

(1977) 03 BOM CK 0011

In the Bombay High Court

Case No : S.T. Ref. No's. 18 to 20 of 1976 & Sales Tax Reference No's. 18, 19 and 20 of 1976

Pragji Mulji and Co.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-03-1977

Acts Referred:

Citation : (1977) 6 CTR 615

Hon'ble Judges : Madon, J;Kania, J

Bench : Division Bench

Advocate : V.H. Patil, for the Appellant; R.J. Joshi, for the Respondent

Judgement

Kania, J.—These are three references under S. 34(1) of the Bombay Sales Tax Act, 1953 (hereinafter referred to as "the said Act"). The facts giving rise to these references are as follows :

The assessees are a firm and were duly registered as a dealer under the said Act. During the period 1-4-1957 to 31-3-1958, 1-4-1958 to 31-3-1959 and 1-4-1959 to 31-12-1959 as well as during the two earlier years, the assessees maintained a Shah account. In respect of the said two earlier years viz. 1955-56 and 1956-57 in Revision Applications Nos. 173 and 174 of 1961 the Tribunal took the view that in respect of the transactions entered into by the assessees which were entered in the said Shah account the assessees had not acted as selling commission agents although they had entered into other transactions as selling commission agents. In those revisional applications the Tribunal took the view that in respect of the said transactions entered by the assessee in the Shah account the assessees were the purchasers themselves and, therefore, when these goods were subsequently sold by the assessees these were separate transactions. In the assessment of the assessees in respect of the aforesaid three periods aggregating they took the view that the goods sent by the constituents to the assessees in respect of which entries have been made in the Shah account by the assessees had been appropriated by the assessees

themselves and when these goods were sold by the assesseees, these sales were not made by the assesseees as the commission agents of their constituents but on their own account and hence there were two sales, one, by the constituents to the assesseees and the second, by the assesseees to the purchasers. In taking this view the Sales Tax Officer followed the view taken by the Tribunal in the said revisional applications Nos. 173 and 174 of 1961 filed by the assesseees in respect of the earlier two years, as we have already set out above. Being aggrieved by these orders of the Sales Tax Officer the assesseees filed appeals before the Assistant Commissioner of Sales Tax, who dismissed the same. Revision applications were then preferred by the assesseees before the Deputy Commissioner who dismissed the same by his orders dated 12th September 1966. The assesseees then went by way of second revisional applications before the Tribunal, which dismissed the same. Before the Tribunal the assesseees sought to challenge the view taken by the Tribunal in the said revisional applications Nos. 173 and 174 of 1961 and sought to contend that the view taken by the Tribunal earlier would amount to the assesseees selling goods to themselves and hence it was not a correct view. The Tribunal held that the assesseees were debarred or precluded from taking up this contention on the principles of res judicata or principles analogous thereto. It further took the view that the assesseees were also estopped by their conduct from taking up this contention. It is from these decisions of the Tribunal that the present references have been filed. Sales Tax Reference No. 18 of 1976 pertains to the period 1-4-1957 to 31-3-1958; Sales Tax Reference No. 19 of 1976 pertains to the period 1-4-1958 to 31-3-1959 and Sales Tax Reference No. 20 of 1976 pertains to the period 1-4-1959 to 31-12-1959. The question referred to us for our determination in these references is as follows :

Whether having regard to the facts and circumstances of the present cases the Tribunal is correct in law in coming to the conclusion that it is not open to the applicant-dealer to agitate the question that the entries in the Shah Account in the account books of the applicant are not sales made by the constituents outside the State to the applicant-dealer ?

2. As the revisional applications before the Tribunal were disposed of by it by a common order and references were also made by a common order, we propose to dispose of these references by a common judgment.

3. We may at the outset make it clear that the contention of the assessee, that the decision of the Tribunal in the earlier revisional applications Nos. 173 and 174 of 1961 amounts to the assesseees selling goods to themselves, and is, therefore, incorrect does not appeal to us at all. The question, which we have, however, to consider, is whether the Tribunal was right in coming to the conclusion that the assesseees were precluded from taking up this contention on the basis of res judicata or estoppel by conduct as set out earlier. As far as the question of res judicata is concerned, we may usefully refer to the decision of the Supreme Court in *Installment Supply (Private) Ltd. vs. Union of India*. In this case, the

Supreme Court has taken the view that in matters of taxation there is no question of res judicata because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. This principle has always been accepted in tax matters. The decision of the Tribunal in revisional applications Nos. 173 and 174 of 1961 was pertaining to the years 1955-56 and 1956-57. The view taken by the Tribunal in these revisional applications was sought to be challenged by the assessment in respect of the later assessment periods viz. from 1-4-1957 to 31-12-1959. Hence the principle of res judicata can never come into play and the view of the Tribunal in this regard is clearly incorrect.

4. As far as the question of estoppel by conduct is concerned, the view taken by the Tribunal appears to be equally unjustified. The Tribunal has observed that if before the earlier forum the party has taken a particular stand on facts and taken advantage, he will not be permitted to make a volte face in subsequent proceedings on the same set of facts. The principle enunciated in this observation may be correct, but we fail to see what application it can have to the facts of the present case. In the present case, the assessee even in the said earlier revisional applications had taken up the same stand as they have taken in the revisional applications from the decision whereof these references arise. Moreover, the contentions of the assessee in the earlier revisional applications were rejected and we fail to see what advantage can they be said to have taken by the stand taken up by them in those revisional applications. The view taken by the Tribunal in this regard is also, in our opinion, erroneous.

5. Mr. Joshi, the learned counsel for the respondent, has sought to support the decision of the Tribunal by placing reliance on the decision of a Division Bench of this Court in *H. A. Shah & Co. vs. Commissioner of Income Tax and Excess Profits Tax*. In this case, it has been held that as a general rule the principle of res judicata is not applicable to the decisions of Income Tax Authorities. An assessment for a particular year is final and conclusive between the parties only in relation to the assessment for that year and the decisions given in an assessment for an earlier year are not binding either on the assessee or the Department in a subsequent year. But this rule is subject to limitations, for there should be finality and certainty in all litigations including litigation arising out of the Income Tax Act and an earlier decision on the same question cannot be reopened if that decision is not arbitrary or perverse, if it had been arrived at after due inquiry, if no fresh facts are placed before the Tribunal giving the later decision, and if the Tribunal giving the earlier decision had taken into consideration all material evidence. A Tribunal like the Appellate Tribunal, should be extremely slow to depart from a finding given by an earlier Tribunal. In our view, far from supporting the contention of Mr. Joshi, this decision shows not that the assessee would be debarred from taking up before the Tribunal a contention, which had been rejected by the Tribunal in connection with the assessment of earlier years, but that the Tribunal would be slow to depart from its earlier view.

6. In view of what we have stated earlier, we answer the question referred to us in the negative. The respondent to pay to the applicants the costs of these references fixed in the aggregate at Rs. 300/-. The fee of Rs. 100/- paid by the applicants in each of these three references shall be refunded to the applicants.