
(1981) 02 BOM CK 0009

In the Bombay High Court

Case No : Sales Tax Reference No. 30 of 1978

Cromelite (India) Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 25-02-1981

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 12, 2, 22, 23, 24

Citation : (1981) 48 STC 223

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

Bench : Division Bench

Judgement

Madon, J.—The applicants were at all times registered as a dealer under the Bombay Sales Tax Act, 1959. During the period 1st April, 1965, to 31st March, 1966, the applicants effected three sales in respect of surgical trays made of stainless steel manufactured by the applicants to one Messrs. H. Amritlal and Company. In respect of these three sales the applicants issued three bills dated 22nd November, 1965, 17th December, 1965, and 18th December, 1965, to Messrs. H. Amritlal and Company, the aggregate price being Rs. 2,70,000. Messrs. H. Amritlal and Company were also a registered dealer and they held a licence as also an authorization under the said Act. In respect of the above three sales Messrs. H. Amritlal and Company gave to the applicants certificates in form 14 certifying that they were a registered dealer and held an authorization and that the said goods would be resold within nine months from the date of purchase by them or by an authorized dealer to whom they would sell the goods in the course of inter-State trade or commerce or in the course of export out of the territory of India. By the said certificates they further certified that their authorization was in force on the date when they purchased the said goods. u/s 10(1)(iii) of the said Act the turnover of sales of goods by a registered dealer to an authorized dealer against a certificate in section 12, which is to be in form 14, is to be deducted from the turnover of sales of goods of the selling dealer for the purpose of arriving at his turnover subject to payment of sales tax, and similarly u/s 10(1)(ii) such turnover is to be deducted for the purpose of arriving at the

selling dealer's turnover subject to payment of general sales tax, that is to say, in view of the said certificates given by Messrs. H. Amritlal and Company, the applicants were not liable to pay either sales tax or general sales tax in respect of such sales. The deductions claimed by the applicants in respect of these sales were allowed by the Sales Tax Officer while assessing the applicants for the aforementioned period. Subsequently, however, the Sales Tax Officer, after following the prescribed procedure, reopened the said assessment and disallowed the said sales on the ground that the registration certificates and the licence and authorization of Messrs. H. Amritlal and Company had been subsequently cancelled with retrospective effect from a date anterior to the date of the said sales. The record shows that the order cancelling the registration certificates and the licence and authorization of Messrs. H. Amritlal and Company was passed on 30th September, 1966, with retrospective effect from 10th November, 1965. The Sales Tax Officer, however, also disallowed the deductions which had been granted to the applicants in respect of sales made to Messrs. H. Amritlal and Company prior to 10th November, 1965. The said order of reassessment mentions that these registration certificates, etc., were cancelled because it subsequently transpired that Messrs. H. Amritlal and Company were fictitious persons. Against the order of reassessment the applicants went in appeal to the Assistant Commissioner of Sales Tax. Their appeal was dismissed by the Assistant Commissioner, holding that the sales said to be made to Messrs. H. Amritlal and Company were not genuine because (1) the payments were made in cash, even though they were large amounts, contrary to the normal trade practice, (2) no delivery chalangans for delivery of the said goods by the applicants to Messrs. H. Amritlal and Company were produced, and (3) the documents (that is, the registration certificates and the licence and authorization) of Messrs. H. Amritlal and Company were cancelled on 30th September, 1966, with effect from 10th November, 1965, that is, prior to the date of the sale.

2. Thereafter the applicants went in second appeal to the Maharashtra Sales Tax Tribunal. The second appeal was partly allowed by the Tribunal by permitting deductions in respect of the sales made against certificate in form 14 to Messrs. H. Amritlal and Company prior to 10th November, 1965. With respect to the sales made after the said date, namely, the three sales made in November and December, 1965, and mentioned earlier, the Tribunal held that the certificate of registration having been cancelled with retrospective effect from a date prior to the date of the said sales, Messrs. H. Amritlal and Company could not be said to be a registered dealer. It was also contended before the Tribunal that if these sales were taxable, they were subject to levy of tax at the rate mentioned either in entry 22 of Schedule E to the said Act or entry 43 of Schedule E (sic) to the said Act and not at the rate mentioned in entry 20 of the said Schedule E, as was applied by the Sales Tax Officer. These contentions were negated by the Tribunal.

