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**(1977) 02 BOM CK 0006**

**In the Bombay High Court**

**Case No :** Sales Tax Reference No's. 2 and 3 of 1976

M. Framrose and Company

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision :** 25-02-1977

**Acts Referred:**

Bombay Sales Tax Act, 1959 — Section 2, 2(36), 61(1)  
Central Sales Tax Act, 1956 — Section 8A

**Citation :** (1977) 40 STC 36

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

**Bench :** Division Bench

**Advocate :** B.C. Joshi and P.C. Joshi, for the Appellant; T.R. Andhyarujina and M.M. Dadhich, Jamsedji Rustomji and for Devidas and Jani and Merchant, for the Respondent

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## Judgement

Madon, J.—In both these references u/s 61(1) of the Bombay Sales Tax Act, 1959, the same question of law has been referred to us, namely :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in concluding that the return of goods values at Rs. 86,715 by the applicants to George Salter India Limited amounted to sales in the course of inter-State trade ?"

2. During the relevant period the applicants were registered as a dealer both under the Central Sales Tax Act, 1956, and the Bombay Sales Tax Act, 1959, and were acting as distributors for George Salter India Limited of Titagarh in West Bengal, a company which manufactured spring balances. During the year 1964-65, the said George Salter India Limited supplied to the applicants certain spring balances. The applicants in their turn sold these machines to their own customers. Some of these customers found the machines sold to them to be defective, and these defective machines were returned by the applicants to the manufacturers, the said George Salter India Limited. These machines were returned between 21st September, 1966, and 30th December, 1966. The

accounting period of the applicants was the calendar year, and at the end of this accounting period for 1966, the applicants made a journal entry debiting the said George Salter India Limited with the value of the machines so returned and crediting it to the purchase account. The description given in the said journal entry was "being the value of unsolvable machines returned to supplier".

3. In the applicants' assessment for the assessment year 1st January, 1966, to 31st December, 1966, the Sales Tax Officer considered the return of the said defective machines to be sales made by the applicants to the said George Salter India Limited, and since the said manufacturers were in West Bengal he treated them as sales made in the course of inter-State trade and commerce. He, therefore, added a sum of Rs. 86,715 to the turnover of sales of the applicants and then deducted the said sum of Rs. 86,715 from the total turnover so arrived at as being sales not liable to tax u/s 75 of the Bombay Sales Tax Act, 1959, that is, as being inter-State sales. In the assessment of the applicants under the Central Sales Tax Act, 1956, in respect of the said period the Sales Tax Officer added to the taxable turnover of the applicants the said sum of Rs. 86,715 as being sales made in the course of inter-State trade and commerce. The applicants filed appeals against these two orders of assessment to the Assistant Commissioner of Sales Tax, who dismissed both there appeals. Against the orders of the Assistant Commissioner of Sales Tax the applicants filed second appeals to the Tribunal, which also rejected both these appeals. It is from these orders of the Tribunal that the present two references are made, Sales Tax Reference No. 2 of 1976, being in respect of the assessment under the Bombay Sales Tax Act, 1959, and Sales Tax Reference No. 3 of 1976, being in respect of the assessment under the Central Sales Tax Act, 1956.

4. The revenue authorities have treated the return of the said goods as sales made by the applicants to the said George Salter India Limited on the ground that the said goods were returned by the applicants after the expiry of the period of one year provided for by rule 4 of the Bombay Sales Tax Rules, 1959, read with clause (36) of section 2 of the Bombay Sales Tax Act, 1959. The said clause (36) of section 2 defined "turnover of sales" as meaning "the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period". There is a corresponding definition of "turnover of purchases" given in clause (35) of the said section 2. Under the said rule 4, as in force at the relevant time, the period for return of goods for the purposes of clauses (35) and (36) of the said section 2 was prescribed as twelve months from the date of their purchase, and discretion was conferred upon the Commissioner of Sales Tax to extend this period for a further period not exceeding three months in case he was satisfied that the purchaser could not return the goods within the said period of twelve months on account of circumstances beyond his control. The Tribunal also dismissed the applicants' said second appeals on the same ground. In doing so,

it followed its previous judgment in Revision Application No. 324 of 1966 - Rhythm House Private Limited v. State of Maharashtra - decided on 13th December, 1966.

