
(1974) 12 BOM CK 0008
In the Bombay High Court
Case No : Sales Tax Reference No. 58 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

Indokem Private Limited

RESPONDENT

Date of Decision : 10-12-1974

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 22, 3, 3(1), 3(4), 32(1)

Citation : (1975) 35 STC 432

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

Bench : Division Bench

Advocate : R.A. Dada, for the Appellant; S.S. Gaitonde, for the Respondent

Judgement

Madon, J.—The question which has been referred to us in this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, is, "Whether, on the facts and in the circumstances of the case and on true and proper interpretation of rules 40 and 45 of the Bombay Sales Tax Rules, 1959, the Tribunal was correct in law in holding that the Ahmedabad branch of the respondent could not claim set-off under rule 40 in respect of the stock held at Ahmedabad as on 1st January, 1960, and sold there in its own assessment proceedings but that the head office at Bombay alone was entitled in law to claim set-off in respect of taxes paid on its purchases of goods held in stock by its branch office at Ahmedabad ?"

2. In order to appreciate the facts which have given rise to this reference it is necessary first to know certain relevant provisions of the Bombay Sales Tax Act, 1959, and the Bombay Sales Tax Rules, 1959, framed thereunder. The said Act came into force on 1st January, 1960, which date is referred to in the said Act as "the appointed day". Under the said Act a dealer whose turnover of all sales or of all purchases in the particular year specified in section 3 exceeds the limit laid down in sub-section (4) of that section becomes liable to pay tax under the said Act. u/s 22 no dealer, while being liable to pay tax under the said Act, is to carry on business as a dealer unless he possesses a valid certificate of registration as provided by the said Act. u/s 77(1)(b) any registration certificate issued by or

under any of the laws repealed by the said Act, which was in force immediately before 1st January, 1960, is on that date to be deemed, so far as the liability to tax under sub-section (1) of section 3 is concerned, to be a certificate of registration issued under the said Act. One of the Acts repealed by the said Act was the Bombay Sales Tax Act, 1953. Under rule 7(3) of the Bombay Sales Tax Rules, 1959, a dealer having places of business within the jurisdiction of different registering authorities is required to make an application for registration separately to each such authority in respect of his places of business (not being merely a warehouse) within the jurisdiction of that authority. The position under rule 3(3) of the Bombay Sales Tax (Registration, Licensing and Authorization) Rules, 1954, framed under the Bombay Sales Tax Act, 1953, was the same. In respect of his different places of business which have been registered separately as aforesaid, a dealer is required, under the Bombay Sales Tax Rules, 1959, to file separate returns unless under the proviso to sub-section (1) of section 32 of the Bombay Sales Tax Act, 1959, the Commissioner has given him permission to furnish a consolidated return relating to all or any of the places of business of the dealer in the State for a particular period or for such different periods to such authority as he may direct. As separate returns have to be filed in respect of each place of business situate within the jurisdiction of different Sales Tax Officers, the assessment in respect of such returns would be separate. Rule 40(1) of the Bombay Sales Tax Rules, 1959, as it was in operation at the material time, provided as follows :

"40. Drawback, set-off or refund of tax for goods in stock on the appointed day. - (1) Where a registered dealer (hereinafter referred to in this rule as "the assessee") becomes liable to pay tax under the Act from the appointed day by reason of his turnover of sales or turnover of purchases having exceeded during the year ending on the 31st March, 1959, or before the appointed day during the year commencing on the 1st April, 1959, the relevant limits specified in sub-section (4) of section 3 and the assessee holds in stock on the appointed day goods described in Schedule C, D or E, which were purchased by him before the appointed day (hereinafter referred to in this rule as "the said goods"), then if the assessee -

(a) has resold the said goods within 15 months from the appointed day, or

(b) has despatched on or after the appointed day the said goods, without making any sale thereof, to a destination outside the State of Maharashtra for resale, the Commissioner shall, in assessing the tax payable by the assessee, for any period, grant him a drawback, set-off or, as the case may be, refund of such amount as may be admissible to him in accordance with sub-rules (2) to (5) of this rule."

