

(1966) 02 CAL CK 0019

In the Calcutta High Court

Case No : Income Tax Reference No. 92 of 1962

Ikrahnandi Coal Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-02-1966

Acts Referred:

Constitution of India, 1950 — Article 286
Income Tax Act, 1961 — Section 16

Citation : (1968) 22 STC 229

Hon'ble Judges : Ray, J;D. Basu, J

Bench : Division Bench

Advocate : Nirmal Mukherjee and P.C. Mukherjee, for the Appellant; S. Mukherjee and B. Gupta, for the Respondent

Judgement

Ray, J.—The question in this reference is as follows:

Whether, on the facts and in the circumstances of the case, the sum of Rs. 41,125 was assessable to tax as the income of the assessee for the assessment year 1958-59?

2. The assessment year was 1958-59 and the relevant previous year was the calendar year 1957.

3. The assessee is a partnership firm. It supplied coal and coke as commission agents to different parties. The assessee purchased coal from collieries in West Bengal, Madhya Pradesh and other collieries outside the State of Bombay and supplied the same to parties in the State of Bombay and received commission either from the party or from the collieries or from both. Coal was usually consigned by the collieries directly to the party concerned but the bills were sent by the colliery to the assessee who in its turn made out a bill charging the party, in addition to the amount of the bill of the colliery, its commission as well as Bombay sales tax at 3 pies per rupee. In the accounts of the assessee the coal supplied by the colliery was shown as purchases and supply was shown as sales.

Collections and payments of sales tax were shown in the separate account styled Bombay sales tax account. Sales tax collected from the buyers was credited by the assessee to the Bombay sales tax account while payment of sales tax to the Sales Tax Authorities of Bombay was debited to the same account and not to the sales account. The collections and payments of sales tax were not also shown in the profit and loss account with the result that in none of the preceding assessments the balance left after adjustment of payments was included in the assessee's total income.

4. In the relevant year of account the assessee received a refund of sales tax amounting to Rs. 41,124-13-9 as a result of an order made by the Bombay Sales Tax Authorities, consequent upon a decision of the Supreme Court on the provisions of Article 286 of the Constitution. The assessee claimed a sum of Rs. 6,982 as legal expenses incurred in connection with the recovery of the amount of refund. The Income Tax Officer disallowed the assessee's claim for expenses. The Appellate Assistant Commissioner held that the amounts collected by the assessee from its customers as Bombay sales tax represented receipts from business in the assessee's hands and should have been included in the total income of the assessee after allowing payment for sales tax and expenses. The Appellate Assistant Commissioner included the sum of Rs. 41,125 refunded to the assessee by the Bombay Government as the income of the assessee from business for the assessment year and allowed deduction of the legal expenses of Rs. 6,982. In the result the assessment was enhanced by the sum of Rs. 34,143.

5. Before the Appellate Tribunal the assessee contended first, that the Appellate Assistant Commissioner was not competent to enhance the assessment ; and secondly, that the sum of Rs. 41,125 was not to be included as the income of the assessee because the refund was not a trading receipt. The assessee's contentions were not accepted by the Tribunal.

6. The only question in the present reference is whether the sum of Rs. 41,125 which was refunded to the assessee by the Bombay Sales Tax Authorities was assessable to tax as the income of the assessee.

7. Counsel for the assessee contended first that the assessee was not a dealer and was therefore not liable to be brought within the provisions of the Sales Tax Act, and the money which came on refund from the Bombay Sales Tax Authorities to the assessee was not to be brought within the ambit of taxation. Reliance was placed on the decision of the Supreme Court in the State of Bombay v. Ratilal Vadilal and Bros. [1962] 2 S.C.R. 367. In that case the contention was that the respondents were commission agents and coal was supplied to parties through respondents and that the respondents were not dealers because they were not carrying on the business of selling coal and that their position was merely that of an agent arranging the sale to a disclosed purchaser, though guaranteeing payment to the colliery on behalf of their principal. In the present case the finding of the Appellate Tribunal is that the assessee purchased coal from collieries and supplied the same to parties. It is

not open to the assessee to contend that the assessee is not a dealer.