3. At the instance of the applicants the Tribunal has stated this case and referred the following three questions to this Court :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the deductions in respect of the transactions of sale effected on 22nd November, 1965, 17th December, 1965, and 18th December, 1965, to Messrs. H. Amritlal and Company only on the ground that the registration certificate of the said vendor was cancelled by the order dated 13th September, 1966, with effect from 16th November, 1965 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in not going behind the order of cancellation of the registration certificate of Messrs. H. Amritlal and Company ?

(3) Whether the Tribunal was correct in law in holding that the goods, namely, surgical trays, are covered by the scope of entry 20 of Schedule E to the Bombay Sales Tax Act, 1959 ?"

4. In question No. (1) the date of the order of cancellation of the registration certificate as also the date from which cancellation was made effective have both been wrongly mentioned, and both the learned counsel are agreed that question No. (1) should be corrected and reframed by setting out the correct dates. The said reframed question No. (1) is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in disallowing the deductions in respect of the transactions of sale effected on 22nd November, 1965, 17th December, 1965, and 18th December, 1965, to Messrs. H. Amritlal and Company only on the ground that the registration certificate of the said vendor was cancelled by the order dated 30th September, 1966, with effect from 10th November, 1965 ?"

5. So far as question No. (1) is concerned, the Tribunal has purely proceeded upon the basis that the registration certificate of Messrs. H. Amritlal and Company having been cancelled with retrospective effect from a date anterior to the dates of the sales in question, Messrs. H. Amritlal and Company could not be considered a registered dealer so as to enable them to issue a certificate in form 14. The certificate in form 14 is, however, to be issued by an authorized dealer, which Messrs. H. Amritlal and Company were, but before an authorization is granted to a dealer he has to be a registered dealer. Therefore, the expression "authorized dealer" in clause (5) of section 2 of the said Act would imply a registered dealer, but none the less the Tribunal ought to have seen the date of cancellation of the authorization of Messrs. H. Amritlal and Company. However, there is no dispute that the said authorization was also cancelled by an order passed on the same date, namely, 30th September, 1966, and such cancellation was made effective also from 10th November, 1965. However, in (Sales Tax Reference No. 42 of 1977) Suresh Trading Company v. State of Maharashtra [1981] 48 S.T.C. 207 decided yesterday by this Court, we have held that the cancellation of a registration certificate with retrospective effect from an anterior date cannot and does not prejudice the rights of third parties who have between the date from which the cancellation was made effective and the actual date of

the order of cancellation dealt with such third parties (sic). Mere cancellation of the registration certificate and the authorization of Messrs. H. Amritlal and Company cannot, therefore, deprive the applicants of the deductions to which they had become entitled on the dates of the sales to Messrs. H. Amritlal and Company. In this case, however, an additional factor arises, namely, that the Assistant Commissioner has held that the sales to Messrs. H. Amritlal and Company were not genuine. He has given three reasons for arriving at this conclusion, which reasons we have set out earlier. It is obvious that the third reason given by him, namely, that the registration certificate and the licence and authorization of the applicants (sic) were cancelled with retrospective effect from a date prior to the dates of the sales, can hardly be a ground for holding that the transactions were not genuine, and does not merit any consideration.

