
(1977) 11 BOM CK 0053

In the Bombay High Court

Case No : Sales Tax References No"s. 54, 55 and 56 of 1976

Commissioner of Sales Tax

APPELLANT

Vs

Paper and Pulp Conversion Limited

RESPONDENT

Date of Decision : 17-11-1977

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 34(1), 34(4), 8, 9(1)

Citation : (1978) 41 STC 64

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

Bench : Division Bench

Advocate : M.S. Sanghavi, for the Appellant; B.C. Joshi and P.C. Joshi, for the Respondent

Judgement

Madon, J.—In each of these three references u/s 34(1) of the Bombay Sales Tax Act, 1953, the following two questions have been referred to us by the Sales Tax Tribunal at the instance of the Commissioner of Sales Tax :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the respondents were entitled to set-off under rule 11(1A) of the Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, when one of the requirements of rule 11(4) of the said Rules relating to furnishing of a statement in form (12) annexed to the return for the relevant assessment period within the prescribed time was admittedly not complied with, in the sense that that statement was not put in form (12) ?

(2) Whether, on the admitted fact, that a statement in form (12) was not furnished as required by rule 11(4) of the Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, the Tribunal was justified in law in holding that there was sufficient compliance with the conditions laid down in the said rule 11(4) because the information required in form (12) was available in the returns ?"

3. The respondents were registered as a dealer under the Bombay Sales Tax Act,

1953. They filed before the Sales Tax Officer their returns by the prescribed time. They carried on business as manufacturers of paper, and for the purposes of this business they used to purchase materials from various dealers some of whom were unregistered, the materials so purchased being required by the respondents either for the purposes of manufacture of paper or for packing of goods so manufactured by them. In respect of such purchases made by them from unregistered dealers the respondents paid purchase tax to the Government. Accordingly, in their returns they claimed a drawback, set-off or refund in respect of the purchase tax so paid by them, contending that they were entitled thereto under the said rule 11(1A). This claim was negatived by the sales tax authorities but was, however, allowed by the Tribunal. The ground on which the sales tax authorities negatived this claim was that while making this claim a dealer was required to furnish certain particulars in a prescribed form, namely form (12), and that the respondents had furnished these details in their returns but not in the separate form as required. The Tribunal held that all the required details had been furnished by the respondents, though not in a separate form, and that the respondents had sufficiently complied with the requirements of the said rule 11(1A).

4. Sales Tax Reference No. 54 of 1976 deals with the assessment period 1st April, 1957, to 31st March, 1958; Sales Tax Reference No. 55 of 1976 deals with the assessment period 1st April, 1958, to 31st March, 1959; and Sales Tax Reference No. 56 of 1976 deals with the assessment period 1st April, 1959, to 31st December, 1959.

5. The contention of the department before us was that the provisions relating to the grant of drawback, set-off or refund were mandatory and any non-compliance with them would disentitle the dealer to such drawback, set-off or refund. u/s 18B of the Bombay Sales Tax Act, 1953, the State Government was conferred the power to make rules providing inter alia that "a drawback, set-off or refund of the whole or part of the tax leviable on any class of sales or purchases u/s 7A, 8, 9, 10 or 10A shall be granted to the purchasing dealer in such circumstances and subject to such conditions as may be specified". In pursuance of this power the Government framed the said Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954. Under rule 11(4) of the said Rules no drawback, set-off or refund is to be granted to a dealer unless he had maintained a register in a particular form setting out the particulars of each purchase and the amount recovered from him by way of tax in chronological order within ten days from the date of each such purchase and had furnished to the Collector a statement in form (12) annexed to his return for the relevant period within the time prescribed for such return and had complied with certain other conditions set out in the said sub-rule.

6. Mr. Sanghavi, the learned counsel for the applicant, has submitted before us that under the said section 18B the Government had the power to frame rules and prescribed conditions subject to which a drawback, set-off or refund can be

granted to a dealer and that the Government had accordingly prescribed those conditions and such conditions had to be strictly complied with. Mr. Sanghavi has further submitted that the provisions of the said rule 11(4) were mandatory and not directory and a failure to comply with them would disentitle a dealer from getting any drawback, set-off or refund. To our mind, these questions do not arise for determination before us. For the purposes of decision of these references we will assume that the said rule 11(4) is mandatory, but even so we fail to see how the respondents are disentitled to get the set-off which they were claiming. It is not disputed that each and every condition and requirement of the said rule 11(4) was fulfilled by the respondents. It is also not disputed and the orders of the sales tax authorities and the judgment of the Tribunal are explicit on the point that each and every particular and detail required to be furnished in the said form (12) had in fact been submitted by the respondents. All that was lacking was that these details and particulars were not set out in form (12) but were furnished in the body of the returns.

