
(1974) 11 BOM CK 0002
In the Bombay High Court
Case No : Sales Tax Reference No. 15 of 1970

New Prahlad Mills

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-11-1974

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 34(1), 9, 9(1)

Citation : (1975) 35 STC 352

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : V.H. Patil and I.M. Munim, for the Appellant; S.B. Sukhthankar, for the Respondent

Judgement

Madon, J.—The question which has been referred to us in this reference u/s 34(1) of the Bombay Sales Tax Act, 1953, made at the instance of the assessee is "Whether, in the circumstances and on the facts of the case and on a proper construction of the relevant provisions of law, the Tribunal was justified in holding that the applicant was not entitled to claim exemption u/s 9(1) in respect of the impugned sale ?" Section 9(1) mentioned in the said question is really the first proviso to section 9 of the Bombay Sales Tax Act, 1953. The relevant provisions of section 9 are as follows :

"9. Levy of general sales tax. - Subject to the provisions of section 7, there shall be levied a general sales tax on the turnover of sales of goods specified in column 1 of Schedule B at the rates, if any, specified against them in column 3 of the said schedule :

Provided that - (1) no general sales tax shall be levied on the sales of goods to a dealer who holds a licence and furnishes to the selling dealer a certificate in the prescribed form declaring inter alia that the goods so sold to him are intended for resale by him."

2. Before we set out the facts which have given rise to this reference it may be

convenient to refer to the other statutory provisions relevant to this matter. The prescribed form mentioned in the first proviso to section 9 is form K to the Bombay Sales Tax (Registration, Licensing and Authorisation) Rules, 1954. Rule 13 of the said Rules provides for a certificate in different forms to be given to a dealer to enable him to obtain deduction or claim exemption in his turnover and under sub-rule (2) of the said rule a certificate for the purpose of first proviso to section 9 is to be in the said form K. The said form requires a dealer giving a certificate to state therein that he is a registered dealer, to specify his registration number, and to state further that a licence u/s 12 of the said Act has been given to him and that the goods purchased by him are intended for resale by him. The certificate in form K is to be signed by the dealer giving the certificate and is to mention the status or the capacity in which he is signing it. Form F to the said Rules is the form in which a licence is issued to a dealer. The relevant clauses of the said form are clauses 6, 7 and 8. They are as follows :

"6. Where the licensee desires to purchase any goods free of general sales tax under the provisions of clause (1) or (2) of the proviso to section 9 of the Act, the licensee or any person nominated by him under paragraph 7 of this licence shall furnish to the selling dealer a certificate in form K or L, as the case may be, in respect of the goods purchased by the licensee. The certificates in the said form K or L furnished by the licensee shall be serially numbered by him in chronological order and the licensee shall keep and produce before the Collector or the assessing authority, if so required, mechanically duplicated (or carbon) copies of such certificates duly signed and dated.

7. The licensee may for the purpose of paragraph 6 of this licence nominate any person to sign certificates on his behalf in respect of goods purchased by the licensee under this licence and the name and signature of the person so nominated shall be entered in the statement appended to this licence.

8. The licensee or any person nominated by him under paragraph 7 of this licence shall produce this licence for the inspection of any dealer from whom he purchases any goods under this licence or for the inspection of the manager or agent of such dealer whenever required to do so."

3. Turning now to the facts of this case, the assessee was a registered dealer under the said Act. In his assessment for the year 1st April, 1956, to 31st March, 1957, the assessee claimed deduction in respect of sales aggregating to Rs. 7,80,007 alleged to be made by the assessee to one Messrs. Arun Trading Company on the ground that these were sales which were covered by the first proviso to section 9. The Sales Tax Officer disallowed the claim for deduction and the attempt by the assessee to have the order set aside by the Assistant Commissioner, the Deputy Commissioner and the Tribunal by way of appeals and revision failed.

4. The ground upon which the assessee's claim for deduction was disallowed by the assessing authority was that the certificates in form K, purported to be

