
(1977) 11 BOM CK 0036

In the Bombay High Court

Case No : S.T.R. No. 60 of 1976 & Sales Tax Reference No. 60 of 1976

Commissioner of Sales Tax

APPELLANT

Vs

Halward Engineers

RESPONDENT

Date of Decision : 18-11-1977

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52, 52(1), 52(2), 55(6), 61(1)

Citation : (1978) 7 CTR 245 : (1978) 41 STC 61

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : G.S. Jetly, for the Appellant; B.S. Joshi and P.C. Joshi, for the Respondent

Judgement

Madon, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the Commissioner of Sales Tax. The question which has been submitted to us in this reference is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal, having held that reduction gears fall under entry 22 of the Schedule E to the Bombay Sales Tax Act, 1959, with effect from 15th July, 1962, after the amendment to entry 20 of Schedule C to the said Act on that date, was correct in giving the benefit of the determination of the Commissioner of Sales Tax u/s 52 of the said Act in the case of Messrs. Tekno Works (India) up to 10th July, 1965, to the respondents, thereby holding that the sales of reduction gears effected by the respondents up to 10th July, 1965, would fall under entry 20 of Schedule C to the said Act ?"

2. The respondents were registered as a dealer under the said Act and carried on business in electrical goods. They were assessed for the period 1st October, 1964, to 30th September, 1965, by the Sales Tax Officer, Poona. In respect of sales of reduction gears made by the respondents the Sales Tax Officer held that the rate of tax which was applicable was the one provided by the residuary entry, namely, entry 22 of Schedule E to the said Act. Being aggrieved by this order the

respondents went in appeal to the Assistant Commissioner of Sales Tax. That appeal was dismissed. The respondents thereupon went in second appeal to the Tribunal. The Tribunal negatived the contention of the respondents that the reduction gears fell under entry 20 of Schedule C to the said Act and held that the residuary entry was properly made applicable to reduction gears. The said entry 20 of Schedule C during the relevant period was the one substituted by Maharashtra Act 21 of 1962 with effect from 15th July, 1962. Prior to this amendment, in a determination proceeding u/s 52(1) of the said Act filed by Messrs. Tekno Works (India), the Commissioner of Sales Tax had held on 31st January, 1962, that reduction gears fell under the said entry 20 of Schedule C. After the said entry was substituted by the said amending Act, in another determination proceeding commenced by Messrs. Supreme Industries, the Commissioner of Sales Tax held on 10th July, 1965, that reduction gears were taxable under the said residuary entry, namely, entry 22 of Schedule E. The Tribunal held that though there was a change in the said entry 20 of Schedule C, it was difficult for a layman to understand that the determination of the Commissioner of Sales Tax in the case of Messrs. Tekno Works (India) did not hold goods and that as the respondents had acted on the basis of that determination they should receive the benefit thereof, and, accordingly, the Tribunal partly allowed the respondents' appeal and granted to them the benefit of the determination of the Commissioner of Sales Tax in the case of Messrs. Tekno Works (India) up to 10th July, 1965, namely, the date of determination of the Commissioner of Sales Tax in the application of Messrs. Supreme Industries.

3. There is no question referred to us as to whether reduction gears fall under entry 20 of Schedule C or entry 22 of Schedule E to the said Act. The only question before us is as to the power of the Tribunal to give the relief which it has purported to give. Under sub-section (2) of section 52 of the said Act the Commissioner of Sales Tax has the power to direct that the determination made by him should not affect the liability of any person under the Act, as respects any sale or purchase effected prior to the determination. This is a power conferred upon the Commissioner of Sales Tax so far as determination proceedings are concerned. Such a power, therefore, could also be validity exercised by the Tribunal in appeal from an order in determination proceedings made by the Commissioner of Sales Tax under the said section 52. No such power, however, is conferred by the said Act upon the assessing authority, and an assessing authority has no power to direct that even though goods are taxable under one entry, they should up to a particular date be treated as being taxable under a different entry. There being no such power in an assessing authority, there can be equally no such power in the Tribunal acting as an appellate or revising authority in assessing proceedings. Mr. Joshi, the learned counsel for the respondents, submitted that u/s 52(2) of the said Act the Commissioner of Sales Tax has the power to direct that his determination will not affect the liability of any person under the Act, and not merely that of the applicant before him, as regards any sale or purchase effected prior to the determination. According to

Mr. Joshi, this power was conferred upon the Commissioner of Sales Tax because his determination binds all dealers and not merely the applicant before him. Mr. Joshi submitted that if the Commissioner of Sales Tax did not exercise such power with respect to other persons, that is, persons other than the applicant before him, such persons have no remedy because they cannot appeal to the Tribunal against the order of the Commissioner of Sales Tax and, therefore, the Tribunal could in assessment proceedings of such persons exercise this power and grant them the requisite relief. Assuming for the sake of argument that the interpretation sought to be placed by Mr. Joshi on sub-section (2) of section 52 of the said Act is correct and the Commissioner of Sales Tax can grant relief to persons other than the applicant before him, we are unable to accept Mr. Joshi's further submission that in case the Commissioner of Sales Tax does not grant them relief, the Tribunal could do so in their assessment proceedings. The power under the said section 52(2) is a limited power which can be exercised only in proceedings under that section. The question of prejudice is irrelevant, for litigants are every day affected by judgments given by superior courts which operate as binding precedents. To accept this submission of Mr. Joshi would be tantamount to doing away with the theory of precedents. Mr. Joshi, however, submitted that the Tribunal did possess such power under sub-section (6) of section 55 of the said Act prior to its amendment by Mah. Act 42 of 1971, this reference arising out of the decision of the Tribunal given on 15th January, 1968. The said sub-section, as it originally stood, provided as follows :

"Subject to such rules of procedure as may be prescribed, an appellate authority may pass such order on appeal as it deems just and proper."

4. According to Mr. Joshi, under this sub-section, the Tribunal could pass whatever order it liked, provided such an order appeared to the Tribunal to be "just and proper". We are not able to accept this submission. This sub-section was not enacted to confer upon the Tribunal the power to pass any order it liked, irrespective of the provisions of the said Act. The order which the Tribunal could pass in an appeal must be one which is conferred upon it by statute and within the four corners of the statute. What the Tribunal has done by this order is to exercise a power which has not been conferred upon it by the statute. The Tribunal has confused the powers it could exercise in assessment proceedings with those which it could exercise in an appeal in determination proceedings.

5. For the reasons set out above, we answer the question submitted to us in the negative.

6. The respondents will pay to the applicant the costs of this reference fixed at Rs. 300.

7. Reference answered in the negative.