

(1974) 11 BOM CK 0013
In the Bombay High Court
Case No : Sales Tax Reference No. 30 of 1969

Commissioner of Sales Tax

APPELLANT

Vs

Minimax Ltd.

RESPONDENT

Date of Decision : 25-11-1974

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61(1)
Central Sales Tax (Bombay) Rules, 1957 — Rule 4
Central Sales Tax Act, 1956 — Section 8, 8(1), 8(4), 9(3)

Citation : (1975) 35 STC 388

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

Bench : Division Bench

Advocate : S.B. Sukhthankar, for the Appellant; P.T. Vaswani, for the Respondent

Judgement

Kania, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959, read with section 9(3) of the Central Sales Tax Act, 1956. The question referred to us for our opinion is :

"Whether on a true and proper interpretation of the provisions of rule 4-B(2) of the Central Sales Tax (Bombay) Rules, 1957, and section 8(4) of the Central Sales Tax Act, 1956, and, on the facts and in the circumstances of the case, it was permissible in law to the appellate authority to accept the declarations in form C, which were admittedly not produced by the respondents at the time of assessment, in exercise of his appellate jurisdiction and subject the impugned sales to a concessional rate of tax u/s 8(1) of the Central Sales Tax Act, 1956 ?"

2. It may be useful to set out at this place the material provisions upon which the arguments in the present case turn. Section 8(1) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the said Act"), at the material time, ran as follows :

"(1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be one per cent. of his turnover."

3. Sub-section (4) of section 8 of the said Act runs as follows :

"(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnished to the prescribed authority in the prescribed manner -

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

4. Rule 4-B(2) of the Central Sales Tax (Bombay) Rules, 1957, provides as follows :

"(2) A registered dealer who claims to have made a sale covered by clause (b) of sub-section (4) of section 8 shall, at the time when assessment is being made in his case by the assessing authority, produce before the assessing authority for verification the portions marked "duplicate" and "original" of the certificate in the said form D received by him from the authorised officer. The assessing authority may retain the "original" or such of the certificates as it may deem necessary."

5. The relevant facts are as follows :

The respondents were assessed by the Sales tax Officer for the period from 1st January, 1960, to 31st December, 1960, under the said Act. While making the assessment the Sales Tax Officer did not allow the respondents deduction of sales to the tune of Rs. 59,705.71 u/s 8(1) the said Act as they were not supported by the declarations in form D. It appears from the record and the judgment of the Tribunal that the Advocate for the respondents informed the Sales Tax Officer, when the assessment proceedings were going on, that the declarations obtained by the respondents regarding sales of the said amount were either misplaced or lost and he applied for time to obtain duplicate declarations from the vendees. The Sales Tax Officer took the view that as he had already given sufficient time, no further time should be granted to the respondents and he disallowed the deduction as aforesaid. Aggrieved by this order, the respondents filed an appeal before the Assistant Commissioner of Sales Tax and produced before him certain duplicate declarations, which were received by them in respect of the disallowed claim. The Assistant Commissioner took the view that the Sales Tax Officer had given sufficient opportunity to the

respondents to produce the required declarations, but the respondents had failed to do so, and hence he did not allow the respondents to produce the duplicate declarations before him at the appellate stage and dismissed the appeal. The respondents went in appeal against this decision to the Sales Tax Tribunal contending that the Assistant Commissioner of Sales Tax had failed to exercise his discretion vested in him in not considering the duplicate declarations which were produced before him in view of the facts and circumstances of the case. The judgment of the Tribunal shows that the Tribunal has taken the view that the contention of the respondents that the declarations were misplaced or lost was not a mere afterthought. The Tribunal has pointed out that the declarations (namely, the duplicates) from the vendee at Madras were received by the respondents on 19th June, 1965, from the vendee at Chandigarh on 18th July, 1964, and from the vendee from Jamnagar on 20th July, 1964. The Tribunal has further pointed out that the record of the case shows that the notice of hearing of the case by the Sales Tax Officer was served on the respondents on 11th March, 1964, and the case was heard on 17th July, 1964, and the assessment order was passed on 22nd July, 1964. The Tribunal has further referred to the correspondence produced before it showing that the respondents had commenced correspondence to obtain the duplicates of form D declarations from 10th April, 1964. On these facts the Tribunal has found that the respondents could not produce the declarations before the Sales Tax Officer for reasons beyond their control and, that being so, the Assistant Commissioner ought to have considered the duplicates, which were produced before him, and in refusing to do so, he had failed to exercise the discretion vested in him in that behalf. Although there is no express finding by the Tribunal that in its opinion the Sales Tax Officer was in error in not granting further time to the respondents to produce the declarations, such a finding, in our view, is implicit in the findings recorded by the Tribunal, to which we have already made reference. It may be mentioned that it is common ground that the sales in question were to the Government.