3. Under rule 45(1) of the Bombay Sales Tax Rules, 1959, in order to become entitled to a drawback, set-off or refund under the said rule 40(1) a dealer has to comply with certain conditions, one of these conditions being that he is to furnish to the Sales Tax Officer on or after the appointed day, namely, 1st January, 1960, but before 26th March, 1960, a statement in form 32 where the selling dealer

has recovered from him any amount by way of tax under any earlier law, that is, under any of the Acts repealed by the Bombay Sales Tax Act, 1959. Such a dealer also would not be entitled to any such drawback, set-off or refund unless he had maintained a true account in chronological order of all the purchases of goods made by him, and which were held by him on 1st January, 1960, showing in such accounts the particulars specified by the said rule 45(1).

4. Turning now to the facts of this case, the respondent-company was registered as a dealer under the Bombay Sales Tax Act, 1953. The head office of the respondent-company was at Bombay. It had also a branch office at Ahmedabad and in respect of the said branch office it had applied for and obtained a separate certificate of registration as it was required to do under the statutory provisions referred to above. In the application for registration made by the respondent-company in respect of its head office in Bombay, its branch office at Ahmedabad was shown as its additional place of business which was under the jurisdiction of a different registering authority and as required under the statutory provisions referred to above it had thereupon obtained for its Ahmedabad branch a separate certificate of registration. Prior to 1st January, 1960, the respondent-company had purchased goods of the classes described in Schedules C, D and E to the Bombay Sales Tax Act, 1959, and in respect of the sale of these goods to the respondent-company the company's vendors had recovered from the respondent-company the amount of general sales tax, which they would have to pay to the Government in their assessment. After purchasing the said goods the respondent-company despatched them to its Ahmedabad branch and they remained in stock with the Ahmedabad branch on 1st January, 1960. All these goods were sold by the respondent-company by 31st March, 1960, the sales being effected at Ahmedabad by the Ahmedabad branch of the respondent-company. In the returns filed by the Ahmedabad branch of the respondent-company for the period 1st January, 1960, to 31st March, 1960, no drawback, set-off or refund was claimed in respect of the said goods which had remained in stock and were sold between 1st January, 1960, and 31st March, 1960. In their assessment proceedings the respondent-company's head office, however, claimed a set-off in respect of the amount by way of general sales tax, which their vendors had recovered from them in respect of the said stock of goods resold as aforesaid. It may be mentioned that the respondent-company's head officer had maintained an account in respect of the said purchases as required by the said rule 45 and had also furnished to the Sales Tax Officer prior to 26th March, 1960, a statement in form 32 as required by the said rule. The Sales Tax Officer, however, by his assessment order dated 23rd March, 1960, rejected the respondent-company's claim for set-off on the ground that it should have been claimed by the Ahmedabad branch of the respondent-company and not by the head office of the respondent-company. It may be mentioned that by this time as from 1st May, 1960, the erstwhile State of Bombay had been bifurcated into the State of Maharashtra and the State of Gujarat, and Ahmedabad had become the capital of the State of Gujarat. In appeal the Assistant Commissioner of Sales Tax

confirmed the view taken by the Sales Tax Officer. In second appeal to the Tribunal the Tribunal came to the conclusion that the right to claim set-off belonged to the head office of the respondent-company and allowed the appeal.

5. Arising out of the said judgment of the Tribunal, at the instance of the Commissioner of Sales Tax, the question which we have set out earlier has been referred to us.

