

(1991) 06 GUJ CK 0037
In the Gujarat High Court
Case No : Sales Tax Reference No. 3 of 1982

M.N. Khambhatwala

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-06-1991

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 13(B), 15, 16(1), 21, 21(1)

Citation : (1991) 06 GUJ CK 0037

Hon'ble Judges : S.D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Advocate : R.D. Pathak, for S.L. Modi, for the Appellant; J.M. Thakore, Advocate-General and H.V. Chhatrapati and Co., for the Respondent

Judgement

A.P. Ravani, J.—This is a reference at the instance of the dealer registered under the appropriate provisions of the Gujarat Sales Tax Act, 1969. The dealer is a partnership firm. It carries on its business of manufacture and selling of hair-oil, agarbatti, masala for hair-oil in the form of padi (small packets). Since it is a manufacturer, it also holds recognition certificate u/s 32 of the Act, which enables it to purchase raw and processing materials and consumable stores on the declaration being made in form 19 without payment of tax so that it can use the goods so purchased in the manufacture of taxable goods. The declaration in form 19 is to be effect that the goods purchased will be used as raw/processing materials or consumable stores in the manufacture of taxable goods for sale and that such sale shall not take place outside the State of Gujarat.

2. During samvat year 2029, the dealer purchased wooden boxes or cartons for Rs. 23,166 from unregistered dealers and used the same in packing of its various finished products. Such goods were dispatched for sale in the course of inter-State trade or commerce. It was contended before the Sales Tax Officer that the wooden boxes so purchased were resold for a price, over and above the sales of the manufactured goods packed therein. Such sales were in the course of inter-State trade and commerce. Therefore it was contended that since the goods

were resold it was not liable to pay purchase tax u/s 15 of the Act. The Sales Tax Officer rejected the contention on the ground that no express or implied sales of wooden boxes were proved.

3. It may be noted that the dealer had also purchased "grasskhola" for Rs. 9,346 from unregistered dealers by making declaration in form 19 without payment of tax. Such "grasskhola" were also used to pack the finished products, in order to protect them from loss or damage during the transfer. The dealer tried to justify the purchase of grasskhola as consumable stores used in the manufacture of taxable goods. The dealer had contended that since grasskhola were resold it was not liable to pay the purchase tax u/s 15 of the Act. The Sales Tax Officer rejected this plea also on the ground that grasskhola was not consumable stores. The Sales Tax Officer held that there was breach of declaration made in form 19 and therefore the dealer was liable to pay purchase tax u/s 16(1) of the Act. The Sales Tax Officer also imposed a penalty of Rs. 131 u/s 45(1)(a) of the Act. On other count, a further penalty of Rs. 7,153 was imposed by the Sales Tax Officer u/s 45(5) of the Act.

4. The dealer preferred appeal before the Assistant Commissioner of Sales Tax. The appeal was dismissed in its entirety. The matter was carried in second appeal before the Tribunal. The Tribunal upheld the contention of the dealer as regards the purchase of grasskhola for Rs. 9,346. The Tribunal held that grasskhola were used to pack the glass bottles containing manufactured hair-oil for the purpose of sale. Grasskholas were used in order to facilitate the safe carriage and transport of hair-oil bottles to different places for sale. Therefore the Tribunal held that "grasskholas" were consumable stores used in the manufacture of taxable goods. Hence there was no breach of declaration made in form 19, inasmuch as "grasskholas" can be said to have been used in the manufacture of taxable goods for sale as provided u/s 13(1)(B) of the Act.

5. Before the Tribunal it was contended that the wooden boxes or cartons for Rs. 23,166 were resold in the course of inter-State trade and therefore there was no breach of declaration made in form 19. The Tribunal, however, did not accept this plea. The Tribunal held that the wooden boxes were also consumable stores. But, wooden boxes were "prohibited goods" as provided u/s 21 of the Act. Therefore the dealer was not relieved of its obligation to pay the purchase tax. Thus the Tribunal held that there was no resale of wooden box. The Tribunal partly allowed the second appeal. As regards the wooden boxes the Tribunal held that there was no resale of the wooden boxes which were purchased from unregistered dealers for Rs. 23,166 and that the dealer was liable to pay the purchase tax thereon u/s 15 of the Act. Thus in so far as the purchase of wooden boxes was concerned, the order passed by the Assistant Commissioner of Sales Tax in appeal was confirmed. The Tribunal delivered its judgment on July 4, 1980.

