

(1956) 06 BOM CK 0008
In the Bombay High Court
Case No : Civil Ref. No's. 7 and 8 of 1956

State of Bombay	Vs	APPELLANT
Morarji Padamsey of E. Eyres and Co.		RESPONDENT

Date of Decision : 20-06-1956

Acts Referred:

Bombay Sales Tax Act, 1946 — Section 5, 6, 8

Citation : AIR 1956 Bom 715 : (1956) 58 BOMLR 801 : (1956) ILR (Bom) 940

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : H.M. Seervai and Little and Co, for the Appellant; P.M. Kapadia, Matubhai Jomietram and Madon, for the Respondent

Judgement

Chagia, C.J.—A rather novel and indigenous contention was put forward by the assessee in this reference. The facts briefly are that the assessee registered his business under the Sales Act on 1-10-1946 and conducted his business till 2-3-1949. On that date he transferred the whole of his business as a going concern to a third party. The Sales Tax Officer assessed the assessee in respect of two periods 1-10-1946, to 31-3-1947 and 1-4-1947 to 1-3-1949. It will be noticed that both periods are antecedent to the date of transfer.

The assessee admitted the correctness of the amount of assessment, but he denied his liability on the ground that as the business had been transferred by him the liability to pay tax with regard to the business done before the transfer was only upon the transferee and the transferor was absolved from his liability. The tribunal accepted this contention and the Taxing Authority has come before us on this reference.

2. Turning to the Act, Section 5 imposes the liability upon the dealer whose gross turnover, exceeds a certain amount during the relevant period and it makes the dealer liable to pay tax on his turnover. It is not disputed that under this section the assessee became liable to pay tax. Section 6 deals with the levy and rates of tax, and Section 8 deals with registration of dealers, and the assessee was

registered under this section.

Sub-section (6) of that section provides that when any business in respect of which a certificate has been granted under this section has been discontinued or transferred, and the dealer has applied in the prescribed manner for cancellation of his registration, the prescribed authority shall cancel the registration with effect from the prescribed date. This is what the assessee did after he had transferred the business and he ceased to be a registered dealer. Section 10 provides for returns to be made in the prescribed manner and these returns were made by the assessee during the relevant period.

Section 11 deals with assessment, and Section 12 deals with payment and recovery of tax, and a special machinery is set up by which a registered dealer has to pay the full amount of tax due from him under the Act according to the return that he makes. Therefore, when the assessment takes "place u/s 11 the assessing authority has to consider the return, the amount paid and to determine whether any further amount is payable by the dealer. Sub-section (4) of Section 12 deals with the notice which is to be served upon the dealer and the notice is to be of 30 days" duration and any amount of tax which remains unpaid after the date specified in the notice is made recoverable as an arrear of land revenue. Then comes Section 18 which calls for interpretation at our hands, and Sub-section (1) provides :

"When the ownership of the business of a dealer liable to pay the tax under this Act is entirely transferred, any tax payable in respect of such business and remaining unpaid at the time of the transfer shall be payable by the transferee as if he were the dealer liable to pay such tax, and the transferee shall also be liable to pay tax under this Act on the sales or supplies of goods effected by him with effect from the date of such transfer and shall within thirty days of the transfer apply for registration u/s 8 or Section 8-A, as the case may be, unless he already holds a certificate of registration."

Under this section a three-fold statutory liability is imposed upon the transferee. The first, with which we are directly concerned, is that he becomes liable to the same extent and in the same manner as the transferor to pay the tax which the transferor was liable to pay. The second liability is that he is liable to pay tax with regard to the sales effected or supplies made of goods after the date of the transfer, and the third liability is that he has got to apply for transfer within the fixed period.

The rather surprising argument that is put forward is that the liability imposed upon the transferee under the first head makes him solely liable to pay the tax which the transferor was liable to pay under that head. It is said that the Legislature in enacting Section 18 has not made it clear that the liability imposed upon the transferee is concurrent and co-extensive with the liability upon the transferor & in only imposing the liability upon the transferee the Legislature has not continued to impose the liability upon the transferor with regard to the

payment of tax.