8. Counsel on behalf of the assessee put in the forefront the second and main contention that the amount refunded by the Sales Tax Authorities was not a trading receipt. It was said on behalf of the assessee that sales tax was collected by the assessee from the assessee's buyers and the same was under the statute to be paid to the Sales Tax Authorities and when the money representing the sales tax was refunded by the Sales Tax Authorities the identical money became refundable by the assessee to the assessee's buyers. Counsel for the assessee relied on the decision of the Judicial Committee in *Raja Bijoy Singh Dhudhuria v. Commissioner of Income Tax* [1933] 1 ITR 135 (P.C.) in support of the contention that if the sum representing sales tax was not income it would not be amenable to taxation. In other words, it was contended that inasmuch as by operation of the Sales Tax Act the amount of sales tax was payable by the assessee to the Sales Tax Authorities that portion did not come to the assessee as income and was, therefore, not amenable to taxation. In *Bijoy Singh Dhudhuria's* case [1933] 1 ITR 135 (P.C.) by the decree of a court the assessee's step-mother had a charge not only on the son's zemindary property from which his agricultural income was derived but also on all his other sources of income included in the assessment and the assessee's liability to the step-mother was not of the same kind as his liability to provide for his wives and daughters. It was held that the charge on the assessee's whole resources with a specific order for payment to the step-mother diverted his income from him and directed it to his step-mother and to that extent what he received for her was not his income. *Bijoy Singh Dhudhuria's* case [1933] 1 ITR 135 (P.C.) illustrates the distinction between diversion of a sum of money before it comes to the assessee on the one hand and an application by the assessee of part of his income after it comes to the hands of the assessee on the other.

9. *Bijoy Singh Dhudhuria's* case [1933] 1 ITR 135 (P.C.) came up for consideration by the Supreme Court in the case of *Provat Kumar Mitter Vs. Commissioner of Income Tax, West Bengal*, . The assessee, who was a registered holder of 500 shares, assigned to his wife by a deed of settlement the right, title and interest to all dividends and sums of money which might be declared or which may be due and payable in respect of those shares for the term of her natural life and covenanted to deliver and endorse over to her any dividend warrant or other document of title to such dividends or sum of money and to instruct the company to pay such dividends and sums of money to her. The dividend declared on the shares was included in the income of the assessee u/s 16 of the Income Tax Act. The assessee contended that since the settlement was for the lifetime of the wife the dividend could not be deemed to be his income. The Supreme Court held that the deed of assignment was in its true nature, only a contract by the assessee to transfer or make over to his wife in future all dividends that may be declared in respect of the shares and the income continued to accrue to the assessee and was assessable in the hands of the assessee as his income even though it was ultimately payable to his wife. The

Supreme Court said that it was a case of an application of income after it had accrued and not a case of diversion of any sum of money before it had become the income of the assessee. Counsel for the revenue in the present case rightly contended that the payment of sales tax by the assessee would arise after the assessee had entered into a contract of sale and the assessee would then apply the proceeds of sale towards payment of sales tax under the relevant statute. In *Provat Kumar Mitter Vs. Commissioner of Income Tax, West Bengal*, the Supreme Court said that the decision of the Judicial Committee in *Bijoy Singh Dhudhuria's* case [1933] 1 ITR 135 (P.C.) would not apply because it was not a case of allocation of a sum out of revenue before it would become income in the hands of the assessee. The distinction to be noticed is whether the sum before it could come in the hands of the assessee was already diverted and could not and did not come to the hands of the assessee. Counsel for the assessee relied on the decision in *Dames v. Shell Co. of China Ltd.* (1951) 32 Tax Cas. 133 and relied on the observation appearing at page 157 of the report where the Court of Appeal dealt with an argument on behalf of the assessee that the deposits made by the agents were not trade receipts, but were anterior to the stage of trade receipts. *Jenkins, L. J.*, said that it was an abuse of language to describe one of these agents, after he had made a deposit, as a trade creditor of the company but he was a creditor of the company in respect of the deposit, not on account of any goods supplied or services rendered by him in the course of its trade, but simply by virtue of the fact that he had been appointed an agent of the company with a view to his trading on its behalf, and as a condition of his appointment had deposited with or in other words lent to the company the amount of his stipulated deposit. In *Shell Co. of China* case (1951) 32 Tax Cas. 133 the company made a practice of requiring its agents to deposit with the company a sum of money, usually in Chinese dollar which was repayable when the agency came to an end. Previously the company had left on deposit with banks in Shanghai amounts approximately equal to the agency deposits but because of the hostilities between China and Japan the company transferred these sums to the United Kingdom and deposited the sterling equivalents with its parent company which acted as its bankers. Owing to the subsequent depreciation of the Chinese dollar with respect to sterling the amount eventually required to repay agency deposits in Chinese currency was much less than the sums held by the company to meet the claims, and substantial profit accrued to the company. The company contended that the deposits received from its agents had been used as fixed capital and not as circulating capital and that the profit on exchange was a capital profit not subject to Income Tax. The Crown on the other hand contended that the deposits were circulating capital and that the exchange profit was made in the course of the company's business. The Commissioners found that the exchange profit was a capital profit not subject to income tax. Counsel for the assessee in the present case extracted the phrase "trade creditor" from the judgment of *Jenkins, L. J.*, and contended that the purchasers of the assessee in the present case were not trade creditors in respect of the sum refunded by the Sales Tax Authorities.