7. It appears that for a part of the period this form (12) was a separate printed form to be annexed to the return and submitted by the assesseees, while for the subsequent periods this form was printed on the back of the return. When we turn to the said form given in the said Rules we find that under the said form all that the respondents would be required to fill in would be the total amount of their purchases from unregistered dealers and the tax paid or payable by them thereon. As mentioned earlier, in the body of the returns the respondents have given the required information. It is not clear on the record whether this information was by way of a separate statement containing the required particulars but not containing the headings and sub-headings of various columns which did not apply to the respondents or whether the respondents had typed out the form themselves instead of using the printed form and in such typed statement omitted to type the word and figure "form (12)". A statement or form annexed to a return would become part of the return. We do not know whether any such statement furnished by the respondents was annexed or attached not to the end to the return but somewhere in the middle of it. That the respondents had submitted along with their returns a statement is clear from the very first question submitted to us by the Tribunal. That question itself states that a statement was submitted but it was not in form (12). This also appears from the order of the Deputy Commissioner of Sales Tax in revision whose reason for disallowing set-off to the respondents was that the details and particulars of the set-off were written out in a different ink from the ink in which the details and particulars in the respondents' returns were written. Even assuming that the requirements of the rule are mandatory and not directory and one of such requirements is the filling in of a form, it cannot be said that the slightest departure from that form would amount to non-compliance with that condition. Supposing, as at times happens, that the printed forms were exhausted in the department's office and in order to file their returns within the prescribed period a dealer had typed out those returns himself, can it be contended that the

omission of a comma or a semicolon or of columns which do not apply to the dealer was non-compliance by him with the prescribed conditions ?

8. In support of his submissions Mr. Sanghavi, the learned counsel for the applicant, relied upon certain authorities. The first authority relied upon by him was a decision of this High Court in *Collector of Sales Tax, Bombay State v. Jamnadas Dharumal* [1962] 13 S.T.C. 537. In that case, the dealers made an application for registration on 14th July, 1955, and were registered as dealer with effect from the said date. Thereafter they filed four statements under the said Rules claiming set-off in respect of the general sales tax payable by them on their purchases for the period 1st July, 1954, to 30th June, 1955, that is, in respect of the period during which they were not registered. Thereupon the dealers were assessed to tax for the said period as also a penalty was levied upon them for failure to get themselves registered. The dealers contended that in assessing the tax for the said period they should be allowed the set-off in respect of the tax paid by them on their purchases. Upholding the contention of the department, this High Court held that the dealers were not entitled to the benefit of set-off unless they had complied with the requirements of the said rule 11(4). Relying upon this decision. Mr. Sanghavi submitted that if the requirements of rule 11(4) were not complied with in any particular, the dealer would be disentitled from getting a set-off. We are unable to read this authority in the way in which Mr. Sanghavi has invited us to go. The question before the court in that case was whether an unregistered dealer was entitled to get a set-off when it was found that he was carrying on business as a dealer without getting himself registered, though under a liability to get himself registered, that is to say, that he was carrying on business as a dealer without getting himself registered in violation of the provisions of law. To be a registered dealer is the very fundamental basis for claiming a set-off. That very basis was absent in the case of *Collector of Sales Tax, Bombay State v. Jamnadas Dharumal* [1962] 13 S.T.C. 537. From this decision it does not follow that the most trifling or minor departure or non-compliance from the requirements of the rule would constitute a non-compliance with the provisions of the Rules.

9. The next authority relied upon by Mr. Sanghavi was a decision of the Supreme Court in *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, That was a case under the Bengal Finance (Sales Tax) Act, 1941. Under that Act, sales by one registered dealer to another registered dealer, who purchased the goods for a particular purpose and had furnished to the selling dealer a declaration setting out the purpose for which he had purchased the goods, were exempt from tax. The selling dealer had to furnish these declarations to the Sales Tax Officer to enable him to claim exemption in respect of such sales. The assessees alleged that the file containing the declarations were missing and that they had made various attempts to get duplicate forms of declarations from the dealers but were unable to do so. The assessees applied to the Sales Tax Officer assessing them to issue summonses to the purchasing dealers to produce the necessary documents. The Sales Tax Officer did not issue

such summonses. The only question which was urged before the Supreme Court was whether under the relevant provisions of the said Bengal Act the furnishing of declaration forms issued by the purchasing dealer was as a condition for claiming exemption thereof. Under rule 27A of the Bengal Sales Tax Rules, 1941, a dealer who wished to claim such exemption had on demand to produce the declaration in writing signed by the purchasing dealer. Sub-rule (2) of that rule enjoined upon a dealer not to accept, and on the purchasing dealer not to give, a declaration except in the prescribed form. Various other rules made stringent provisions to prevent the misuse of the said form. The Supreme Court pointed out the object underlying the stringency of these provisions. The Supreme Court observed :

"The object of section 5(2)(a)(ii) of the Act [that is, the Bengal Finance (Sales Tax) Act, 1941] and the Rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration from in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

10. It will be noticed that in the case before the Supreme Court also the production of the declaration form was the fundamental basis for claiming the exemption. This provision was provided to achieve the twofold object of prevention of fraud and facilitating administrative efficiency as pointed out by the Supreme Court. The facts before us are wholly dissimilar. One could have understood had the respondents sought to claim the set-off at a later period by producing a statement in form (12) or in any other form. What they have actually done is to claim the set-off within the prescribed period, and that too after complying with all the conditions which were prescribed. There can, therefore, be no suggestion of any fraud or any after thought on the part of the respondents. Though the order in revision of the Deputy Collector of Sales Tax seems to suggest some such thing, before the Tribunal the departmental representative refused to support the order of the Deputy Commissioner of Sales Tax on this ground, nor has any such suggestion been made before us.