6. Before coming to the other two grounds, it may be mentioned that the order of the Sales Tax Officer states that Messrs. H. Amritlal and Company were fictitious persons. It is not easy to understand what is meant by "fictitious". We are unable to make out whether by this the Sales Tax Officer meant that there never existed a concern in the name of Messrs. H. Amritlal and Company or whether there was something else in his mind. u/s 22 a person liable to pay tax under the said Act is bound to apply for registration, and if the prescribed authority is satisfied after such inquiry as it deems fit that the application for registration is in order, it is to register such person and issue to him a certificate of registration in the prescribed form. u/s 24 where, during the previous or current year, the turnover of sales of a registered dealer of goods which are exported by him from the State outside the territory of India, or despatched by him from the State to any place in India outside the State, and which are sold by him to any authorized dealer and exported or despatched by that dealer to any destination outside the territory of India or to any other State in India, exceeds thirty thousand rupees, such dealer may apply for an authorization. u/s 23 where, during the previous or current year, the turnover of sales by a registered dealer to other registered dealers exceeds fifty thousand rupees, such dealer may apply for a licence to the Commissioner of Sales Tax. Both these sections provide : "Subject to the provisions of section 27 the Commissioner shall, if the dealer satisfies such further requirements (including the furnishing of adequate security) as may be prescribed, issue to him" a licence or authorization, as the case may be. u/s 27 the Commissioner of Sales Tax is to refuse to grant a licence or authorization if any one of the numerous circumstances set out in that section exists. Two of these circumstances are : (1) where a dealer has failed to pay any tax due from him, and (2) where he has failed, without any sufficient cause, to furnish any return required to be furnished by him. Rule 12 of the said Rules sets out the further requirements for grant of licence, authorization, etc., which a registered dealer has to satisfy before any licence or authorization or other document of a similar nature could be granted to him. Amongst these requirements are that he should have been a registered dealer for a continuous period of not less than twelve months immediately preceding the date of the

application or that he should deposit with the Commissioner of Sales Tax a sum of Rs. 10,000 in cash, or transfer to him by way of security Government securities of the value of Rs. 10,000, or furnish to the Commissioner the guarantee of a Government-approved bank agreeing to pay to the Commissioner on demand such sum not exceeding Rs. 10,000 as the Commissioner might certify as being due under the said Act from the applicant-dealer in respect of any period ending on the last day of the year following the year in which the licence, etc., is issued to him, or he has to furnish two sureties acceptable to the Commissioner for a sum of Rs. 10,000 each by executing a bond in the prescribed form. In the case of a dealer whose turnover of sales or purchases during the previous or current year did not exceed Rs. 50,000 and who does not hold an authorization or permit when he applied for a recognition, the said sum of Rs. 10,000 is to stand reduced to Rs. 5,000. There are various other requirements also provided in the said rule 12.

7. Thus, before a dealer's application for registration is granted, an enquiry is to be made, and the registering authority is to be satisfied that the application is in order, that is to say, it has to verify the correctness of what is stated in the said application. As the matter which has come before us shows that this is done by deputing a sales tax inspector to visit the premises mentioned in the application as the business address of the applicant-dealer, by calling the applicant-dealer, by examining his books of account, rent receipt or leave and licence agreement as also by calling and examining some person or persons with whom he has had dealings. Further, it should be borne in mind that if a registered dealer has made any default in the payment of any tax or has failed to furnish any returns, which are normally to be furnished quarterly, his application for licence or authorization can be rejected by the Commissioner of Sales Tax, and as rule 12 of the said Rules shows, he has to be a registered dealer at least continuously for twelve months before he can apply for a licence or an authorization. In order to obtain authorization as also licence the turnover of a dealer has to exceed a certain minimum amount mentioned in the relevant sections. Further, such applicant for a licence or an authorization is to give security as mentioned earlier. All this would show that registration certificates, and much less licences and authorizations, cannot be got for the asking or by a non-existent person. Section 114 of the Indian Evidence Act, 1872, provides that "the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case". Illustration (e) to that section is as follows :

"The court may presume that judicial and official acts have been regularly performed."