6. The dealer submitted application for making reference to this Court, and requested to refer the following questions :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that as the wooden boxes were used for the packing of manufactured goods, there could not be resale of such wooden boxes even though there was an express or implied agreement for the sale thereof ?"

However the Tribunal held that the question suggested by the dealer did not cover the finding given by the Tribunal and that it was required to be modified. Hence it modified the question. The Tribunal referred the following question to this Court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the wooden boxes once used as consumable stores in the manufacture of taxable goods for sale within the meaning of section 13(1)(B) of the Gujarat Sales Tax Act, 1969, cannot at the same time be paradoxically permitted to retain their original, independent or separate character in law, which would be apart from the manufactured goods, so as to make them legally capable of resale ?"

7. Learned Advocate-General appearing for the Revenue fairly conceded that the question referred to the High Court was required to be decided by taking into consideration the provisions of section 15 of the Act and the conditions laid down in rule 42 of the Sales Tax Rules, 1970. u/s 15 of the Act if a dealer purchases any goods specified in Schedule II or III of the Act from a person who is not a registered dealer, the turnover of such purchases is exigible to tax, "unless the goods so purchased are resold by the dealer". Moreover, such resale should be in conformity with the provisions of rule 42. He further submitted that the provisions of section 13(1)(B) which provides for deduction from turnover of sales in certain circumstances are not applicable and therefore not relevant for deciding the question. Learned Advocate-General conceded that the question is required to be answered by having regard to the facts and circumstances of the case and that the answer that may be given by the court would be operative only as regards the facts and circumstances of this case. In short it was conceded that as a general proposition it could not be laid down that the goods which might have been used as consumable stores in the manufacture of taxable goods, can never be subject-matter of resale in all cases.

8. While making the aforesaid concession, the learned Advocate-General referred to a decision of the Supreme Court in the case of *Raj Sheel v. State of Andhra Pradesh* reported in [1989] 74 STC 379. In the case of *Raj Steel* [1989] 74 STC 379 (SC) the constitutional validity of the provisions of section 6-C of the Andhra Pradesh General Sales Tax Act, 1957, which provides for rate of tax on packing material came up for consideration. This provision is in pari materia with the provisions of section 21(1) of the Act. While upholding the constitutional validity of the said provision, the Supreme Court, inter alia, observed as follows :

"It is commonly accepted that a transaction of sale may consist of a sale of the product and a separate sale of the container housing the product with respective

sale considerations for the product and the container separately; or it may consist of a sale of the product and a sale of the container but both sales being conceived of as integrated components of a single sale transaction; or, what may yet be a third case, it may consist of a sale of the product with the transfer of the container without any sale consideration therefor. The question in every case will be a question of fact as to what are the nature and ingredients of the sale. It is not right in law to pick on one ingredient only to the exclusion of the others and deduce from it the character of the transaction. For example, the circumstance that the price of the product and the price of the container are shown separately may be evidence that two separate transactions are envisaged, but that circumstance alone cannot be conclusive of the true character of the transaction."

After the aforesaid observations, the Supreme Court held that in every case the assessing authority is obliged to ascertain the true nature and character of the transaction upon a consideration of all the facts and circumstances pertaining to the transaction. The Supreme Court further observed that the problem almost always requires factual investigation into the nature and ingredients of the transaction. In this connection the Supreme Court referred to the case law on the point and observed that the issue as to whether packing material has been sold or merely transferred without consideration depends on the contract between the parties. Whether the transaction for sale of packing material is independent transaction will depend upon several factors. The Supreme Court then indicated some of the factors relevant for determining the question.

