(1957) 01 BOM CK 0002

In the Bombay High Court

Case No : Civil References No''s. 20 and 30 of 1956

M.N. Gobhai and Co. — APPELLANT

Vs

The State of Bombay — RESPONDENT

Date of Decision : 16-01-1957

Acts Referred:
Bombay Sales Tax Act, 1946 — Section 5, 6(3)

Citation : (1957) 8 STC 575

Hon'ble Judges : Shah, J;B.N. Gokhale, J

Bench : Division Bench

Advocate : S.P. Mehta and R.V. Patel, for the Appellant; H.D. Banaji, D.P. Madan and instructed by . Little and Co., for the Respondent

Judgement

Shah, J.—Messrs. M. N. Gobhai & Co., whom I will hereafter refer to as the assessees, are a firm carrying on business in cloth at Bombay and at Madras. The principal place of business of the assessees is in Bombay and they have a branch office at Madras. The assessees are registered dealers under the Bombay Sales Tax Act (V of 1946) and holding registration certificate No. BC 2296, in C Ward, Bombay. The assessees purchased cloth of the value of Rs. 30,712-12-6 on the strength of a certificate registering them as dealers in the State of Bombay after executing the requisite undertaking. As the assessees were registered as dealer they were not liable to pay sales tax on the goods purchased by them for resale in the State. Contrary to the undertaking given by them the assessees despatched the goods to their Madras office. The Sales Tax Officer in making assessment for the period between 1st April, 1949, and 31st March, 1951, included the amount of Rs. 30,712-12-6 being the price paid by the assessees for the purchase of the goods by them and transferred to Madras in the taxable turnover for the assessment period and levied a tax of Rs. 959-12-6.

2. Against the order levying the tax the assessees preferred an appeal to the Assistant Collector of Sales Tax, Bombay. The Assistant Collector confirmed the order of the Sales Tax Officer.

3. A revision application against that order was filed to the Collector of Sales Tax and that was also dismissed.

4. Thereafter an application in revision was preferred to the Sales Tax Tribunal. The Sales Tax Tribunal agreed with the view of the Collector and the Assistant Collector and confirmed the order passed by the Sales Tax Officer.

5. The assessees then applied that a question arising out of their judgment be referred to this Court u/s 34(1) of the Bombay Sales Tax Act, 1953, and section 23(1) of the Bombay Sales Tax Act, 1946, and the Sales Tax Tribunal has referred to this Court the following question :-

"Whether the Legislature rightly exercised its authority to tax purchases by enacting the proviso (b) to clause (ii) under the rule I of sub-section (3) of section 6 of the Bombay Sales Tax Act, 1946, in the form in which it was enacted and not by amending the charging section, and if not, whether the proviso in question was valid in law ?"

6. It appears that before the Sales Tax Tribunal the principal question which was canvassed was about the vires of section 6(3) , rule I(ii), proviso (b), but Mr. S. P. Mehta, who appears on behalf of the assessee, has not contended that that provision is ultra vires of the State Legislature. But an argument different from the one which was advanced before the Sales Tax Tribunal has been urged before us. It is contended in the first instance that the price paid for purchase of goods cannot be regarded as "turnover" within the definition of the Act, and secondly it is contended that by seeking to levy tax on what was essentially purchase price, in assessment for levying sales tax on sales of commodities, the incidence of sales tax is sought to be altered.

7. In our view there is no substance in either contention. The period of assessment with which we are concerned is 1st April, 1949, to 31st March, 1951. The relevant provisions of the Bombay Sales Tax Act, 1946, as amended and in operation at the relevant time were as follows :- The expression "turnover" was defined by section 2(j) as meaning "the aggregate of the amounts of sale prices received and receivable by a dealer in respect of sale or supply of goods effected or made during a given period after deducting the amounts, if any, refunded by the dealer to a purchaser in respect of any goods purchased and returned by the purchaser within the prescribed period." Section 5 , sub-section (1), which was the charging section, rendered every dealer whose gross turnover during the year immediately preceding the commencement of the Act, in respect of sales or supplies of goods, exceeded certain amounts as liable to pay tax on his turnover in respect of sales or supplies of goods. A dealer to whom sub-section (1) of section 5 did not apply was liable to pay tax with effect from the 1st April of the year during which his turnover in respect of sales or supplies of goods exceeded the limits specified in that sub-section. This provision was made subject to sections 6 and 7. By section 6 the levy and the rates of sales tax were prescribed. By the first sub-section it was provided that a dealer shall pay a

