

(1995) 02 BOM CK 0078

In the Bombay High Court

Case No : Sales Tax Reference No's. 66 and 67 of 1987

Richardson Hindustan Limited

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 14, 2, 2(28), 2(29), 2(36)
Central Sales Tax Act, 1956 — Section 8A(1)

Citation : (1995) 2 MhLj 433

Hon'ble Judges : D.K. Trivedi, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.S. Gaitonde and K.B. Bhujle, for the Appellant; Ms. Daruwala, for the Respondent

Judgement

Dr. B.P. Saraf, J.—These two references arise out of the common order of the Tribunal passed u/s 55 of the Bombay Sales Tax Act, 1959 ("the Act"). The following two questions have been referred at the instance of the assessee :

"1. Whether, on the facts and circumstances of the case and on a proper interpretation of section 2(36) of the Bombay Sales Tax Act, 1959, read with rule 4 of the Bombay Sales Tax Rules, 1959, the Tribunal was right in concluding that as in pursuance of clause 4 of Part C of the distributorship agreement executed by the applicants with Muller & Phillips (India) Pvt. Ltd. in which parties have consciously provided for repurchase of the goods and not return of goods, it was a case of a resale by the buyer to the seller, the sale price being the very same amount which the buyer had paid to the seller and, therefore, the claim of return of goods made by the applicants before the Sales Tax Officer was not sustainable ?

2. Whether, on the facts and circumstances of the case and on a proper interpretation of section 8A(1)(b) of the Central Sales Tax Act, 1956, the Tribunal was right in concluding that as in pursuance of clause 4 of Part C of the distributorship agreement executed by the applicants with Muller & Phillips

(India) Pvt. Ltd. in which parties have consciously provided for repurchase of the goods and not return of goods, the applicants have repurchased the goods, it was a case of resale by the buyer to the seller the sale price being the very same amount which the buyer had paid to the seller and, therefore, the claim of return of goods made by the applicants before the Sales Tax Officer was not sustainable ?

2. The first question which arises out Reference Application No. 346 of 1985 filed by the assessee pertains to the rejection of the claim of the assessee for deduction u/s 2(36) of the Bombay Sales Tax Act, 1959 ("the Bombay Act" or "the Act") read with rule 4 of the Bombay Sales Tax Rules ("the Bombay Rules" or "the Rules") of the amount of the purchase price refunded by the assessee-dealer to the purchasers in respect of goods purchased and returned by them. The second question pertains to similar controversy arising in connection with the assessment for the very same period under the Central Sales Tax Act ("the Central Act"), the corresponding provisions of the Central Sales Tax Act being section 8A(1)(b). The language of the relevant provisions of the two Acts, is substantially similar except for the difference that under the Bombay Sales Tax Act, the deduction is available in respect of the goods returned within a period of 12 months, under the Central Act it is confined to goods returned within a period of six months. The above difference in the provisions of the two enactments is of no relevance to us for the purpose of deciding the controversy raised in the above question in view of the uncontroverted factual position that the goods were returned to the assessee within the specified period under both the Acts and the purchase prices thereof were refunded by the assessee-dealer to the purchasers within the period under consideration. We have, therefore, taken up both these references together for hearing and final disposal.

3. Before advertng to the relevant provisions of the Bombay Act and the Central Act, it may be expedient to briefly set out the material facts of the case, having a bearing on the questions referred to us, which are as follows :

The assessee-company is a dealer engaged in the business of manufacturing pharmaceutical goods and selling and supplying the same. For selling its products, it had entered into a distributorship agreement on June 17, 1966, with one M/s. Muller & Phillips (India) Pvt. Ltd. (hereinafter referred to as "the distributors"). Clause (1) of Part C of the said agreement provided that the property in all stocks of the assessee's products sold to the distributors would pass to the distributor on delivery of the same at the destination. In terms of the said agreement, sales were effected by the assessee to the said distributors during the period from July 1, 1968 to June 30, 1969 and July 1, 1969 to September 30, 1969. The assessee had included the value of the said goods sold, supplied and delivered to the above distributor in its turnover for the purpose of assessment both under the Bombay Act and the Central Act for the above two periods and paid tax thereon. The said agreement, however, came to an end with effect from October 1, 1969. At the time of termination of the said