10. The provisions of the Bombay Sales Tax Act indicate in Sections 5 and 6 as to what the incidence of tax and levy of the tax are. Sections 8 and 9 relate to levy of sales tax and levy of general sales tax. Section 21 of the Bombay Sales Tax Act was brought in aid by counsel for the assessee in support of the contention that sales tax was payable by the purchaser and, therefore, the money belonged to the purchaser. The provisions of Section 21 of the Bombay Sales Tax Act indicate first that no person shall collect any amount by way of sales tax or general sales tax in respect of sales of any goods which are declared from time to time u/s 7 as sales on which such taxes are not payable ; secondly, it is provided that no person selling any goods shall collect from the purchaser any amount by way of sales tax unless such person is a registered dealer and is liable to pay tax in respect of such sale. In Sub-section (4) of Section 21 it is stated that if any person collects any amount by way of tax in contravention of the provisions of Sub-section (1) or (2) to which reference has been made or if any registered dealer collects any amount by way of sales tax in excess of the amount payable by him, the amount so collected shall, without prejudice to any prosecution that may be instituted against such person or dealer for any offence under this Act, be forfeited to the State Government and such person or dealer as the case may be shall within the prescribed period pay such amount into a Government treasury and in default of such payment the amount shall be recovered as an arrear of land revenue. Relying on these provisions counsel for the assessee contended, first, that the sales tax payable by purchasers was on refund in the nature of a deposit in the hands of the assessee ; and secondly, that in view of the refund of the sales tax by the Government the amount was not leviable as sales tax and, therefore, it was collected by the assessee in contravention of law and therefore it did not form part of the assessee's income.

11. The true character of the transaction will indicate as to whether it was an incident of trade. In other words, the transaction will have to be scrutinised in order to find out whether it has all the concepts attaching to a trading transaction. In the present case, the assessee purchased coal from colliery and then sold to other parties. There is a consideration for such a transaction between the assessee on the one hand and assessee's buyers on the other. It is this aspect of the transaction which will indicate as to whether the consideration is a trading receipt or not. In the Bench decision in *Ram Kumar Moskara Vs. Gopi Krishna Kanodia* , Harries, C.J., referred to the definition of sale price in the Bengal Finance (Sales Tax) Act, 1941. The comparable provision with regard to sale price is to be found in Section 2, Sub-section (14), of the Bombay Sales Tax Act. In the Bombay Act sale price means the amount of valuable consideration payable to a dealer for the sale of any goods less any sum allowed as cash discount according to a trade practice but including any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof other than the cost of freight or delivery or the cost of installation when such cost is separately charged. Harries, C.J., said :

As I have said, the sellers nowadays make out a bill showing what they describe

as the price of the article and the amount of sales tax and the buyer has to pay the total amount. If the dealers were authorised to collect the sales tax from the purchasers, then the sale price would clearly be the amount paid less the sales tax,; but the total amount paid by the buyer in the present case must be the sale price. It is the consideration payable in respect of the article sold. The total amount paid cannot be split up. As I have said the purchaser is not liable to pay sales tax and the sum cannot be levied upon him by the dealer.

12. The true content of sale price is thus the total consideration received. The mere fact that sales tax is shown as sales tax does not denude the contract of its character of trade contract whereby one party sells and the other party buys merchandise in respect of which business and trade was carried on. It has to be noticed that the seller does not levy tax on the purchaser or collect a tax from the purchaser. What the seller does is to increase the price of the articles so as to ensure that he as a dealer will not be a loser by having to pay sales tax levied upon him in determination of the gross turnover.