6. Before us Mr. Dada, the learned counsel for the applicant, has submitted that the scheme of the Bombay Sales Tax Act, 1959, requires that there should be a separate registration certificate in respect of the branch of a dealer situate within the jurisdiction of a Sales Tax Officer different from the Sales Tax Officer who exercises jurisdiction over the area in which the head office of the dealer is situate. In such a case the head office and the branch have both to file separate returns under rule 22 of the Bombay Sales Tax Rules, 1959, or if permission to file consolidated returns has been given by the Commissioner of Sales Tax under the proviso to section 32(1) of the said Act, then consolidated returns in respect of both the head office and the branch office have to be filed. The form in which a return has to be filed, namely, form 18 to the Bombay Sales Tax Rules, 1959, indicates that a set-off under the said rule 40(1) has to be claimed separately by the branch office in its own return and that even otherwise as the branch is required to file a separate return (unless where permission to file consolidated returns is given) and is separately assessed to tax in respect of its turnover disclosed in its return the set-off under the said rule 40(1) can only be claimed by the branch office against the tax, which is assessed and found due on the basis of the turnover of sales or purchases or both of the branch office and that since the tax in respect of the aforesaid goods held in stock and sold by the branch office has not been assessed according to the turnover shown in the returns filed by the head office, the head office of the respondent-company cannot claim a set-off in respect of the amount of tax recovered from it by its vendors when the head office purchased the said goods.

7. There are three main fallacies underlying Mr. Dada's arguments. The first fallacy is as to the meaning of the word "assessed" occurring in the said rule 40(1) of the Bombay Sales Tax Rules, 1959. The second fallacy is as to the legal effect of a separate registration certificate obtained by a dealer in respect of his additional place of business, and the third fallacy is as to the legal nature of a company incorporated under the Companies Act.

8. Under the said rule 40(1) the term "assessed" does not mean a person against whom assessment proceedings have been initiated or who is assessed to tax. For the purposes of rule 40, the term "assessed" is given a special meaning by the said rule 40(1). The opening words of the said sub-rule are "where a registered dealer (hereinafter referred to in this rule as "the assessed"))....." Therefore, for the purposes of the said rule 40, the word "assessed", wherever it occurs, must be read as meaning "registered dealer". In view of this special definition, the matter falls to be decided irrespective of the ordinary meaning to be given to the

word "assessed".

9. So far as the obtaining of a separate certificate of registration by a dealer in respect of his additional place of business is concerned, the argument on behalf of the applicant has proceeded upon the footing as if by obtaining such separate certificate of registration a separate registered dealer has come into being. As set out above, under rule 7(3) of the Bombay Sales Tax Rules, 1959, a dealer who applies for registration as a dealer has to make an application for registration separately to each of the Sales Tax Officers in whose jurisdiction his several additional places of business are situate. The registration obtained in respect of such additional place of business stands on an entirely different footing from the obligation cast upon a dealer by section 22 of the said Act to get himself registered if he becomes liable to pay tax by reason of his turnover exceeding the limits specified in section 3(4) of the said Act. If a dealer's turnover does not exceed the relevant limit specified in the said section 3(4), the dealer would not be entitled to get himself registered. This requirement, however, does not apply to an additional place of business of a dealer. For obtaining his initial certificate of registration a dealer has to show that the combined turnover of his head office and its branch or branches exceeds the specified limit. Thereafter he has to make separate applications for registration in respect of each branch officer situate within the jurisdiction of different Sales Tax Officers. The branch office would have a registration certificate issued to it irrespective of the fact whether the turnover of sales or purchases effected by the branch office exceeds the specified limit or not, for the certificate of registration is issued to a branch office merely on the strength of the fact that the dealer's combined turnover in respect of his head office and its branch office has exceeded the specified limit. A branch office, therefore, is not a registered dealer. In such cases what merely happens is that a dealer is issued several registration certificates in respect of his places of business. This does not bring into being as many dealers as there are registration certificates. The registered dealer remains only one. The other provisions are merely for administrative convenience.

