolished, they were running a Kirana shop therein. Messrs Pendse and Mandali, purporting to execute, what is described as a deed of sale between the respondent Shri Laxman Manjayya Nair and the proprietor of Messrs Pendse and Mandali have transferred their business. A copy of that document is filed with the petition and is to be found at pages 26-28 of the paper-book. Under this agreement, the transferor purported to transfer on and from 2nd December, 1954, to the purchaser, i.e., the respondent, their business of grocery and provision merchant under the name and style of Messrs Pendse and Mandali at shop No. 4 102-C-106, Girgaum Road, Bombay. The total consideration was fixed at Rs. 5,500, out of which Rs. 3,000 by mutual consent was agreed to be the price of the stock-in-trade, furniture, fixtures and other articles pertaining to the business and Rs. 2,500 was agreed to be the consideration for the goodwill of the said business carried on under the name and style of Messrs Pendse and Mandali. It was also stated that on payment of Rs. 3,000, the vendor had already delivered furniture, fixtures, fittings and stock-in trade and all other tangible movable property in the said premises pertaining to the said business to the purchaser and, as incidental to the sale of the business but for no monetary consideration, the vendor had agreed to assign his right, title and interest in the tenancy of the said premises where the said business was carried on to the purchaser, and the balance of the consideration of Rs. 2,500 was paid before the Registrar. The document also describes that the vendor sold or assigned to the purchaser the business carried on under the name and style of Messrs Pendse and Mandali as a running concern with the goodwill of the said business and the right to use the name Messrs Pendse and Mandali and also the right to represent to the customers that the purchaser was the successor of the vendor in that business, and as incidental to the sale of the said business and in consideration thereof, the purchaser agreed to pay rent of the said shop and observe all the terms and conditions of tenancy thereof and the petitioner also assigned and transferred the shop to the purchaser with the entire right, title and interest of the vendor therein under the terms of the tenancy. It is also mentioned in one of the clauses of the document that the vendor shall not carry on business like the one that is assigned to the purchaser in the name and style of Messrs Pendse and Mandali within a radius of half a mile from the present place of business for a period of 10 years from the date of those presents. Thus, ostensibly, it was a sale of business and along with it assignment of rights of tenancy. But it has been found by the Tribunal that contrary to the recitals in the transfer deed the respondent never carried on the business of provision merchant and rationing, and on the contrary, he started the business of manufacturing and selling surgical appliances in those premises immediately after he got vacant possession of the said premises on 2nd December, 1954. The Tribunal also observed that it was admitted that the transferor had intimated to the Sales Tax Authorities by his letter dated 5th January, 1955, that the transferee was not carrying on the kirana (grocery) business and that the Kirana business which was carried on by the transferor himself had been closed some 6 months before the transfer deed of 2nd December, 1954. On a consideration of all these circumstances the Tribunal came to the conclusion that the recitals in the transfer deed regarding transfer of business are false and the entire object of the respondent was to obtain vacant possession of the premises for starting his business of manufacturing and selling surgical appliances.

2. Now, so far as the second question is concerned, the contention of the department appears to be that there was no evidence before the Tribunal to

come to the conclusion that the whole object of the respondent was to obtain possession of the vacant premises for starting his business of manufacturing and selling surgical appliances. We are unable to see how it can be said to be so in the face of the circumstances pointed out by the Tribunal that this is a case where there was no evidence for the Tribunal to come to the conclusion which it has reached, viz., that the real object in entering into the transaction was not to transfer any business because there was no business to be transferred, but was to make the premises available to the respondent to enable him to carry on his business of manufacturing and selling surgical goods. The fact that the business of Messrs Pendse and Mandali was already closed six months before the date of transfer is sufficiently eloquent to show that there could be no intention on the part of either party either to sell any business or purchase any business, coupled with the fact that in fact the transferee did not carry on any Kirana business, because there was no business to be carried on and none was intended to be carried on. We fail to see how it could be said that there was no evidence before the Tribunal to come to the conclusion which it has reached, viz., that the real object of the respondent in entering into the transaction dated 2nd December, 1954, was to obtain the right of tenancy of the premises and its occupation to enable the respondent to carry on his own business of manufacturing and selling surgical goods. The second question, therefore, must be answered in the affirmative. Once the conclusion is reached that there was evidence before the Tribunal to come to the conclusion that the whole object of the respondent was to obtain possession of the vacant premises for starting his own business as a manufacturer and seller of surgical appliances and that the recitals in that connection in the transfer deed were false, the answer to the first question is obvious. If there was no intention on the part of either of the parties to transfer business because there was no business to transfer, then the conclusion that the respondent is not a transferee of any business as a result of the transaction dated 2nd December, 1954, within the meaning of section 26 of the Bombay Sales Tax Act, 1953, must follow. We must, therefore, answer the first question in the negative.

3. The result is, the first question is answered in the negative, and the second question is answered in the affirmative.

4. As the answers to the reference are in favour of the assessee, we direct that the applicants shall pay the costs of the assessee. We fix the sum of Rs. 250 as the costs of the reference.

5. Reference answered accordingly.