(1990) 08 BOM CK 0002

In the Bombay High Court

Case No : Sales Tax Application No. 1 of 1988

Shivlal APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 2(28), 2(5A), 61

Citation : (1990) 08 BOM CK 0002

Hon'ble Judges : V.A. Mohta, J;H.D. Patel, J

Bench : Division Bench

Advocate : V.L. Somalwar, for the Appellant; B.P. Jaiswal, for the Respondent

Judgement

V.A. Mohta, J.—The assessee carried on the business of manufacturing exercise-books. Unfortunately he was unsuccessful in the business which ran into losses. For the purpose of the business the assessee had taken loan from the Maharashtra State Financial Corporation. The said creditor filed a suit for recovery of the loan given to the assessee for the business. Decree was passed and in execution of the decree, old machinery, like paper cutting machine, one stitching machine, file creasing and file punching machine were attached. The attached property was to be put to public auction. But before that, the assessee made an application for permission to sell the attached property privately to one Vithalsingh Rana of Anand Printing Press at Gondia, for a sum of Rs. 14,500. The District Judge, by order dated July 13, 1983, granted the permission on the condition that the sale proceeds will be deposited with the creditor. Accordingly, the property was sold as permitted ant the amount was deposited with the creditor. Sales tax was levied on this sale by the Sales Tax Officer. This levy was confirmed in the first appeal by the Assistant Commissioner and in the second appeal by the Tribunal. An application was filed by the assessee to refer the following questions to the High Court u/s 61 of the Bombay Sales Tax Act, 1959 ("the Act") :

(1) Whether, on the facts and in the circumstances of the case, the Appellate

Tribunal was correct in upholding the order of the first appellate authority, namely, that the disposal of machinery was in the curse of business as being directly related to the business of manufacture of exercise-books by the applicant ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was correct in holding that particular sales to machinery were not distressed sales by order of the court with stipulation that sale proceeds must be given to Maharashtra State Financial Corporation for the discharge of the applicant''s debt ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in taxing the sale of machinery which was admittedly under attachment by the court, for the satisfaction of the debts of the applicant ?

(4) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that particular sales of machinery were not casual sales ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the sale of machinery was as understood under the Sale of Goods Act or as applicable to the Sales Tax Act ?

(6) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that even if the sale is compulsory, the said sale is still taxable, and further is not exempt form the tax ?

The Tribunal rejected the application.

2. On undisputed positions it seems to us that the order passed by the Tribunal was perfectly correct. It was a clear-cut case of a "sale" within the meaning of section 2(28) of the Act. It was not a case of distress sale. The facts that the assessee had no choice to sell the property and that permission of the court was required do not alter the position in law.

3. The last surviving point is whether the sale was casual in nature and not in the course of business. The term "business" is defined u/s 2(5A) of the Act and the amended definition as it stood during the relevant period (January 1, 1983 to September 1, 1983) read thus :

"''business'' includes any trade, commerce or manufacture or any adventure or concern and any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern, and any transaction in connection with, or incidental or ancillary to, the commencement or closure of such trade, commerce, manufacture, adventure or concern;"

Under the circumstances, this transaction amounted to "sale" in the course of the business as rightly held by the Tribunal in its detailed order passed in the second appeal as well as the order rejecting the application for reference.

4. No case for interference, therefore, exists. Order accordingly. No costs.

5. Application dismissed.