agreement, the distributors had in their possession some unsold stock of the products of the assessee which had been sold to them by the assessee during the above periods. In terms of clause 4 of part C of the distributorship agreement, the assessee-company was required to repurchase from the distributors the stock of its products remaining unsold with them at the price at which it had been purchased by them from the assessee. In terms of the above clause the assessee took back the unsold stocks of its products lying with the distributors at the time of the termination of the distributorship agreement in the State of Maharashtra as well as at their places of business situated outside Maharashtra. The assessee claimed deduction for the amount of sale price refunded by it to the distributors on termination of the agreement. The claim of the assessee both under the Bombay Act as well as the Central Act was rejected by the Sales Tax Officer on the ground that the assessee had repurchased the goods from the distributors which did not amount to return of the goods within the meaning of section 2(36) of the Bombay Act and section 8A(1)(b) of the Central Act. The assessee appealed to the Assistant Commissioner of Sales Tax against the above order of the Sales Tax Officer. The Assistant Commissioner accepted the contention of the assessee that the return of the goods by the distributors to the assessee on termination of the distributorship agreement was nothing but return of unsold goods lying with them for the purchase price of which the assessee was entitled to deduction both under the Bombay Act and the Central Act. The Assistant Commissioner, however held that by taking back the goods sold by it the assessee had violated the terms of the declaration on the strength of which it had purchased the goods without payment of tax for use in manufacture of the goods in question for sale and hence it was liable to purchase tax u/s 14 of the Act. Against the above order of the Assistant Commissioner, both the assessee and the Revenue went in appeal to the Maharashtra Sales Tax Tribunal ("the Tribunal"). The assessee was aggrieved by the order of the Assistant Commissioner in so far as it had held that the assessee was liable to purchase tax u/s 14 of the Act. The Revenue was aggrieved by the above order in so far as the entitlement of the assessee for deduction of the value of the goods returned by the distributors from its turnover is concerned. The Tribunal rejected the appeals of both the assessee as well as the Revenue and held that the assessee was not entitled to deduction of the value of the goods returned by the distributors because it was not a return but repurchase of the goods after the same have been sold by the assessee to the distributors and in that view of the matter set aside the order of the Assistant Commissioner and restored that of the Sales Tax Office. The Tribunal also held that in view of the above conclusion, the question of application of section 14 did not arise. The assessee sought for reference arising out of the order of the Tribunal and the Tribunal on the said application of the assessee has referred the questions set out above to this Court for opinion.

4. We shall first deal with the claim of the assessee under the Bombay Act. The relevant provisions of the said Act is clause (36) of section 2 which defines

"turnover of sales". It reads :

"(36) "turnover of sales" means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deduction the amount of sale price, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period."

The period referred to in the above clause has been prescribed by rule 4 of the Rules which reads as follows :

"4. Goods returned to a dealer. - The period for return of goods for the purposes of clauses (35) and (36) of section 2 shall be twelve months from the date of their purchase :

Provided that, if in any particular case the Commissioner is satisfied that the purchaser could not return the goods within the said period on account of circumstances beyond his control, the Commissioner may, in such case, extend the said period by a further period not exceeding three months."

5. On a conjoint reading of clause (36) of section 2 and rule 4, it is clear that while computing the turnover of sales for the purpose of assessment under the Bombay Act, the assessee is entitled to claim deduction of the amount of sale price of the goods refunded by the dealer to the purchaser in respect of any goods purchased and returned by the purchaser within a period of 12 months from the date of their purchase. The benefit of deduction under this provision, however, may be given to the dealers even for amounts refunded in respect of goods purchased and returned beyond the period of twelve months but not exceeding three months thereafter, on the satisfaction of the Commissioner that the purchaser could not return the goods within the said period on account of circumstances beyond his control. The provision for deduction of the sale price in respect of goods purchased and returned by a purchaser presupposes a sale of the goods by a dealer to the purchaser and return thereof thereafter. Sale has been defined in clause (28) of section 2 of the Act to mean a sale of goods made within the State for cash or deferred payment or other valuable consideration. It is only when there is a sale of goods that the question of levy of sales tax under the Act would arise and for that purpose it would become necessary to determine the "turnover of sales", because sales tax is leviable u/s 3 of the Act on the turnover of sales and purchases. The question of refund of sale price by the dealer to the purchasers and claiming deduction for the same from the aggregate of sale prices can arise when the goods had been sold by the assessee and the sale price thereof included in the turnover of the sales of the dealer in any period. If there is no sale within the meaning of clause (28) of section 2 of the Act, the question of receipt of consideration and inclusion thereof in the turnover of sales would not arise. The expression sale price has also been defined in clause (29) of section 2 of the Act to mean :

"the amount of valuable consideration paid or payable to a dealer for any sale

made by him."