9. In view of the aforesaid settled legal position the question referred to by the Tribunal to this Court is required to be reframed so as to restrict the scope thereof to the facts and circumstances of this case only. Learned Advocate-General rightly stated that it was not necessary to decide, in the facts of the case, as to whether in all cases, consumable stores used in the manufacture of taxable goods can be permitted to retain their original independent or separate character in law and can be held to be capable of being resold or not. Learned Advocate-General fairly submitted that if and when such a question arises, the same will be argued on the basis of the facts and circumstances of the case and on the basis of the provisions of law at appropriate time. For the aforesaid reasons we reframe the question and indicate our answer to the question so reframed against the question :

Question Answer Whether, on the facts and in the In the affirmative circumstances of the case, the Tribunal in favour of the was right in law in holding that wooden Revenue and against boxes once used as consumable goods in the assessee. the manufacture of taxable goods for sale within the meaning of section 13(1)(B) of the Gujarat Sales Tax Act, 1959, could not be resold as provided under section 15 of the Act ?

10. It may be noted that as held by the Supreme Court in the case of Raj Steel and Others Vs. State of A.P. and Another, the question as to what are the ingredients of a particular transaction of sale is essentially a question of fact.

Therefore in the instant case also whether the wooden boxes were resold separately as independent identifiable articles apart from the taxable goods, i.e., hair-oil bottles or they were used as consumable stores in the manufacture of taxable goods is essentially a question of fact. The Tribunal held that "grasskholas" which were used in the packing of hair-oil bottles and other taxable goods were consumable stores. On the same reasoning the Tribunal held that wooden boxes were consumable stores. While arriving at this conclusion the Tribunal relied upon the concession made by the learned counsel for the dealer. In para 34 of the judgment the Tribunal has recorded the concession made by the learned counsel for the dealer in the following words :

"The appellant's learned advocate had unequivocally admitted or conceded before us that after purchases the wooden boxes in question from unregistered dealers, his client had used them in order to pack therein finished or manufactured goods like bottles of hair-oil and packets or card board boxes containing agarbatti, etc., in order to facilitate their transport to outstations for sale and to protect the finished or manufactured goods as packed in the disputed wooden boxes, against loss or damage in transit undertaken for the purpose of marketing the same for sale."

The Tribunal relied upon the aforesaid admission.

11. On the basis of the admission and in view of the evidence on record the Tribunal held that the principles laid down by this High Court in the case of Vasuki Carborundum Works v. State of Gujarat reported in [1979] 43 STC 294 were applicable. In that case, the assessee was manufacturing crockery and carborundum and was selling the same as registered dealer. The assessee purchased "kathi" (twine) against declaration in form 19, to the effect that the goods were to be used in the manufacture of taxable goods for sale. "Kathi" was used for packing the manufactured goods which were sold thereafter. The question arose as to whether "kathi" can be said to be packing material or could it be classified as consumable stores ? This High Court held that theoretically, particular process may not be necessary for production of finished goods. But if that process is an integral part of the ultimate manufacture of that goods, and that in its absence the manufacture of the goods may not be commercially expedient, that activity or process must be considered as manufacturing activity itself. This Court further held that the goods intended for use in that process or activity should be considered to be goods required for manufacture of taxable goods for sale. On this basis in the facts of that case, "kathi" was held to be consumable store used in the manufacture of taxable goods.

12. The Tribunal also followed the reasoning which it had adopted with regard to the purchase of "grasskhola". It may be noted that section 15 of the Act, inter alia, provides that if the goods so purchased are resold by the dealer, the dealer may be entitled to claim set-off or refund of the tax paid by him. Hence in order to claim benefits of section 15 of the Act it is required to be shown by the dealer that the goods so purchased were resold by him. Having regard to the overall

facts and circumstances of the case the Tribunal came to the conclusion that there was no resale of the goods in question. We don't find any infirmity in this conclusion arrived at by the Tribunal.

13. It is true that the Tribunal has, while arriving at the aforesaid finding, made certain broad observations in the course of its judgment. On the basis of these observations one may get the impression that the goods which are held to be consumable stores used in the manufacture of taxable goods can never be subject-matter of resale. By making such broad proposition and making general statement, of almost universal applicability, the Tribunal has unnecessarily widened the scope of controversy. By doing so, the Tribunal transposed the arena of controversy from the particular transaction of wooden boxes in question to the general category of all goods which may be used as consumable stores in the manufacture of taxable goods. For deciding the question at issue it was not necessary to make such broad proposition of facts or law.

14. In above view of the matter we answer the question as indicated against the question in para 9 hereinabove. The reference is answered accordingly, with no order as to costs.

15. Reference reframed and answered in the affirmative.