
(1975) 11 BOM CK 0004

In the Bombay High Court

Case No : Sales Tax Reference No. 1 of 1971

Impex (India) Limited

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-11-1975

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2(11), 2(21), 22, 22(6), 3

Citation : (1976) 37 STC 249

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

Bench : Division Bench

Advocate : V.H. Patil and K.B. Vora, for the Appellant; C.A. Phadkar, for the Respondent

Judgement

Madon, J.—The question which has been submitted to us in this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the assesseees, is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in treating the purchase of the machinery in question as from unregistered dealer and rejecting the contention of the applicants that they were entitled to deduct, out of their total turnover of sales, the sale price of the machine known as Blown Fold Drier resold by the applicants to M/s. Raymond Woollen Mills Ltd. for Rs. 1,99,324 on the ground that the sale of the said machine is a resale of goods purchased from a registered dealer under the provisions of section 8(ii) of the Bombay Sales Tax Act, 1959 ?"

2. The facts which have given rise to this reference are that the applicants purchased a machine, namely, a Blown Fold Drier (complete with electric motor), from the New Kaiser-I-Hind Spinning and Weaving Company Limited on 29th November, 1961, and they sold the said machine to the Raymond Woollen Mills Limited on 17th February, 1962. The New Kaiser-I-Hind Spinning and Weaving Company Limited, the assesseees, and the Raymond Woollen Mills Limited were all of them at all material times registered as dealers under the said Act. The sale of

the said machine by the said New Kaiser-I-Hind Spinning and Weaving Company Limited to the assesseees was, however, not made in the course of their business as a dealer, for they did not carry on business in these machines but it was a casual sale made by them. In their return for the quarter ending 31st March, 1962, the assesseees included the sale price of the said machine and paid general sales tax, but claimed to deduct under clause (ii) of section 8 of the said Act the amount received by them as purchase price in respect of the sale of this machine to the Raymond Woollen Mills Limited on the ground that they had resold the said machine after purchasing it from a registered dealer. The Sales Tax Officer accepted the said claim for deduction, and the assesseees were assessed accordingly. Subsequently, the Sales Tax Officer reopened the said assessment and reassessed the assesseees by disallowing the said claim for deduction. Against this order of reassessment the assesseees went in appeal to the Assistant Commissioner, which appeal was dismissed. They preferred a further appeal to the Tribunal, which appeal also failed. The ground upon which the Sales Tax Officer in his order of reassessment disallowed the claim for deduction was that the New Kaiser-I-Hind Spinning and Weaving Company Limited was not a dealer in machines and, therefore, the purchase of the said machine by the assesseees could not be considered as a purchase made by them from a registered dealer.

3. The short question which falls for our determination, therefore, is whether a deduction under clause (ii) of section 8 of the said Act can only be claimed where the goods, which have been resold by a registered dealer to another registered dealer, have been purchased by him from a registered dealer who deals in this class of goods or whether such deduction is permissible even though the sale of goods to the registered dealer claiming deduction is a casual sale. In other words, the question is whether once a dealer is registered, his registration certificate operates in respect of all goods sold by him or only in respect of those goods in which he carries on business as a dealer.

4. A dealer is defined by clause (11) of section 2 of the said Act as meaning "any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods" u/s 3 of the said Act every dealer whose turnover exceeds a certain prescribed limit in any particular year becomes liable to pay tax on his turnover of sales and purchases. Under Chapter II of the said Act the taxes which are levied are not levied in respect of every sale or purchase made by any person but only in respect of sales or purchases made by dealers. Section 22 of the said Act provides for registration of dealers. Under the said section every dealer liable to pay tax is to obtain a valid certificate of registration as provided by the said Act. Under sub-section (2) of section 22 of the said Act such a dealer has to make an application for the said purpose in the prescribed manner to the prescribed authority. Under sub-section (3) if the prescribed authority is satisfied that his application is in order, it has to register the dealer and issue to him a certificate of registration in the prescribed form. Under clause (21) of section 2 of the said Act "prescribed" means prescribed by rules. The relevant part of sub-section (6) of section 22 of the said Act provides as follows :

"Where -

(a) any business, in respect of which a certificate of registration has been issued under this section, has been discontinued, or has been transferred or otherwise disposed of, or

(b)

and the dealer applies in the prescribed manner for cancellation of his registration, the prescribed authority shall cancel the registration with effect from such date as it may fix in accordance with the rules."

5. The scheme of the said Act, therefore, is that what is to be taxed are sales and purchases made by a dealer in the course of his business of buying or selling goods, and not sales or purchases of any goods by a dealer even though he may not be carrying on business in that particular class of goods. A dealer is, therefore, registered in respect of a particular business of buying or selling goods, and not generally. This is made amply clear by sub-section (6) of section 22 of the said Act which talks of "any business, in respect of which a certificate of registration has been issued under this section". When we turn to the prescribed form of the application for registration, which is form 1 to the Bombay Sales Tax Rules, 1959, and to the prescribed form of a certificate of registration, which is form 2 to the said Rules, the conclusion which we have reached is further fortified. Form 1, which, as aforesaid, is the form in which an application for registration is to be made, contains several clauses which are to be filled in by a dealer desirous of applying for registration. Clauses 8 and 9 of the said form are as follows :

"8. The nature of the business is wholly/mainly/partly manufacturing, exporting, wholesale distribution, retail distribution or commission agency.

[Strike out whichever is not applicable] I deal 9. ----- in the following classes of [Strike out whichever is not applicable] The said [State here firm, company, local authority, corporation, society, club, association of individuals, Hindu undivided family, trust or Government."]deals goods (general description) :- Thus, the form of the application for registration requires that a dealer must state not only the nature of his business but the generic description of the goods in which he deals, that is, in which he buys or sells in the course of his business. The form of the certificate of registration, namely, form 2 to the said Rules, sets out the type of business or business which the dealer is carrying on. The scheme of the Act and the Rules and the forms appended thereto leave no doubt that unless the goods which have been resold were purchased from a registered dealer who was dealing in that very class of goods, there could be no claim for deduction under clause (ii) of section 8 of the said Act. Where a registered dealer who has made the first sale was not dealing in this class of goods, the goods sold could not be said to be sold by a registered dealer, and such a sale must stand on the same footing as a sale by an unregistered dealer.

6. For the above reasons, we answer the question referred to us in the affirmative.

7. The applicants will pay to the respondents the costs of the reference fixed at Rs. 250.

8. Reference answered in the affirmative.