issued to the assessee by Messrs. Arun Trading Company, in some cases were signed by manager Pendya, in some other cases by manager-cum-cashier Sathe and, in the remaining cases by cashier Babade. None of these three signatories was nominated by Messrs. Arun Trading Company as being the person authorised to sign certificates on its behalf in respect of goods purchased by them under the licence. The contention of the assessee, however, was that the fact that the certificate was signed by a person who was not so nominated was inconsequential and did not affect the validity of the certificate and in support of this contention Mr. Patil has relied before us upon a judgment of the Supreme Court in State of Orissa Vs. M.A. Tulloch and Co., That was a case under the Orissa Sales Tax Act, 1947. u/s 5(2)(a)(ii) of the said Act, "sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him in Orissa..... and on sales to a registered dealer of containers or other materials for the packing of such goods" were exempt from tax provided that if these goods were used by the registered dealer for purposes other than those specified in his certificate of registration, the price of goods so utilised was to be included in his taxable turnover. Under rule 27(2) of the Orissa Sales Tax Rules a dealer who wished to deduct the turnover on such sales from his gross turnover was to produce a copy of the relevant cash receipt or bill, according as the sale was a cash sale or a sale on credit, in respect of such sale and a true declaration in writing by the purchasing dealer or by such responsible person as may be authorised in writing in this behalf by such dealer that the goods in question were specified in the purchasing dealer's certificate of registration as being required for resale by him. The dealer in that case did not produce the declarations required by the said rule 27(2). He, however, produced other evidence to show that the sales made by him did in fact qualify for exemption under the said section 5(2)(a)(ii). The Supreme Court held that the said section did not prescribe any condition other than sale to a registered dealer of goods specified in the purchasing dealer's certificate of registration for being intended for resale by him in Orissa and that the said rule 27(2) merely provided a method by which the selling dealer could claim exemption, but that was not the only method available to him. The court further held that the said rule 27(2) must be reconciled with the section and the rule can only be reconciled by treating it as directory and not mandatory and that substantial compliance with the rule was sufficient. This case came up for consideration before the Supreme Court in Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, , a case under the Bengal Finance (Sales Tax) Act, 1941. Section 5(2)(a)(ii) of the said Act exempted from the taxable turnover all sales to a registered dealer of goods of the class or classes specified in the certificate of registration of the dealer as being intended for the purposes mentioned therein, the condition for obtaining such exemption being the furnishing by the purchasing dealer of a declaration duly filed up and signed by him and containing the prescribed particulars on a prescribed form obtained from the prescribed authority. Under rule 27A of the Bengal Sales Tax Rules, 1941, a dealer who wished to claim such exemption was on demand to produce such a

declaration in writing signed by the purchasing dealer. The Supreme Court held that in order to qualify for exemption under the said section 5(2)(a)(ii) a dealer had to strictly comply with the provisions thereof and could not produce other evidence to prove that the sales to the registered dealer were for the purposes mentioned in the said sub-clause (ii) and that he could not get the exemption unless he furnished the declaration in the prescribed form. With reference to the judgment in *State of Orissa Vs. M.A. Tulloch and Co.*, the Supreme Court pointed out that the relevant section of the Orissa Sales Tax Act, 1947, did not contain a proviso similar to the one in the Bengal Finance (Sales Tax) Act, 1941, and that the proviso in the Bengal Act made all the difference, for it imposed the condition of production of a declaration in the prescribed form. The Supreme Court in the following words set out the reason why this type of provisions are introduced in the Sales Tax Acts of various States :

"There is an understandable reason for the stringency of the provisions. The object of section 5(2)(a)(ii) of the Act and the Rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well-nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commissioner of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

5. In the case before us it is condition laid down in section 9 itself that the certificate has to be furnished in the prescribed form. The above-quoted passage from the judgment of their Lordships of the Supreme Court is a complete answer to the arguments advanced before us by Mr. Patil on behalf of the assessee. If the contention that a certificate in form F could be signed by anyone on behalf of the purchasing dealer, even though such person was not nominated by the purchasing dealer as provided for in clause 7 of the purchasing dealer's licence, were true, it would open the door to many types of fraud. The department would be burdened with deciding questions such as whether the person who had signed a certificate had the authority of the purchasing dealer to do so in cases where a false certificate has been given or the goods purchased have been utilised for purposes other than those specified in the purchasing dealer's licence and mentioned in his certificate, whether the purchasing dealer had knowledge of the transaction or whether it was a transaction unauthorisedly entered into by someone purporting to do so on his behalf. The requirement that the certificate should be signed by the purchasing dealer himself or by a person nominated by

him as provided for by clause 7 of the purchasing dealer's licence is, therefore, neither a mere formality nor an inconsequential matter of routine. The requirement with respect to the signature is vital to the very validity of the certificate, for it is a signature to the declaration that the goods purchased are intended for resale and such a declaration can only be made either by the purchasing dealer himself or someone duly authorised by him. When such an authorisation is by statute or by rules required to be in a particular form, there cannot be said to be a proper authorisation unless the statutory requirement is strictly complied with.

6. Mr. Patil, however, relied upon a judgment of Division Bench of this High Court, namely, *Commissioner of Sales Tax, Maharashtra State v. Hindustan Silk Mills, Bombay* [1972] 29 S.T.C. 99. In that case, in order to support his claim for deductions under the first proviso to section 9 and the proviso to clause (b) of section 8 of the Bombay Sales Tax Act, 1953, the dealer produced a consolidated declaration form written out in an exercise-book. It was conceded by the department that every particular and information which was required by the statute to be furnished was contained in the said declaration. The only grievance of the department was that the information was written out in an exercise-book and not on a separate page. This contention was rightly negated by the Division Bench. We fail to see what application that case has to the matter before us. Here the very basis upon which the validity of the certificate rests, namely, the signature of the purchasing dealer or of a person authorised by him in the prescribed manner, is lacking. By reason of this defect there is no valid certificate at all and it cannot be said that every information which the statute required the dealer to furnish has been given in the certificates in question.

7. In the circumstances, we hold that the applicant-assessed was not entitled to claim exemption under the first proviso to section 9 of the Bombay Sales tax Act, 1953, in respect of his aggregate turnover of Rs. 7,80,007 consisting of sales alleged by the assessee to have been made to Messrs. Arun Trading Company during the assessment year 1st April, 1956, to 31st March, 1957.

8. The applicant will pay to the respondent the costs of this reference.

9. Reference answered accordingly.