
(2002) 07 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No's. 2565 of 1987 and 1641 of 1988

New Metro Engineering Industries

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 15

Citation : (2003) 1 ALLMR 1032 : (2003) 132 STC 3

Hon'ble Judges : V.M. Kanade, J;R.K. Batta, J

Bench : Division Bench

Advocate : V.A. Thakre and S.P. Hedao, for the Appellant; Dhote, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—The petitioner in Writ Petition No. 2565 of 1987 is challenging the validity of Section 15-1A of the Act on various grounds and also challenging the order dated May 13, 1986 passed by the Sales Tax Officer, Unit I, Nagpur who had levied an amount of Rs. 5,720 as additional tax u/s 15-1A and also is challenging the orders passed by the Sales Tax Tribunal confirming the earlier order by an order dated September 10, 1987. The petitioner in Writ Petition No. 1641 of 1988 is also challenging the levy of additional tax under the said provisions of Section 15-1A on the ground that no additional tax could be levied and, therefore, the provisions of Section 15-1A were not attracted in his case.

2. Since the question arising in both these petitions is the same, we propose to decide and dispose of these two petitions by common judgment. In fact, the Writ Petition No. 1641 of 1988 was admitted on August 3, 1989. It was directed that it should be heard with the Writ Petition No. 2565 of 1987.

3. The petitioner in W.P. No. 2565 of 1987 is a partnership firm and had started the factory at Ghat Road, Nagpur where the works of manufacturing truck body, building fabrication and machinery spares, were undertaken and the petitioner

was registered as a dealer under the Bombay Sales Tax Act. The dispute in the said petition relates to the period from November 5, 1983 to October 24, 1984. It is the case of the petitioner that in view of the notification which was issued u/s 41 of the Bombay Sales Tax Act, 1959, under entry No. 70, the extent of liability was restricted to 4 paise in a rupee. Section 41 of the Bombay Sales Tax Act, 1959 reads as follows :

"41. Exemption.--(1) Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest, by notification in the official gazette, exempt any specified class of sales or purchases from payment of the whole or any part of any tax payable under the provisions of this Act (any notification issued under this section may be issued so as to retrospective to any date not earlier than the 1st January, 1960).

(2) Where any dealer or person has purchased any goods under a declaration given by him under any of the notifications issued under this section and-

(a) any of the conditions subject to which such exemption was granted, or

(b) any of the recitals or the conditions of the declaration,

are not complied with, for any reason whatsoever, [or, in any other case, where such dealer or person was not entitled to issue (such declaration, then without prejudice to the other provisions of this Act)] such dealer or person, shall be liable to pay purchase tax on the purchase price of the goods so purchased and the purchase tax shall be levied at the rates set out against each of such goods in column 4 of Schedules B and C, notwithstanding that such dealer or person was not liable to pay tax u/s 3, and accordingly the dealer or the person who has become liable to pay purchase tax under this sub-section shall file a return in the prescribed form to the prescribed authority within a prescribed time and shall include the purchase price of such turnover in his return, and pay the tax in the prescribed manner. The tax due from any such dealer or person shall be assessed or reassessed u/s 33 or 35, as the case may be :

Provided that, the amount of tax (if any) paid by the dealer or such person to a registered dealer on such purchases, on which he has become liable to pay purchase tax under this sub-section, shall be set-off against the purchase tax so leviable :

Provided further that, if the dealer or the person liable to pay purchase tax as aforesaid has been assessed to purchase tax and if he has paid such tax, then the dealer from whom such goods are purchased shall be exempted from payment of tax on sales of such goods to the extent such purchase tax has been paid.

(3) If the Commissioner has reason to believe that any person is liable to pay tax under Sub-section (2), the Commissioner shall, after giving him a reasonable opportunity of being heard, assess the amount of tax so due."

As provided u/s 41, the notification was issued in which entry 70 reads as follows :

"(1) Sales of goods by a registered dealer to the Central Government or any State Government for the purpose of official use by such Government and not for the purpose of resale or for use in manufacture of any goods for sale.

(2) To the extent to which the amount of sales tax exceeds four paise in the rupee."

Explanation.--The expression "Central Government or any State Government Department" shall not include autonomous bodies like Zilla Parishad, Gram Panchayat, Municipal Corporation, University or any other semi-Government concern."

