(1990) 01 BOM CK 0025

In the Bombay High Court

Case No : Sales Tax Reference No''s. 17 of 1984 and 34 of 1986 in Reference Application No. 112 of 1984

Modi Rubber Ltd. APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 29-01-1990

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 36(3), 38(2), 38(4), 61(1)
Central Sales Tax Act, 1956 — Section 9

Citation : (1990) 01 BOM CK 0025

Hon'ble Judges : T.D. Sugla, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : R.V. Patel, for the Appellant; C.A. Phadkar and Miss S.J. Shah, for the Respondent

Judgement

Smt. Sujata Manohar, J.—By consent of all parties, the several questions which have been referred to us at the instance of the State as also at the instance of the assessee are reframed as follows :

(1) Whether, on the facts and in the circumstances of the case, was the Tribunal justified in law in holding that no penalty u/s 36(3) was legally imposable on the respondent dealer for non-payment of the amount of tax payable as per rule 29(1A) of the Rules for each of the first two months of the relevant quarters, both under the Bombay Sales Tax Act and the Central Sales Tax Act, as the case may be ?

Questions at the instance of the assessee :

(1) Whether, on the facts and in the circumstances of the case, was the Tribunal justified in law under the Bombay Sales Tax Act or the Central Sales Tax Act, as the case may be, in upholding the levy of penalty u/s 36(3) of the Bombay Sales Tax Act, 1959, for non-payment of part or whole of the tax payable along with the returns, without issue of a notice from the department in form No. 26, as

required u/s 38(4) of the Bombay Sales Tax Act, 1959, read with rule 31 of the Bombay Sales Tax Rules ?

(2) In cases where penalty u/s 36(3) of the Bombay Sales Tax Act, 1959, read with section 9 of the Central Sales Tax Act, 1956, is levied for a period prior to 7th September, 1976, the date of promulgation of the Central Sales Tax Amendment Act, 1976, the circumstance of there being no such provision under the Central Sales Tax Act, 1956, prior to the amendment of 1976, constitute a reasonable cause within the meaning of section 36(3) in the facts and circumstances of the case ?

(3) Whether the circumstances set out in question No. 2 above constitute a ground for remission of penalty in whole or in part under the proviso to section 36(3) of the Bombay Sales Tax Act, 1959, in the facts and circumstances of the present case ?

2. In Sales Tax Reference No. 34 of 1986 the following further question has also been referred to us u/s 61(1) of the Bombay Sales Tax Act :

Whether on a true and correct reading of section 38(2), the Tribunal erred in holding that the applicant was liable for penalty u/s 36(3) for the delay in payment of tax for the month of April, 1976 ?

3. For the reasons which are set out by us in our judgment in the case of Commissioner of Sales Tax v. Machinery Sales Service being Sales Tax Reference Nos. 26 of 1982 and others, delivered today [Reported in [1990] 77 STC 131, the questions are answered as follows :

Question referred at the instance of the State is answered in the affirmative and in favour of the assessee. Question No. 1 at the instance of the assessee is answered in the negative and in favour of the assessee. In view of our answers to these questions it is not necessary for us to answer question Nos. 2 and 3. We therefore decline to answer question Nos. 2 and 3.

4. As far as the additional question is concerned the applicant was required to file a monthly return for the month of April, 1976, in view of the provisions of rule 22(2)(c) of the Bombay Sales Tax Rules. He was also required to pay tax in accordance with this return. The applicant, however, did not file any monthly return for the month of April, 1976. Penalty u/s 36(3) has been levied on him for delay in the payment of tax for the month of April, 1976.

5. For reasons which are set out in our (myself and Sugla, J.) judgment dated 8th January, 1990, in Sales Tax Reference No. 74 of 1980 Avery India Ltd. v. State of Maharashtra [1990] 76 STC 296, the provisions of section 36(3) are not attracted in a case where the assessee has not filed a return as required under law. In these circumstances in the present case also the provisions of section 36(3) are not attracted since no return was filed by the applicant for the month of April, 1976, as was required by law. This question is therefore answered in the affirmative and in favour of the assessee.

The deposit of Rs. 100 made by the assessee to be refunded to the assessee in the above references.