13. This aspect of sale price was considered by the Supreme Court in *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, . S.R. Das, C. J., in dealing with the contention that the sales tax was a direct tax on the dealer instead of an indirect tax to be passed to the consumer, said :

From the point of view of the economist and as an economic theory, sales tax may be an indirect tax on the consumers, but legally it need not be so. Under the 1947 Act the primary liability to pay the sales tax, so far as the State is concerned, is on the seller. Indeed before the amendment of the 1947 Act by the amending Act, the sellers had no authority to collect the sales tax as such from the purchaser. The seller could undoubtedly have put up the price so as to include the sales tax, which he would have to pay but he could not realise any sales tax as such from the purchaser. That circumstance could not prevent the sales tax imposed on the seller to be any the less sales tax on the sale of goods. The circumstance that the 1947 Act, after the amendment, permitted the seller who was a registered dealer to collect the sales tax as a tax from the purchaser does not do away with the primary liability of the seller to pay the sales tax. This is further made clear by the fact that the registered dealer need not, if he so pleases or chooses, collect the tax from the purchaser and sometimes by reason of competition with other registered dealers he may find it profitable to sell his goods and retain his old customers even at the sacrifice of the sales tax. This also makes it clear that the sales tax need not be passed on to the purchasers and this fact does not alter the real nature of the tax which, by the express provisions of the law, is cast upon the seller. The buyer is under no liability to pay sales tax in addition to the agreed sale price unless the contract specifically provides otherwise.

14. These observations indicate first that the amount of sales tax even though shown separately in the transaction as sales tax is a part of the consideration which the seller charges for transfer of the property and as a part of the

consideration. Secondly, the fact that the statute provides that the seller may collect sales tax does not rob the transaction of its trading character. Thirdly, the seller may or may not charge sales tax from the buyer but that would not alter the real character of the transaction of sale and purchase. In the present case all the elements of purchase and sale make the assessee the seller in relation to his buyers and there was consideration or transfer of the property and the inclusion of sales tax in the bargain as a separate item does not change the character of the transaction nor is there any provision in the Bombay Sales Tax Act that the seller may collect sales tax from the purchaser.

15. In the recent decision in *Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla*, the Supreme Court dealt with the case of an assessee carrying on business as distiller of country liquor who sold the produce of the distillery to licensed wholesalers and, because of the difficulty of finding bottles, devised a scheme whereby the distiller was entitled to charge the wholesalers for bottles in which the liquor was supplied at rates fixed by the Government which he was bound to repay to the wholesaler on the latter returning the bottles and the moneys were described as security deposit and were returned as and when the bottles were returned. The question arose as to whether the assessee could be assessed to tax on the balance of the amount lying after refund had been made out. The Supreme Court held that the assessee in realising the amount described as security deposit was really charging extra price for bottles and the additional amount was actually part of the consideration and was a part of the price of what was sold and it did not make any difference as to whether the additional amount was entered in a separate loan ledger. In the present case a contention was advanced by counsel for the assessee that the Bombay sales tax all throughout represented a different ledger entry. The entry by itself is not indicative or decisive of the real character of the transaction. The Supreme Court further held in the *Punjab Distilling Industries Ltd.* case¹ that the wholesalers were under no obligation to return the bottles. The additional sum taxed was not security deposit and the additional amount taxed was an integral part of the commercial transaction of the sale of liquor and bottle. It is manifest from the decision of the Supreme Court that the integral part of the transaction would be determined by finding out as to what was the consideration for which or in charge of which the assessee transferred the goods. The Supreme Court said that trading transactions themselves would have to be ascertained in order to find out as to whether an assessee would not sell the goods unless the amount was paid and the fact that the amount so paid had to be repaid would not alter the nature of trading receipt. In the *Punjab Distilling Industries Ltd. Vs. The Commissioner of Income Tax, Simla*, though the amount was refundable in the event of certain conditions being fulfilled, yet the Supreme Court came to a conclusion that the trading character of the transaction was established by an answer to the question as to whether goods would be parted with without payment of money.

16. Counsel for the assessee relied on the decision in *Morley v. Tattersall* (1938)

22 Tax Cas. 51. That was a case where a certain amount of money by way of remittance sent by the buyers accumulated in the hands of the assessee and unclaimed balances after a certain length of time were appropriated by the assessee to the credit of the assessee's partners. The contention of the revenue was that it became an income. That contention was negated by holding that if the character of the money at the beginning was that it was not income, its subsequent diversion or operation would not merit the character of income. Sir Wilfrid Greene, M.R., said:

Mr. Hills' argument was to the effect that although they were not trading receipts at the moment of receipt, they had at that moment the potentiality of becoming trading receipts. That proposition involves a view of income tax law in which I can discover no merit except that of novelty.