5. We find that the reliance placed by the revenue authorities and the Tribunal on the said rule 4 and the said clause (36) of section 2 was entirely misplaced for two reasons. The first is that the question for decision was whether these were inter-State sales. That question had to be decided by reference to the definition of "sale" given in the Central Sales Tax Act, 1956, and not by reference to the Bombay Sales Tax Act, 1959. It may, however, be mentioned that at the relevant time under rule 11(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the sale price of all goods returned to the dealer by the purchaser of such goods within a period of six months from the date of delivery of the goods was, inter alia, to be deducted in determining the taxable turnover of a dealer for the purposes of the said Central Act. By the Amending Act 28 of 1969, section 8A was inserted in the Central Act with retrospective effect under which, inter alia, the sale price of all goods returned to the dealer by the purchasers of such goods within a period of three months from the date of delivery of the goods, in the case of goods returned before 14th May, 1966, and within a period of six months from the date of delivery of the goods, in the case of goods returned on or after 14th May, 1966, is required to be deducted from the turnover of a dealer for the purposes of arriving at his taxable turnover. The second reason, and this is more important, is that the revenue authorities as also the Tribunal in considering this return of goods as sales effected by the applicants to the said George Salter India Limited overlooked the fact that assuming any of the above statutory provisions applied, they applied to the sales made by the original seller, that is, they applied when a person had sold goods to a purchaser and such purchaser had returned the goods to the seller, that is, in case these statutory provisions applied, they would apply in the assessment and in calculating the turnover of sales of George Salter India Limited and not in the case of the purchasers from them, namely, the applicants. It is true that clause (35) of section 2 of the Bombay Act provides for purchase price of goods returned to a seller within the prescribed period to be deducted in calculating the turnover of purchases of a dealer, but, as pointed out earlier, that is only for the purposes of the Bombay Act and, in any event, it has not been contended nor have the revenue authorities or the Tribunal proceeded upon the basis that these amounts should be added to the turnover of purchases of the applicants. The case of Rhythm House Private Limited, upon which reliance was placed by the Tribunal was equally wrongly decided by the Tribunal upon a wrong application of the said rule 4, because in that case also what was done was to add the sale price of the goods returned by the purchaser to his seller to the turnover of sales of the purchasers, namely, the said Rhythm House Private Limited.

6. In fairness it must be said that Mr. Andhyarujina, the learned counsel for the respondents has, realising the correct position, not attempted to support the reliance placed by the revenue authorities and the Tribunal upon these statutory

provisions. What Mr. Andhyarujina, however, urged was that in view of the provisions of the Sale of Goods Act, 1930, the property in the goods had passed to the applicants, and when the applicants returned the said goods to the said George Salter India Limited there was a resale by them to the said manufacturers. In support of this submission, Mr. Andhyarujina relied upon sections 41 and 42 of the Sale of Goods Act. Under sub-section (1) of section 41, where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. Sub-section (2) of that section provides that unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. Section 42 of the Sale of Goods Act deals with the question of acceptance. It provides as follows :

"42. Acceptance. - The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."