4. The case of the petitioner in Writ Petition No. 2565 of 1987 is that the petitioner had sold the goods amounting to Rs. 12,39,388 to the Maharashtra State Electricity Board and, therefore, assessing authority had levied the sales tax at the rate of 4 per cent amounting to Rs. 47,665. The Sales Tax Officer further levied additional tax of Rs. 5,720 u/s 15-1A of the Sales Tax Act on the sales tax amounting to Rs. 47,665 as the petitioner's turnover had exceeded Rs. 10 lakhs during the year. Section 15-1A reads as under :

"15-1A. Levy of surcharge.--In case of a dealer liable to pay tax under any provisions of this Act, the tax payable before adjustment of any set-off, drawback or refund on sales and purchases made by him at the rates of sales tax or purchase tax, as the case may be, shall be increased by the levy of surcharge at the rate of ten per cent of the tax so payable :

Provided that, in calculating the surcharge payable by the dealer, the tax payable under the other provisions of this Act in respect of sales or purchases of declared goods shall not be taken into consideration.

Explanation.--For the purposes of this section, "tax payable" means the aggregate of the following :--

(a) in case of sales or purchases of goods exempted in part or full from the payment of any tax u/s 41, the sales tax and purchase tax paid or payable ;

(b) in any other case, the sales tax and purchase tax levied or leviable, without adjustment of any drawback, set-off, or as the case may be, refund granted in accordance with the provisions of Section 42 or the rules."

Thus, under the said provisions an additional surcharge was levied at the rate of 10 per cent of the said tax. The said provision has been subsequently amended but we are concerned with the provisions as it existed at the relevant period.

5. In the case of the petitioner in Writ Petition No. 1641 of 1988 is concerned, the petitioner was a manufacturer of sleepers and had a contract with the Indian Railways to supply sleepers manufactured by it and he was holding the eligibility

and entitlement certificates under the Sales Tax Deferment Scheme. By virtue of which, the sales tax which the petitioner is liable to pay, is not required to be paid immediately but this payment is deferred for the period of 12 years. The relevant period in respect of the petitioner in W.P. No. 1641 of 1988 is concerned, from July 1, 1983 to June 30, 1984 and July 1, 1984 to June 30, 1985 and in respect of the orders dated March 24, 1986 and October 11, 1986 respectively. In the case of the petitioner in the said Writ Petition No. 1641 of 1988 additional tax u/s 15-1A was levied by the Sales Tax Officer. The petitioner, in Writ Petition No. 2565 of 1987, has challenged the validity of Section 15-1A of 1987 on the ground that though his maximum liability to pay tax was fixed at the rate of 4 per cent by virtue of entry 70 as per the notification issued u/s 41 of the Act, by virtue of the additional surcharge on the tax, his total liability would exceed 4 per cent and, therefore, additional tax could not be levied. In our view, the said submission cannot be accepted. It will have to be noted that so far as the levy of tax under entry 70 of the notification issued u/s 41 of the Bombay Sales Tax Act is concerned it pertains to the exemption which was granted to the petitioner for supplying goods to the Government and the tax liability is restricted to 4 per cent. However, u/s 15-1A surcharge is levied in respect of a manufacturer whose turnover exceeds Rs. 10 lakhs and the said surcharge has been fixed at 10 per cent of the actual tax payable. Thus, the surcharge u/s 15-1A cannot be termed as additional tax and the surcharge is applicable to all manufacturers irrespective of the fact whether they supply goods to the Government or not. Thus, the exemption which is granted to the petitioner by virtue of notification issued u/s 41 remains intact and additional surcharge is calculated on the said tax. In our view, there is no bar for levying surcharge and Legislature is competent to levy the said surcharge. We are, therefore, of the view that the said provision is not ultra vires of the provisions of the said Act or the Constitution of India.

6. Having come to the conclusion that the provisions of Section 15-1A are not ultra vires then second question which is required to be considered is as to whether levy of surcharge has been properly calculated or not. We have perused the assessment order passed by the Sales Tax Officer in both the cases as also by the Sales Tax Tribunal in W.P. No. 2565 of 1987. They have considered at length and considered the levy of sales tax at length and have held that sales tax is properly levied. Under the circumstances, we do not find any reason to interfere with the findings of facts given even by both the authorities.

7. The writ petitions are, therefore, rejected. Rule is discharged. Under the circumstances, no order as to costs.