6. It is the submission of Mr. Sukhthankar, the learned counsel for the applicant, that under the provisions of section 8(4)(b) of the said Act read with the provisions of rule 4-B(2) of the Central Sales Tax (Bombay) Rules, 1957, it is necessary that the declarations in form D must be filed before the Sales Tax Officer before the assessment was completed. It was submitted by him that it was not open to the appellate authorities to take on record any such declarations filed before them. In this connection, reference may be made to the decision in *Shirahatti v. Commercial Tax Officer* [1967] 19 S.T.C. 306. In that case, the Commercial Tax Officer assessed the petitioner to sales tax in respect of the year 1959-60 rejecting the petitioner's claim u/s 8 of the said Act for a lower rate of tax in respect of certain inter-State transactions on the ground that the relevant declarations in C forms were not produced by the petitioner right up to the time the order of assessment came to be passed. The petitioner appealed to the Deputy Commissioner of Commercial Taxes complaining that the original

authority had not given him sufficient opportunity to produce the necessary declarations, and actually produced some declarations before the appellate authority, who received those declarations and gave the petitioner the benefit of reduced rate to the limit of the transactions covered by the said declarations. Subsequently, the Commissioner acting in exercise of his suo motu power of revision u/s 21 of the Mysore Sales Tax Act, 1957, set aside the order of the appellate authority on the ground that it was illegal and restored that of the original assessing authority. The petitioner thereupon filed a petition under article 226 of the Constitution in the High Court of Mysore. It was held, inter alia, that the appellate authority has the power as well as the duty of correcting errors, if any, committed by the original authority and passing such orders, as in the light of the correct view of facts and law taken by it, should have been passed by the original authority. It was further held that the opinion of the appellate authority was that the original authority had not given sufficient opportunity to the petitioner to produce the C forms and that what the appellate authority had done was merely to exercise its powers under the law to do what the original authority in its opinion could and should have done. The Division Bench of the Mysore High Court in its judgment has observed as follows (page 310) :

"Now, in this case, there is no suggestion that the forms produced by the petitioner before the appellate authority were either not genuine or not in the prescribed forms or devoid of the prescribed particulars. We have also pointed out that the complaint of the petitioner before the appellate authority was that the original authority had not given him sufficient opportunity to produce the same. The same was obviously accepted by the appellate authority, and that opinion of the appellate authority has not even been dissented from by the revising authority in its order.

In such a position, it is not disputed, nor can it be, that it would have been open to the appellate authority to set aside the order of assessment and remit the matter back to the original authority with a direction to give an opportunity to the assessee to produce the forms and then proceed to dispose of the assessment. If so, we see no reason why the appellate authority, instead of taking up the time of the department, should not have proceeded to dispose of the matter itself on the basis of the forms produced before it. That is exactly what the appellate authority has done."

7. We are in respectful agreement with the observations of the Mysore High Court which we have set out above. In the case before us too, it is not disputed by the learned counsel for the applicant that if the Assistant Commissioner had come to the conclusion that the Sales Tax Officer had made an error in not granting further time to the respondents to produce the declarations, he could have set aside the assessment order passed by the Sales Tax Officer and remanded the matter to him with a direction to take the declarations on record. If that be the undisputed position, we fail to see why the Assistant Commissioner, instead of going through this dilatory procedure, could not have taken the

declarations on record himself. As we have already pointed out, the Tribunal has taken the view that the Sales Tax Officer was in error in not granting further time to the respondents to produce the declarations. It is clear that in the opinion of the Tribunal, the Assistant Commissioner should have remanded the matter to the Sales Tax Officer with a direction to take the declarations on record or should have taken the declarations on record himself. The Tribunal sitting in appeal over the decision of the Assistant Commissioner was entitled itself either to remand the matter to the Sales Tax Officer with a direction as aforesaid or to take the declarations or record itself, and we fail to see how it committed an error in taking on record the declarations, viz., the duplicates produced by the respondents and in granting the necessary relief on that footing.

8. We find that the same view, as we propose to take, has been taken by a Division Bench of the Allahabad High Court in *Commissioner of Sales Tax v. Kanpur Dal and Rice Mills* [1970] 25 S.T.C. 511. In that case, it has been held that in making an assessment on inter-State sales-under the said Act, if the Sales Tax Officer wrongly rejects C forms or wrongly refuses to allow sufficient time to an assessee to file such forms, in case he has not been able to procure them, the assessee would be entitled to seek redress from an appellate authority and the appellate authority would be within its jurisdiction to grant him the necessary relief. The manner in which the appellate authority grants the relief would depend upon his discretion. He may set aside the assessment and remand the case to the Sales Tax Officer for fresh assessment with a direction to entertain the C forms which the assessee had not been able to file at the time of the original assessment or he may himself entertain the C forms and allow the assessee the necessary relief.

9. Strong reliance was placed by Mr. Sukhthankar on the decision of a Division Bench of the Madras High Court in *Deputy Commissioner (Commercial Taxes) v. Parekutti Hajee Sons* [1962] 13 S.T.C. 680 and on the decision of the Madhya Pradesh High Court in *Chopra & Co. v. Additional Commissioner of Sales Tax* [1967] 19 S.T.C. 46. In our view, these decisions are not applicable to the case before us, because in neither of these cases was any application made by the assessee before the Sales Tax Officer for time to get a reasonable opportunity to produce the necessary declarations. In the case before the Madras High Court the C forms were sought to be produced for the first time before the Appellate Assistant Commissioner at the hearing of the appeal and in the case before the Madhya Pradesh High Court the assessee failed to appear at all before the Sales Tax Officer, with the result that there was no question of his asking for any reasonable opportunity to produce the declarations in the prescribed form. In these circumstances, the question which has arisen in the case before us did not arise in those cases at all.

10. In the result, in our view, the question referred to us must be answered in the affirmative. The applicant to pay the costs of this reference to the respondents.

11. Reference answered in the affirmative.