general tax at the rate prescribed and also a special tax at the rate prescribed. The general tax was levied on the taxable turnover in respect of sales or supplies of goods other than the excepted goods. Similarly the special tax was to be levied on the taxable turnover in respect of sales or supplies of goods other than the excepted goods. Similarly the special tax was to be levied on the taxable turnover in respect of sales or supplies of goods specified in Schedule I. Sub-section (3) prescribed the method of computation of "taxable turnover" for the purpose of clause (a) or (b) of sub-section (1), and it was provided inter alia that the taxable turnover shall be determined in accordance with certain rules, the first rule being that from the gross turnover of the dealer in respect of all his sales or supplies of goods, including goods specified in Schedule I, during any period of his liability to pay the tax, there shall first be deducted his turnover during that period in respect of sales or supplies of certain goods described in (i) and (ii). The rule was followed by a proviso which provided for the inclusion of price of the goods purchased in the taxable turnover of the purchasing dealer, where any goods to which the clause applied were utilized by the purchasing dealer for purposes other than those specified in the certificate of registration or where such goods had been used or removed or despatched by the dealer to such place outside the Province of Bombay as notified by the Provincial Government without any sale or supply in respect thereof being effected by the dealer in the Province of Bombay. It is unnecessary for the purpose of this case to set out rules II and III in sub-section (3) of section 6 prescribing the method of computation. It is conceded before us that they have no bearing on the facts of the present case.

8. The definition of the expression "taxable turnover" is an artificial definition invented by the Legislature for the purpose of ascertaining the amount on which the general and the special tax were to be paid. The Legislature provided that the basis for ascertaining the taxable turnover should in the first instance be the gross turnover and certain amounts should be deducted therefrom and certain other amounts should be added. Admittedly the goods of the value of Rs. 30,712-12-6 in respect of which the impugned tax has been levied by the Sales Tax Authorities falls within proviso (b) to rule I(ii) in sub-section (3) of section 6. The goods have been despatched by the assessees to a place outside the Province of Bombay and by the operation of that proviso the price of the goods purchased by the assessees is liable to be included in the taxable turnover of the assessees. It is true that the expression "turnover" is defined by the Legislature as meaning the aggregate of the amounts of sale prices received and receivable by a dealer, and it may at first blush be difficult to regard price paid for purchasing goods as part of the turnover of an assessee. But the Legislature has not sought to levy a tax on turnover; it has sought to levy a tax on the taxable turnover and the method of computation of that taxable turnover is prescribed in sub-section (3) of section 6, and in the "taxable turnover" is liable to be included a certain amount equivalent to the price paid by the assessee for purchase of goods which have been despatched outside the State of Bombay. We are unable

also to agree with the contention that by seeking to levy sales tax on a part of the amount which is substantially price paid for purchasing the goods the Legislature has attempted to alter the incidence of taxation. For obvious reasons when the goods have been, contrary to an undertaking given by the assessee, despatched outside the Province of Bombay, it would be difficult for the taxing authorities to ascertain the price at which they are sold and levy sales tax thereon, and would raise complicated questions as to the competence of the authority to tax goods when sold outside the limits of the Province of Bombay. The Legislature therefore has provided that when goods are despatched outside the limits of the State they may be regarded as supplied and the price at which they are purchased should be regarded as the price for which they are sold or supplied. By enacting that definition the incidence of taxation is not sought to be altered from tax levied on sale to tax levied on purchase. It only prescribes a method of ascertaining the sales tax on goods which have been purchased for sale within the limits of the State and then have been despatched for sale, outside the State.