17. Sri Wilfrid Greene, M. R., further said that the quality and nature of a receipt for Income Tax purposes was fixed once and for all when it was received. In Tattersall's case (1938) 22 Tax Cas. 51, there was no contention that the amount when received was towards prices of the horses sold but that they became income upon being transferred to the credit of the partners of the firm. In the present case the contention of the revenue is that the amount which came to the hands of the assessee was at once a trading receipt. It is not the contention of the revenue in the present case that after the money came to the hands of the assessee there was any subsequent change in the character of the quality or character of the money to turn it into income.

18. Counsel for the assessee relied on a recent decision of the Supreme Court in the case of R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad, in support of the proposition that the sales tax in the present case represented a sum of money which the company was, under an implied contract between it and its buyers, to return or refund. In R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad, Section 11(2) of the Hyderabad General Sales Tax Act, which laid down that any amount collected by way of tax was to be paid over to the Government and in default of such payment the amounts would be recoverable from such person as if they were arrears of land revenue, was not justified as incidental or ancillary provision permitted under entry No. 54 of List II. It was found not to fall under entry No. 26 of List II. In the present case there is no aspect of vires of the legislation being impeached but counsel for the assessee invoked the decision of the Supreme Court in aid of his contention that if the assessee collected any amount from his purchasers it was a matter between him and the purchasers and the purchasers would be entitled to recover the amount and until the amount was collected as tax the State could not make it recoverable. It is not necessary to deal with the case as to whether the State can recover this amount or not. As far as the buyers vis-a-vis the seller, namely, the assessee, are concerned in the present case the answer is simple. If the assessee's case be that the amounts are refundable or will be refunded the assessee will be entitled to claim that as an amount refunded by the assessee to

its buyers and will be entitled to claim that in the revenue account of the business. The potentiality of the money being refunded or the potentiality of the money being claimed by a buyer from the assessee could not destroy or alter the sale price in the present case or the real transaction between the parties that it was a case of sale and purchase of merchandise in the course of trade.

19. Counsel for the assessee relied on the decision of the Gujarat High Court in *Ambica Mills Ltd., Ahmedabad Vs. Commissioner of Income Tax Gujarat, Ahmedabad*, in support of the contention that the amount would be amenable to taxation within the provision of Section 10(2A) of the Finance Act, 1955. The only contention advanced on the authority of the decision of the Gujarat High Court was that the money in the present case was not the assessee's money or the assessee's income. I have dealt with that contention of the assessee and already indicated that it became a part of the assessee's trade operation and trade income.

20. Counsel for the revenue relied on the recent decision of the Supreme Court in *Commissioner of Income Tax, Punjab Jammu and Kashmir, Himachal Pradesh And Patiala Vs. Punjab Distilling Industries Ltd.*, in support of the contention that though the assessee suggested that the amount was in the nature of sales tax and was a refund by the Bombay Sales Tax Authorities the character of the amount did not change and it could not be contended that the statute, namely, the Bombay Sales Tax Act created any right in the purchasers to the return of the money. In the Supreme Court case *Punjab Distilling Industries Ltd.* collected from its wholesalers certain security deposits for empty bottles and these deposits were to be refunded in full when 90 per cent. of the bottles were returned. The Punjab Excise Rules made it compulsory for the wholesaler to return at least 90 per cent. of the bottles issued to him by the distiller and also recognised that the distiller might demand security at certain rates up to 10 per cent. of the bottles issued by the distiller and confiscate the security to the extent falling short of the 90 per cent. limit. A question arose in that case as to whether the collections by way of "empty bottles return security deposit" were income assessable. It was held that the amounts collected by the assessee by way of "empty bottles return security deposit" both before and after the amendment of the Punjab Excise Rules were trade receipts and the Rules did not create right in the distiller to the return of the bottles. It was also suggested by the distiller to take a deposit, but the deposit had to be taken under a contract. In the present case it would appear that the amount which came to the assessee from the assessee's purchasers formed part of the consideration for the transfer of the goods and was, therefore, money in the hands of the assessee under a trading contract and, therefore, a fortiori constituted a trading receipt of the assessee. The Supreme Court observed that the Punjab Excise Rules were to be read as intending only to lay down that if the wholesaler could not return the bottles, his deposit was liable to be confiscated. The Excise Rules by virtue of themselves would not compel a deposit to be made nor would allow a depositor to claim any part of the deposit money. In the present case the statute does not

confer any right on the purchaser to demand any portion of the money from the seller nor does the statute have the effect of compelling a purchaser to pay. As the Supreme Court said in Tata's case [1958] 9 S.C.R. 1355 the present case also is a transaction between the buyer on the one hand and the seller on the other and as soon as property had passed and consideration has been furnished, a trade receipt was established.