11. The next authority relied upon by Mr. Sanghavi is a decision of this very Bench in *Commissioner of Sales Tax v. Khimji Velji and Co.* (Page 71 *infra*) (Sales Tax Reference No. 55 of 1969 decided on 18th November, 1975). This authority

has no relevance at all to the point which we have to decide. In this case, the assesseees were held in the course of their assessment to be manufacturers and a purchase tax was levied upon them in respect of the purchases made by them. They thereupon claimed that a set-off should be allowed to them in respect of the purchase tax so levied upon them. That contention was negatived by us. Since, according to the assesseees in that case, they were not manufacturers, they obviously had not complied with a single condition or requirement which would entitle them to claim a set-off or refund. Once again, therefore, the very fundamental basis which could entitle the dealer to set-off was absent.

12. The last authority relied upon by Mr. Sanghavi was the judgment of a Division Bench of this High Court consisting of Deshpande and Sawant, JJ., in *Century Spinning and Manufacturing Co. Ltd., Bombay v. State of Maharashtra* (Special Civil Application No. 1317 of 1971 delivered on 21st April, 1976 (Bombay High Court)). In that case, the assesseees made a claim for set-off for the first time when the orders of assessment were passed. No statements were submitted by them along with their returns. No particulars or details of any such set-off were filed or shown in the returns filed by them. What was, however, done was that on 9th October, 1963, when their assessments were being finalised the assesseees produced the statement in form (12). It was contended before the Division Bench that the time-limits of one month from the end of the quarter to which the period related, within which these forms were to be submitted, was in excess of the rule-making power conferred upon the State Government. This was negatived by the Division Bench. The Division Bench pointed out that time element was an important factor inasmuch as it afforded a guarantee of the genuineness and accuracy of the account books and registers to be maintained and prevented the commission of fraud and discouraged false and frivolous claims.

13. To our mind, none of the authorities relied upon on behalf of the department has any relevance to the point which we have to decide. A relevant authority is, however, the one relied upon by Mr. Joshi, the learned counsel for the respondents, namely, *Commissioner of Sales Tax, Maharashtra State, Bombay-10 v. Hindustan Silk Mills, Bombay-2* [1972] 29 S.T.C. 99. In that case too, a contention as hypertechnical as the one raised before us was taken up in order to deprive the assesseees of the relief to which they were entitled under the Bombay Sales Tax Act, 1953. In that case, the assesseees had claimed certain deductions u/s 9(1) and the proviso to section 8(b) of the said Act. The Sales Tax Officer called upon them to produce certain declarations in the prescribed form or the duplicates in support of their claim. However, what the assesseees did was to produce consolidated declarations containing the particulars which were required to be mentioned in the prescribed form. This information was set out not in the printed form but in an exercise book. The department contended that giving the information in an exercise book and not in the prescribed form was non-compliance with the statutory requirements. The Division Bench consisting of Modi, Ag. C.J., and Chandrachud, J., negatived the department's contention.

14. As mentioned earlier, the orders of the sales tax authorities as also of the Tribunal make it abundantly clear that every single detail and particular required to be furnished by the respondents was furnished by them. It also appears that this was furnished in the form of a statement, though that statement was not in the printed form supplied by the Government or printed at the back of the returns. Even then we were prepared to direct the Tribunal u/s 34(4) of the said Act to state an additional case setting out whether the statements submitted and the information furnished by the respondents differed from the prescribed form, namely, form (12), and the information required to be stated therein and if so in what respects. We, however, did not do so because Mr. Sanghavi, the learned counsel for the applicant, stated to us that it would not be possible for the Tribunal to state such an additional case inasmuch as the department had destroyed all the returns for the relevant periods by the respondents. If the department itself has chosen to destroy the relevant evidence, we fail to see why the respondents should suffer thereby.

15. We may also mentioned that the form of an application for reference to be made to the Tribunal, prescribed by the Bombay Sales Tax Tribunal Regulations, 1960, provides that the party applying for reference is to set out in his application the documents or the copies thereof which he requires to be forwarded to this court along with the statement of the case. It is significant that in his application for reference the applicant has not chosen to ask the return for these periods filed by the respondents or copies thereof to be forwarded to this High Court along with the statement of the case.

16. For the reasons set out above, the answer both the questions submitted to us in the affirmative.

17. As these three references have been heard together and are being disposed of by a common judgment, in our opinion, a fair order for costs would be that the applicant would pay to the respondents an aggregate sum of Rs. 300 by way of costs.

18. Reference answered in the affirmative.