10. In support of his submission that a separate taxable legal entity has come into being in the shape of the branch office of the respondent-company when a separate registration certificate was issued to it, Mr. Dada, the learned counsel for the applicant, relied upon the judgment of the Supreme Court in *Commr. of Sales Tax, M.P. Vs. Minerva Minerals, Nagpur*, Prior to the States Reorganisation Act, 1956, Minerva Minerals, a firm carrying on business at Nagpur which was its main place of business, was also carrying on business at Gondia, which was styled by that firm as its additional place of business. Both Nagpur and Gondia were situate within the then State of Madhya Pradesh. Apart from Nagpur and Gondia the respondent-firm was also working some manganese mines in Wara Seoni and Chhindwara, also situate within the then State of Madhya Pradesh. They had, however, not specified their places of business at Wara Seoni and Chhindwara in their application for registration as their additional places of business. The respondent-firm held a registration certificate under the C.P. and

Berar Sales Tax Act, 1947. As a result of the reorganisation of States on 1st November, 1956, Nagpur came within the State of Bombay and thereupon the respondent-firm became a registered dealer in the new State of Madhya Pradesh on 8th March, 1958. In its assessment for the period 1st November, 1956, to 3rd July, 1958, it was held that the respondent-firm should be treated as an unregistered dealer in respect of its places of business at Wara Seoni and Chhindwara as the certificate of registration which it had obtained did not cover those two places. The matter ultimately went to the Supreme Court and the Supreme Court observed (at page 69) :

"It is plain on an examination of the relevant sections and statutory rules that the certificate of registration is granted with reference to the place of business or places of business of the dealer and not with reference to the whole area of the State though for the purpose of determining the liability of the dealer, his turnover in respect of all places of business in the State including those not mentioned in the registration certificate is to be taken into consideration. It follows therefore that if a registered dealer carries on business in places not disclosed in the registered certificate he will have to be treated as an unregistered dealer vis-a-vis those places."

11. The reliance by the applicant upon this case is misplaced. The Supreme Court did not lay down that there were two dealers, one a registered dealer and the other an unregistered dealer. All that their Lordships of the Supreme Court laid down was that where a dealer fails to obtain a certificate of registration in respect of any of his additional places of business, in respect of the turnover of sales or purchases, or both, of that place, he must be treated on the same footing as an unregistered dealer, which is different from saying that there are two altogether separate entities - one a registered dealer and the other an unregistered dealer. It only means that in respect of his transactions effected at such additional place of business, all the consequences of not obtaining a registration certificate would be visited upon the dealer as if he were an unregistered dealer.

12. So far as the last branch of Mr. Dada's arguments is concerned, namely, that it is only the dealer who is assessed to tax, who can claim a set-off in respect of the amount of tax recovered from him by his own vendors, the argument ignores the identity of the person who is actually paying the tax in this case. A company incorporated under the Companies Act is a legal entity. In the instant case, the legal entity is Indokem Private Limited and not two legal entities, namely, Indokem Private Limited, head office, and Indokem Private Limited, Ahmedabad branch office. Both in respect of the transactions effected by the head office and the transactions effected by the branch office, the tax which is assessed is assessed against the respondent-company, namely, Indokem Private Limited. There will, however, be two separate assessment orders, one in respect of the transactions of the head office and the other in respect of the transactions of the branch office. The tax which will have to be paid under these assessment orders

will, however, be paid only by one legal entity, namely, Indokem Private Limited. The amount of tax which will be paid under both these assessment orders will find place only in one balance-sheet, namely, the balance-sheet of the Indokem Private Limited. Any provision for taxation which has to be made in the balance-sheet in view of pending assessments will be only made in one balance-sheet, namely, the balance-sheet of Indokem Private Limited. Therefore, in this case the taxpayer is the Indokem Private Limited. It is Indokem Private Limited which had purchased these goods and had paid sales tax on it to its own vendors. Instead of keeping these goods in Bombay, Indokem Private Limited kept them in stock in Ahmedabad and they were in stock in Ahmedabad on "the appointed day", namely, 1st January, 1960. Thereafter within a period of three months they were sold by Indokem Private Limited and the sales were effected in Ahmedabad and the goods, being situate in Ahmedabad, delivery thereof was given from Ahmedabad. This did not, however, make these sales the sales of a separate registered dealer. They continued to be the goods held in stock by Indokem Private Limited and the sales which were effected at Ahmedabad were the sales of Indokem Private Limited and Indokem Private Limited was entitled to claim a set-off in respect thereof, and we answer the question in the affirmative.

13. The applicant will pay to the respondents the costs of this reference.

14. Reference answered in the affirmative.