(1997) 09 BOM CK 0034

In the Bombay High Court

Case No : Sales Tax Ref. No. 4 of 1997 & Sales Tax Reference No. 4 of 1997

Maharashtra State Electricity Board APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:
Electricity (Supply) Act, 1948 — Section 5

Citation : (1998) 4 BomCR 423 : (1998) 1 MhLj 47

Hon'ble Judges : Pratibha Upasani, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.S. Gaitonde, for the Appellant; S.A. Kirtikar, instructed by Government Pleader, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, the Maharashtra Sales Tax Tribunal has referred the following questions of law to this Court for opinion at the instance of the assessee :

"1. Whether, on the facts and circumstances of the case, the Tribunal was justified in law in confirming the levy of tax on the sales of tender forms, amounting to Rs. 3,81,054 ?

2. Whether, on the facts and circumstances of the case, the Tribunal erred in holding that the sales of tender forms are not covered by the scope of entry 4, Schedule ''A'' appended to the Bombay Sales Tax Act, 1959 and that they are taxable ?

3. Whether, on the facts and circumstances of the case, the Tribunal was justified in confirming the levy of tax on the sales of Board''s publication, amounting to Rs. 4,639 ?

4. Whether, on the facts an circumstances of the case, the Tribunal was justified in confirming the levy of tax on the sales of waste papers, amounting to Rs. 1,417 ?"

2. So far as question Nos. 3 and 4 are concerned, it is clear that the controversy therein is concluded by the decision of the Supreme Court in State of Gujarat v. Raipur Manufacturing Co. Ltd. [1967] 19 STC 1 and the decision of this Court in Morariji Brothers (Import & Export) Pvt. Ltd. v. State of Maharashtra [1995] 99 STC 117 and following the same, both question Nos. 3 and 4 are answered in the negative and in favour of the assessee.

3. So far as question No. 1 is concerned, the controversy therein is whether the Tribunal was justified in law in confirming the levy of tax on the sales of tender forms amounting to Rs. 3,81,054. The material facts, giving rise to the controversy, are as follows :

The assessee, Maharashtra State Electricity Board, is a body constituted u/s 5 of the Electricity (Supply) Act, 1948. It is engaged in the business of generation and distribution of electricity. During the financial year 1978-79, to which this reference pertains, the assessee received a sum of Rs. 3,81,054 from sales of tender forms to the various parties who intended to submit tenders with the assessee. The Sales Tax Officer levied sales tax on the above amount treating the same as sales taxable under the Act. The order of the Sales Tax Officer was confirmed by the Assistant Commissioner of Sales Tax and the Maharashtra Sales Tax Tribunal. Hence reference of question No. 1 to this Court by the Tribunal at the instance of the assessee.

4. We have heard the counsel for the parties on the controversy about the taxability of the amount received on supply of tender forms by the assessee to sales tax. The admitted factual position is that the tender forms were supplied by the assessee to the persons who desired to submit tenders with the assessee for certain contracts. It was necessary to do so because tenders were required to be submitted in the prescribed form. The assessee charged certain amount termed as "price" for supply of the tender form. The question is whether the supply of tender forms to parties who desired to submit tenders with the assessee for certain contract can be regarded as sales in course of business to justify levy of sales tax under the Bombay Sales Tax Act. In our opinion, supply of tender forms to persons who wanted to submit tenders with the assessee-Board cannot be regarded as sales which can be subjected to tax under the Act because neither the assessee carried on the business of buying or selling tender forms nor the sales of tender form was connected with or incidental or ancillary to the business of the assessee which admittedly was "generation and distribution of electricity". That being so, the amount received by the assessee from supply of tender forms cannot be included in the turnover of the assessee.

5. We are supported for our above conclusion by the decision of the Madhya Pradesh High Court in Madhya Pradesh Electricity Board v. Commissioner of Sales Tax [1968] 21 STC 202 where dealing with identical controversy, it was held :

"The answer to the next question of the taxability of sales of specification and tender forms by the assessee-Board is plain enough. The specification and tender forms are given by the assessee-Board at a certain price to the persons who desire to give tenders for certain contracts. If tenders have to be given in certain prescribed forms and according to certain prescribed specifications, then it cannot be held that by supplying specification and tender forms at a price to the persons concerned the assessee-Board carries on the business of selling specification and tender forms. The point is plain enough and does not require elaboration."

It appears that the revenue took this judgment of the Madhya Pradesh High Court to the Supreme Court but when the matter came up before the Supreme Court, the Revenue did not press the matter relating to imposition of sales tax on supply of specification and tender forms. The Supreme Court observed (Commissioner of the Sales Tax v. Madhya Pradesh Electricity Board [1970] 25 STC 188 :

"Mr. Shroff, who has argued the appeals of the Commissioner of Sales Tax, has not quite properly and rightly pressed the matter relating to imposition of sales tax on supply of specification and tender form."

6. In view of the above, we answer question No. 1 in the negative and in favour of the assessee.

7. In view of the answer to question No. 1 being in favour of the assessee, question No. 2 is academic and the same need not be answered. It is accordingly returned unanswered.

8. This reference is disposed of accordingly no order as to cost.

9. Reference disposed of accordingly.