8. Though the Indian Evidence Act does not in terms apply to proceedings in taxation, the principle embodied in section 114 and in the different illustrations thereto are principles of general application. We must, therefore, start with a

presumption that official acts have been regularly performed, that before granting a registration certificate, licence and authorization to Messrs. H. Amritlal and Company all due inquiries were made and all requisite conditions satisfied, that their turnover had exceeded the prescribed minimum, that no default had been committed by them in paying any tax or in filing any return and that the requisite security was furnished by them. These are all conditions prescribed for granting a licence or an authorization, and it is, therefore, difficult to visualise how either of these two documents can ever be issued to "a fictitious person". It is also difficult to understand what the Assistant Commissioner meant by holding that the sales in question were not genuine. If he meant that in fact no sales had taken place, then the very foundation of levying sales tax on these transactions would disappear and these transactions would not be subject to any tax, because unless and until a sale has taken place in fact, no tax under the said Act would be leviable on it. If, however, what was meant was that these sales were sales to some party other than Messrs. H. Amritlal and Company, who are not registered dealers and did not hold an authorization, and merely certificates in the said form 14 were procured from Messrs. H. Amritlal and Company, then obviously the sales would not be to an authorised dealer, and the applicants would not be entitled to any deduction in respect of these sales. We do not, however, find either in the order of the Sales Tax Officer or of the Assistant Commissioner any finding or even a suggestion to this effect. All that is mentioned is that the payments were made in cash and no delivery chalans were produced, but these observations of the Assistant Commissioner appear to apply to all sales made to Messrs. H. Amritlal and Company, whether before the retrospective date of the operation of the order of cancellation or after that. The Tribunal has allowed deductions in respect of all sales made prior to the operative date of the order of cancellation. There would, therefore, be no logic in disallowing the other sales. It is true that the Tribunal has not considered this aspect of the case, but when it allowed deductions in respect of sales made prior to the operative date of the order, it impliedly negated the Assistant Commissioner's finding with respect to those sales that they were not genuine. The department has not gone in reference against this part of the finding of the Tribunal. The same facts cannot operate to make one transaction genuine and to invalidate another transaction which stands on an identical footing. Apart from this, the Assistant Commissioner has given no positive finding whatever except stating that the sales were not genuine. If by holding that it was not believable that sale price of such a large amount was made in cash and that goods were in fact not delivered because delivery chalans were not produced the sales were not genuine in the sense that they had in fact not taken place, the question of taxing them just did not arise, whatever may be the motive of the applicants in seeking to make them out to be sales and whatever offences, if any, which they might have committed under other Acts. We may mention that in the case of the dealings of Messrs. H. Amritlal and Company with another registered dealer - Messrs. Chandulal and Company, namely, in (Sales Tax Reference No. 34 of 1977) Chandulal and Company v. State of Maharashtra [1981] 48 S.T.C. 205, decided on 3rd February,

1981 - the Tribunal had not given any finding on the facts but had merely proceeded upon the basis that the sales in question were made after the retrospectively operative date of the order of cancellation of the registration certificate of Messrs. H. Amritlal and Company. In that case we had held that the Tribunal ought to have considered the facts whether the transactions in question were in fact transactions of sale to Messrs. H. Amritlal and Company or not or were sales made to a third party and certificates procured from Messrs. H. Amritlal and Company. The facts of that case, however, were very different from the facts before us. In the order of assessment in that case the Sales Tax Officer had, after referring to various facts which according to him showed that there were no genuine sales by the assessee to Messrs. H. Amritlal and Company but the sales were to some other party in respect of which the certificates in question were procured from Messrs. H. Amritlal and Company in order to evade the incidence of general sales tax in respect of the said transactions, disallowed the claim for deductions made by the said Messrs. Chandulal and Company. These facts do not exist in the present case. Neither the Sales Tax Officer nor the Assistant Commissioner have even suggested that the sales in question were sales to third parties, and our judgment in the said Sales Tax Reference No. 34 of 1977 [1981] 48 S.T.C. 205 has no application to the facts of the present case.