9. Mr. S. P. Mehta on behalf of the assessees placed strong reliance on the judgment of a Division Bench of this Court delivered on 13th September, 1955, Sha Velji Kanji v. V. R. Pandurangi (Special Civil Application No. 1077 of 1955). Mr. Mehta invites our attention to the observations made by the learned Chief Justice in delivering the judgment of the Court to the following effect :-

"As the Act stands, and as the definition of ''turnover'' stands, it is impossible to contended that a turnover can possibly include a purchase price, because the attempt of rule 6, as we have already pointed out, is to include in the turnover of the petitioner not the sale price of any article but the purchase price of these goods in question. But is it competent to the Legislature to treat something as being part of a turnover which in fact it is not ? It may be proper that in a case like this the purchase price paid by the petitioner shall be deemed to be a sale price for the purpose of being included in the turnover. But the Legislature has not so provided. Rule 6 really in substance alters the incidence of the taxation in question. The scheme of the Sales Tax Act is that the incidence of tax must fall upon a seller and not upon the purchaser, and the question is whether by a rule framed under the Act it is open to the rule-making authority to alter the incidence, to make the purchaser liable to pay the tax instead of the seller, and to make something a part of the turnover which the Legislature itself has not provided."

10. In our judgment, these observations are not only not in favour of the contentions advanced by Mr. Mehta but they appear to destroy the contentions raised. It may be noted that in that case the Court was concerned to deal with the validity of Rule 6(1)(i)(b) of the Bombay Sales Tax Rules framed under the Bombay Sales Tax Act, 1953. Under the Act, section 11 provided for the computation of taxable turnover by prescribing that from the turnover certain amounts shall be deducted. In section 11 there was no clause similar to section

6(3) , rule I, proviso (b). But by a rule framed under that Act under the authority reserved in section 49 of that Act it was provided :-

"For the purpose of clauses (i) and (ii) of sub-rule (1)(i) the goods shall be consigned by the purchasing dealer from a place within the State of Bombay to a place outside the State through a railway, shipping or aircraft company, or country boat registered for carrying cargo, or public motor transport service, or by registered post"

and under rule 6(b) it was provided that when the provisions of sub-rule (2) are not satisfied or the purchasing dealer fails to produce a certificate in the form specified in clause (iv) of sub-rule (2), the purchase price of the goods payable by the purchasing dealer shall be included in the taxable turnover of that dealer. Relying upon this rule the taxing authorities in that case sought to include the price of certain goods paid by the assessee as part of his taxable turnover. That was sought to be justified before this Court on the plea that purchase price paid by the assessee was part of the turnover; and it was in the context of that argument that the learned Chief Justice made the observation that it was impossible to contend that a turnover can possibly include a purchase price. In substance what was sought to be done by the rule-making authority in that case was to extend the definition of the word ''turnover'' as inclusive of purchase price paid by the assessee for purchasing certain goods which were despatched by him outside the limits of the State and it was held that the rule-making authority was incompetent to do so. But the vital distinction between the statute applicable to that case and the statute applicable to this case is that whereas it was by a rule-making authority an attempt was made to extend the definition of the word ''turnover'' as defined in the Act, in this case the Legislature has by legislative process defined the the expression ''taxable turnover'' as inclusive of an amount equal to the purchase price paid for purchasing goods. As the learned Chief Justice pointed out, and, with respect, rightly, "is it competent to the Legislature to treat something as being part of a turnover which in fact it is not", and that is precisely what the Legislature has done in this case. We are therefore of the view that the judgment in Special Civil Application No. 1077 of 1955 does not assist the assessees.

11. We have set out earlier the form of the question which has been referred to us, but we think that on the arguments presented before us that is not the question which we are called upon to answer. As I already observed, the vires of proviso (b) to rule I(ii) under sub-section (3) of section 6 was never challenged. What was challenged was the competence of the Sales Tax Authorities to levy the tax relying upon that proviso. We, therefore, reframe the question as follows :-

"Whether the levy of sales tax under proviso (b) to rule I(ii) under sub-section (3) of section 6 of the Bombay Sales Tax Act, 1946 (V of 1946), on Rs. 30,712-12-6 paid by the assessees for the purchase of goods despatched to Madras is valid in law ?"

12. We answer the question in the affirmative. The assessees will pay the costs of this reference to the State.

Civil Reference No. 30 of 1956.

13. This reference is companion to reference No. 20 of 1956 and raises the identical question which was sought to be raised in that reference. No additional arguments have been advanced before us and for reasons mentioned by me in the judgment in the other reference we answer the question referred to us in the affirmative. The assessees will pay the costs of the State of this hearing before me.

14. Reference answered accordingly.