7. Mr. Andhyarujina has submitted that the applicants retaining the goods after the lapse of more than one year must lead to the conclusion that they had retained the goods after the lapse of a reasonable time without intimating to the seller that they had rejected them, and they should, therefore, be deemed to have accepted the goods. Mr. Andhyarujina further submitted that there were no materials on the record to show how and in what circumstances the goods came to be returned. He further urged that the relevant correspondence, if any, between the applicants and the said George Salter India Limited has not been produced nor had any contract between these parties produced before any of the authorities or the Tribunal. It is true that that record could have been more complete and certain documents which can be said to be relevant could have been produced. It, however, appears to us that the applicants cannot be blamed for this state of affairs. At no stage was it ever disputed that the goods were returned by the applicants to the said George Salter India Limited because the applicants' customers had found them defective and had returned them. The only ground upon which this return of goods was not taken as a return but as a sale was by reason of the provisions of the said rule 4 of the Bombay Sales Tax Rules, 1959. Further, from the judgment of the Tribunal it appears that an application was made to the Tribunal to remand the case to the Assistant Commissioner of Sales Tax for reinvestigation of facts. The Tribunal rejected that application. As this order shows, it rejected that application on the ground that the accepted position was that the goods were returned more than one year after the date of their purchase. In spite of incompleteness of the record we find that there are enough materials before us to enable us to give a definite answer to

the question referred to us.

8. During the relevant period the applicants were acting as distributors of spring balances manufactured by the said George Salter India Limited. As the assessment orders show, the goods in question were purchased by the applicants against form C to the Central Sales Tax (Registration and Turnover) Rules, 1957, that is, they were purchased by them for the purposes of resale. The applicants in their turn sold these goods to their own customers. From the record we find that whenever goods were sold to customers, a guarantee from the said George Salter India Limited was given to them which, inter alia, contained an undertaking by the said manufacturers to replace or repair free of charge any part of the machine which within one year from the date of purchase could be shown to have failed through defective material or faulty workmanship, provided a claim was made to the nearest service station or dealer of the said George Salter India Limited within the period of the said guarantee and such goods were returned were returned to the said manufacturers at their factory freight paid. The Tribunal has, however, erroneously construed this guarantee as a guarantee given by the said George Salter India Limited to the applicants. The very wording of the guarantee negatives any such conclusion. It is a guarantee given not to a distributor or a stockist or a middleman but to the ultimate purchaser of the goods in question.

9. It is also obvious that when goods were supplied from Titaghar in West Bengal to the applicants in Bombay they would come packed. It is not possible to imagine that the applicants, who would be selling these goods to ultimate purchasers or to other retailers, would open out the packing of each and every parcel in order to examine the goods. From the nature of things such a course of conduct is impossible. It is for this reason that this guarantee was given by the manufacturers to the ultimate purchaser either to repair or replace the defective machine or parts within a period of one year from the date of purchase by the ultimate purchaser. Sub-section (1) of section 41 of the Sale of Goods Act, 1930, clearly applied to the case, because, in the facts and circumstances of this case, it could not be said that the buyers, namely, the applicants, had a reasonable opportunity of examining these goods for the purpose of ascertaining whether they were in conformity with the contract. What is a reasonable time is in each case a question of fact and has to be judged on the facts and in the circumstances of each particular case. In the present case, a reasonable time within the meaning of that expression as used in section 42 of the Sale of Goods Act can only be taken to be a period of one year from the date of sale by the applicants to the applicants' own customers. In any event, this was a matter between the applicants and the said George Salter India Limited. The purchaser, namely, the applicants, had rejected the said goods and returned them to the sellers, the sellers had accepted them as being returned rejected, and we fail to see how the taxing authorities can contend that the rejection was not proper. In this connection, we must point out that, in his order, the Assistant Commissioner of Sales Tax has categorically stated : "It is further to be remembered that the

goods are returned under the original contract of sale ....." Thus, the Assistant Commissioner of Sales Tax has accepted the position that the return of goods was in accordance with the terms of the contract between the applicants and the said George Salter India Limited. He, however, none the less went on to treat this return of goods as sales because they were not returned within the period of one year mentioned in rule 4 of the Bombay Sales Tax Rules, 1959.

10. For the reasons set out above, we answer the question submitted to us in both these references in the negative.

11. As the arguments in both these references were common, we direct the respondents to pay to the applicants the costs of both these references fixed in all at Rs. 300.

12. The fee of Rs. 100 paid by the applicants in each of these references will be refunded to them.

13. Reference answered in the negative.