The question of deduction from the aggregate of such sale prices thus arises only after the goods are sold and the valuable consideration received or receivable on account thereof is included in the turnover of sales of the dealer. No such question will arise where the goods are not sold or the value thereof is not included in the turnover of sales of the dealer, e.g., a case where the goods are given to a customer for approval and returned by him. In such a case, the question of claiming deduction would not arise. But once the goods are sold and the same are thereafter returned by the purchaser to the dealer for one reason or the other within the prescribed period, the assessee is entitled to get a deduction of amount refunded by him from "the aggregate amount of sale price received by it during a given period" for computation of his turnover of sales of such period for levy of sales tax under the Act. The nomenclature given by the parties to such transaction of return of goods, viz., "return of goods" or "repurchase of goods", would be of no relevance because return of goods falling u/s 2(36) of the Act envisages purchase of the goods earlier sold by the assessee-dealer to the purchaser. On return of goods, the purchaser would naturally be entitled to the refund of the price of the goods, if already paid, or to credit for the same, if it had been debited for the price thereof at the time of sale. The return of goods envisaged by clause (36) of section 2 of the Act, therefore, in all cases will be preceded by a sale of goods and in effect, would be repurchase of the goods by the dealer. The Tribunal was therefore not justified in rejecting the claim of the assessee on the ground that the return of the goods amounted to repurchase of the goods by the assessee-dealer. In that view of the matter, we are of the clear opinion that the assessee is entitled to deduction of the sale price of the goods refunded by him to the purchaser in respect of goods purchased and returned by such purchaser.

6. The same is the position under the Central Act. Section 8A(1) of the said Act, so far as relevant, reads as follows :

"8A. Determination of turnover. - (1) In determining the turnover of a dealer for the purposes of this Act, the following deductions shall be made from the aggregate of the sale prices, namely :-

(a)

(b) The sale price of all goods returned to the dealer by the purchasers of such goods, -

(i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May, 1966;

(ii) Within a period of six months from the date of delivery of the goods, in the case of goods returned on or after the 14th day of May, 1966 :

Provided that satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority

competent to assess or, as the case may be, reassess the tax payable by the dealer under the Act; and

....."

In this Act also turnover used in relation to any dealer liable to pay tax under the above Act has been defined in clause (j) of section 2 of the Act to mean :

"(j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in accordance with the provisions of this Act and the Rules made thereunder;"

There is no material difference between the scheme of section 8A(1)(b) of the Central Act and section 2(36) of the Bombay Act in regard to the allowability of deduction from the aggregate of sale prices the amount refunded by the dealer to purchaser in respect of the goods returned by the purchaser within the prescribed period.

7. In view of the above legal position, we answer both the questions referred to us in the negative and in favour of the assessee.

8. Our attention was also drawn to the order of the Assistant Commissioner as well as the Tribunal dealing with the applicability of section 14 of the Act to the present case. No question was referred in regard to this aspect, because in view of the decision of the Tribunal against the assessee on the question of allowability of deduction, it became academic. However, to avoid further litigation on that the count, we perused the provisions of section 14 of the Act with a view to ascertaining whether it can be applied to cases of return of goods by the purchaser. Section 14 deals with liability of a dealer to purchaser tax for contravention of the terms of declaration. In the instant case, the goods had been purchased by the assessee on furnishing of declaration to the effect that they would be used by him for use in manufacture for sale. There is no controversy about the fact that the goods purchased by the assessee were used in manufacture. It is also evident that the goods were sold. The return of the goods by the purchaser per se cannot in any way amount to violation of the terms of the declaration because the goods, on return, are still intended for sale and in the usual course of business, in fact, might have been sold by the assessee to some other purchaser. However, we do not want to go into the factual part of that controversy. Suffice it to say that the return of goods by purchaser by itself cannot and would not attract section 14 of the Act in the absence of a finding that the goods so returned had been used by the dealer for any other purpose in contravention of the terms of his declaration. Without such a finding, resort to section 14 of the Act is not possible.

9. In the result, both the questions referred to us are answered in favour of the assessee and against the Revenue.

10. Reference answered in the negative.