9. Turning now to the second question, it was urged by Mr. Joshi, the learned counsel for the applicants, that if an order of cancellation of the registration certificate, licence, authorization, recognition or permit of a dealer is to affect adversely another dealer, such dealer would be entitled to challenge the correctness of the order of cancellation. Mr. Joshi further submitted that the Tribunal was in error in not permitting the applicants to do so. It was also Mr. Joshi's submission that such third party should be entitled to and allowed to take inspection of the relevant registration record of the dealer whose registration certificate or licence, etc., has been cancelled. Mr. Joshi made a grievance that the Tribunal in these circumstances does not permit the assessee's Advocate to look into these files.

10. In view of what we have held in (Sales Tax Reference No. 42 of 1977) Suresh Trading Company v. State of Maharashtra [1981] 48 S.T.C. 207, namely, that an order of cancellation of a registration certificate with retrospective effect does not prejudice third parties, the question of the Tribunal going behind the order of cancellation of a registration certificate does not arise, and a third party who is not affected by such an order would not be entitled to challenge the correctness or legality of the order of cancellation. If, however, the order of cancellation or any other document in the registration or other record of the dealer whose registration certificate or other document has been cancelled or any fact to be found in such records is to be referred to or availed of against an assessee who is sought to be prejudiced by such retrospective cancellation of a registration certificate or document, such assessee and his legal adviser would be entitled to take inspection of the file in question, because it is contrary to the principles of natural justice that documents and facts should be used against a party without

his having a chance to controvert them.

11. In view of what we have held with respect to question No. (1), question No. (3) really does not arise for determination, but since it has been referred to us and since its determination is hardly likely to take any time, we may as well answer it. The surgical trays made of stainless steel manufactured by the applicants have been taxed at the rate specified in entry 20 of Schedule E to the said Act. The description of goods in the said entry 20 as at the relevant time was as follows :

"Stainless steel articles and utensils (but excluding articles used as parts of industrial machinery or plant)."

12. Before the Tribunal it had been canvassed that if the transactions in question were taxable, they would be taxable either at the rate mentioned in entry 43 of the notification issued u/s 41 or under the residuary entry 22 in Schedule E to the said Act. So far as the said entry 43 is concerned, it was contended that these surgical trays fell within items (2), (4), (6) and (8) of the said entry because these surgical trays were steel furniture. No one setting up a house has ever thought of buying surgical trays in order to furnish it, and this contention merely requires to be stated in order to be rejected. In fairness to Mr. Joshi it must, however, be said that before us this point was not pressed. It was the alternative contention which was pressed before us, namely, that these trays fell under the said entry 22. It was submitted that surgical trays were surgical instruments, and as there was no specific entry under which surgical instruments were covered, they would fall under the residuary entry 22 in Schedule E to the said Act. It is difficult to contemplate a surgical tray as being a surgical instrument. In popular parlance as also in trade usage a surgical instrument would mean an instrument used by a surgeon for performing operations, and however skilful a surgeon may be, medical history as yet has not recorded an instance of a surgeon who has performed an operation with a surgical tray. The only other part of the entry which would except surgical trays from falling under the said entry 20 is where the article in question is part of entire machinery or plant. Mercifully, that point has not been contended before us.

13. For the reasons set out above, we answer the questions referred to us, with the corrections mentioned above, as follows :

Question No. (1) : In the negative, that is, in favour of the assessee and against the department.

Question No. (2) : In the affirmative, with this modification that where the Tribunal or any taxing authority seeks to make use of the order of cancellation of a registration certificate or licence, authorization, recognition or permit of one dealer to the prejudice of another, or any document or statement in the registration or other record of such dealer to the prejudice of another dealer, the dealer who is sought to be so prejudiced would be entitled to take inspection of the relevant file and controvert the statement sought to be used against him.

Question No. (3) : In the affirmative, that is, in favour of the department and against the assesseees.

14. There will be no order as to the costs of this reference.

The applicants will be entitled to a refund of the fee of Rs. 100 deposited by them.

15. Reference answered accordingly.