In putting forward this argument what is overlooked is that the liability upon the transferor is already imposed by Section 5 of the Act. That is the charging section which makes the dealer who in this case is the assessee, liable to pay tax, and it is not disputed that, that liability was upon him during the relevant period and in respect of the relevant period. The assessee in order to succeed must draw our attention to some provision in the Act which absolves him from that liability.

Undoubtedly the Legislature for greater caution could have said in Section 18 that not only the transferee is liable but the transferor continues to be liable. But the mere fact that the Legislature did not make the position clear cannot lead to the inference that a liability solemnly imposed in a taxing statute upon the tax payer has been displaced or taken away by reason of the fact that a statutory liability to pay the same tax has been imposed upon a third party.

It has been seriously suggested before us that even though an assessment had taken place before the date of transfer and even though a notice to pay had been served u/s 12(4), as soon as the transferor transferred the whole of his business his liability would automatically cease and the liability would be imposed upon the transferee and he would be solely liable to discharge the tax due by the assessee. We are conscious of the fact that this is a taxing statute and that we must place upon every provision of this statute a construction which should help the assessee if it is possible to do so.

But as Mr. Seervai has rightly pointed out, the construction suggested by the transferor imposes an unconscionable burden upon the transferee because the result of this construction is that the transferee alone in law is liable to pay the tax which was due by the assessee and that if the transferee pays the tax he would not be entitled to recover that tax from the transferor because it is only if he discharges a liability which in law is payable by the transferor that the transferee would be entitled to recover the tax.

So we are asked to put a construction upon Section 18 which discharges the liability of the transferor, imposes a liability upon the transferee, makes that liability the sole liability of the transferee, and deprives the transferee of recovering the amount of tax paid by him from the transferor. No canon of construction can possibly induce us to take that view of Section 18. We should have thought that the proper construction of any statute which imposes a liability upon a person and then proceeds to impose that liability vicariously upon a third party is that the original liability of the person does not come to an end.

The taxing authority in order to make sure of the tax makes somebody else also liable to pay the tax, but it would be fantastic to suggest that the Legislature relieved the person primarily liable to pay the tax from his liability and only made the transferee liable merely by reason of the fact that he accepted a transfer of the business. It is true, as we have pointed out, that Section 18 does not in

terms say that the tax shall be payable also by the transferor, but nor does the section say that the tax shall be payable only by the transferee.

If the legislature had used either one or the other expression, we would not have been called upon to consider this matter. But as the legislature has failed to use those clear words, the question is what is the proper construction to be placed upon the liability imposed, upon the transferee by Section 18, and in our opinion with respect to the Tribunal, it is not possible to take the view that Section 18 absolves the transferor of the liability to pay the tax which liability has been incurred by him by reason of Section 5.

The Tribunal has referred to certain provisions of the Income Tax Act and considered the language used by that statute to come to the conclusion that failure to use similar language in Section 18 must result in a contrary conclusion being taken as to the liability of the transferor. The Sales Tax Act and the Income Tax Act, as we have said before, are not in *pari materia*.

The particular section to which reference has been made by the Sales Tax Tribunal, viz., Section 26, deals with the rather complicated machinery of assessment of partnerships and partners before and after discontinuance of the partnership and draw any inference from the language used in that section in order to construe Section 18 would in our opinion not be a safe guide at all nor would it be a proper canon of construction.

3. in our opinion, therefore, the transferor continues to be liable to pay the tax in respect of the periods during which he carried on the business and incurred the liability to pay sales tax. Although two questions have been submitted to us, Mr. Seervai has only argued one, viz. question (1), and we answer that question in the negative. The assessee to pay the costs.

4. Same answer for the same reasons in Reference No. 8 of 1956.

5. As both the references were heard together there will be one order for costs.

6. Answers accordingly.