
(1981) 02 BOM CK 0037

In the Bombay High Court

Case No : Sales Tax References No's. 50 and 51 of 1979

Commissioner of Sales Tax

APPELLANT

Vs

Automatic Engineering Works

RESPONDENT

Date of Decision : 27-02-1981

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61(1)

Citation : (1981) 47 STC 343

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

Bench : Division Bench

Judgement

Madon, J.—The respondents in these references are manufacturers of nuts and bolts, and are registered as a dealer under the Bombay Sales Tax Act, 1959. During the period 1st April, 1964, to 31st December, 1964, as also during the period 1st January, 1965, to 31st December, 1965, the respondents purchased certain machinery. The vendors of this machinery collected from the respondents the tax which was to be paid by them in respect of these sales of machinery. In their assessment for these two periods the respondents were allowed by the Assistant Commissioner of Sales Tax set-off under rule 41-A of the Bombay Sales Tax Rules, 1959. Subsequently the Deputy Commissioner of Sales Tax suo motu revised the order of the Assistant Commissioner and allowed to the respondents set-off only for a part of the amount claimed by them on the ground that the machinery purchased by them had not been wholly used by them for manufacturing their own goods for sale but was also used for manufacturing goods on behalf of others on job-work basis. Against this order of the Deputy Commissioner the respondents went in appeal to the Maharashtra Sales Tax Tribunal. The Tribunal upheld the respondents' contention and allowed to the respondents the full amount of set-off claimed by them.

2. At the instance of the Commissioner of Sales Tax the Tribunal has referred to this Court u/s 61(1) of the said Act the following question in each of these two references :

"Whether, on a proper construction of rule 41-A of the Bombay Sales Tax Rules, 1959, the respondents are entitled to the full amount of set-off of taxes paid on the purchases of machinery, claimed by them, even though the said machinery is used partly in the manufacture of taxable goods for sale and partly for doing job-work on behalf of others ?"

3. Sales Tax Reference No. 50 of 1979 relates to the period 1st April, 1964, to 31st December, 1964, while Sales Tax Reference No. 51 of 1979 relates to the period 1st January, 1965, to 31st December, 1965. Under rule 41-A of the said Rules, as it stood at the relevant time, a dealer became entitled to a set-off of a certain proportion of the amount of tax recovered from him by his vendor where the goods purchased fell under any of the entries in Schedule B, C, D or E to the said Act and where inter alia "used by him within the State in the manufacture of taxable goods for sale". Admittedly, the goods in the present two references fell under the residuary entry 22 of Schedule E to the said Act. Again admittedly, they were used for manufacture within the State of Maharashtra, and all the goods which were manufactured were admittedly taxable goods for sale. The only controversy is with respect to whether the goods so manufactured should be goods manufactured for sale by the purchasing dealer himself or whether they could be manufactured on behalf of others for sale by those others. This point is already concluded by the decision of a Division Bench of this High Court in *Commissioner of Sales Tax v. Burmah Shell Refineries Limited* [1978] 41 S.T.C. 337, in which the court held with respect to clause (e) of rule 41 of the said Rules, which was in pari materia with rule 41-A with which we are concerned and, so far as the use of the purchased goods is concerned, used identical language. That the relief claimed in the said clause (e) was available both to a dealer who purchased goods of the required description for use by him in the manufacture of goods for sale by him as also to one who purchased such goods for use by him in the manufacture of goods for sale by others. In view of this, the respondents would be entitled to the full amount of set-off as held by the Tribunal. We may mention that by an amendment made on 15th January, 1976, in rule 41-A(1), before the purchasing dealer becomes entitled to a set-off under the said rule 41-A the goods manufactured have to be sold by him.

4. In the result, we answer the question submitted to us in each of these two references in the affirmative, that is, in favour of the assessee and against the department.

5. The applicant will pay to the respondents the costs of these two references quantified in all at Rs. 300.

6. References answered in the affirmative.