21. For these reasons I am of opinion that the decision of the Tribunal is correct and the answer to the question is in the affirmative. The revenue is entitled to costs of this reference.

D. Basu, J.

22. Concurring in the answer proposed by my Lord, I would add a few words rather by way of summary of the elaborate discussion already made by my Lord.

23. The main issue raised by the learned counsel on behalf of the assessee is that the amount received by the assessee by way of refund of the sales tax paid by him is not a trading receipt but a liability in his hands. If that were so, the question should have been answered in the affirmative straightaway because we can ill afford to forget that Income Tax is a tax on "income". The way in which it has been contended on behalf of the assessee that the amount received by way of refund is a liability is this. It is said that the purchasers from whom the assessee realized or collected the sales tax are entitled to recover it proportionately from the assessee from the amount received by him by way of refund. The question, however, should be approached not from the end but from the beginning. The foundation stone of the argument on behalf of the assessee is the Court of Appeal decision in *Morley v. Tattersall* [1938] 2 All E.R. 296. But the ratio decidendi of that case, as has been explained by the Supreme Court, is whether the money which has been received by the assessee was another person's money. If it is so, certainly it is a liability which he got even at the inception. Now, in the instant case, if the purchasers were liable under the statute to pay the tax and the assessee was simply a collector, as has been argued, when the money was refunded the purchasers would obviously have been entitled to recover back their money. But this contention is not available after the explanation of the system of sales tax legislation by the Supreme Court in the *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, . It was, however, argued on behalf of the assessee that that was a decision under the Bihar Sales Tax Act, 1947. We must, therefore, turn to the provisions of the Bombay Sales Tax Act, 1953, to find out if there was anything contrary to what was dealt with by the Supreme Court. So far as the charging section is concerned, Section 5 of the Bombay Sales Tax Act makes it clear that the charge is upon the dealer and he is liable to pay the tax under this Act on his turnover of sales. Learned counsel on behalf of the assessee, however, pointed out the provisions of Section 21 of the Bombay Sales Tax Act to show that the dealer was entitled to collect or recover the money from the purchasers. On a proper reading of Section 21, however, I am unable to come to that conclusion. It is not an enabling provision

empowering the dealer to collect the tax from the purchasers, nor does it create any liability upon a purchaser by statute. What it seeks to do is to prohibit the dealer to make any collection or recover from his customers which he would otherwise have done by his own trade practice or terms of his dealings in certain cases specified in the section. For instance, Sub-section (1) of Section 21 prohibits any such collection in the case of dealing in goods which were exempted from sales tax. Then Sub-section (2) prohibits non-registered dealers to recover any amount from their purchasers in the name of sales tax. From the statute itself thus it cannot be deciphered that the purchasers were liable to pay the tax which was imposed by the Legislature and that the dealer only acted as a collector on behalf of the State. The liability was that of the dealer and if he had realized any amount from his purchasers, that was because the purchasers had no other option in the prevailing conditions of the market than to pay the additional amount as part of the price charged by the dealer and this has been explained by the Supreme Court clearly in the *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, , already referred to by me. If the original character of the realization of sales tax from the purchasers were a trade transaction and not the function of a mere collector, the foundation of the argument on behalf of the assessee goes. Let us, nevertheless, turn to the second limb of the argument, namely, the stage after the refund has been obtained by the dealer as a result of a change in Government policy. It should be noted that this refund has taken place not by virtue of a statute where it might have been provided that the amount refunded to the dealer would have to be proportionately distributed back to the purchasers. The refund has ensued as a result of the order of the Bombay Government which is referred to in the order of the Appellate Assistant Commissioner, at page 16 of the paper book. So, when the refund has been received by the assessee, there is no condition imposed upon the refund that the money must be paid back to the purchasers. It may be that the purchasers may resort to some litigation to try their luck to have a share of the money which was refunded by the State and it is in that sense that the Supreme Court observed in *R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad*, that the question of any recovery by the purchasers was one as between the dealer and the purchaser. That question was not decided by the Supreme Court in that case nor are we deciding that question in the present case. What suffices for the purpose of this reference is that there is no statutory right of the purchaser to recover any portion of the money which has been received by the dealer by way of refund. The question referred to must, therefore, be answered in the affirmative and I concur in the answer proposed by my Lord.