

(1957) 01 BOM CK 0001
In the Bombay High Court
Case No : Civil Reference No. 22 of 1956

State of Bombay	Vs	APPELLANT
Purshottamdas Dwarakadas Patel		RESPONDENT

Date of Decision : 16-01-1957

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 34
Bombay Sales Tax Rules, 1946 — Rule 35

Citation : (1957) 8 STC 379

Hon'ble Judges : Shah, J;B.N. Gokhale, J

Bench : Division Bench

Advocate : H.D. Banaji and D. P. Madan, instructed by Little and Co, for the Appellant; S.P. Mehta and H.K. Shah, for the Respondent

Judgement

Shah, J.—In this reference we are concerned with a question about the authority of the Sales Tax Officer to grant refund of sales tax paid under an order of assessment on a certain view of the law, the law being thereafter differently interpreted by the Supreme Court.

2. Messrs. Purshottamdas Dwarakadas Patel, whom I will hereafter refer to as the assesseees, are wholesale and retail dealers in grocery. On 28th November, 1952, the Sales Tax Officer, Patan, in the District of Mehsana assessed the assesseees to sales tax for the period between 1st May, 1949, and 31st March, 1951. Under the assessment order made the assesseees were liable to pay Rs. 14,185-8-0 as sales tax. The Sales Tax Officer gave credit for Rs. 13,925-11-9 which had already been paid by the assesseees as tax and called upon them to pay the balance of Rs. 259-12-3. On 11th December, 1952, the balance of Rs. 259-12-3 was paid by the assesseees. Against the order of assessment no appeal was preferred by the assesseees. It appears that about this time there was pending an appeal [The State of Bombay v. The United Motors (India) Ltd. [1953] 4 S.T.C. 133] before their Lordships of the Supreme Court in which a question as to the competence of the legislature of a State to pass an Act levying

sales tax on inter-State transactions fell to be decided. Expecting that the Supreme Court may hold that the Legislature of the State had no authority to enact legislation to tax inter-State transaction, the assessee on 1st March, 1953, applied to the Sales Tax Officer for refund of Rs. 1,192-11-0 alleging that the levy was unauthorised. This application was in the form of a letter addressed to the officer. No action was taken on that letter by the Sales Tax Officer. On 30th March, 1953, their Lordships of the Supreme Court delivered their judgment holding that the Bombay State Legislature has no power to impose sales tax on transactions of sale taking place outside the the State of Bombay. On 5th June, 1953, the assessee again addressed a letter to the Sales Tax Officer asking for refund of Rs. 13,697-0-0. The application was also not in the form prescribed under the Sales Tax Act. On 23rd December, 1954, the Sales Tax officer informed the assessee that no refund could be granted by him and that the remedy of the assessee, if any, was to prefer an appeal against the order of assessment. The assessee thereafter preferred an appeal to the Assistant Collector of Sales Tax against the order of assessment. This appeal was evidently filed more than 60 days after the date on which the order of assessment was made. By order dated 7th March, 1955, the Assistant Collector summarily dismissed the appeal holding that it was barred by limitation. On 13th May, 1955, the assessee preferred a revision application to the Collector of Sales Tax. That application was rejected on 29th July, 1955, and against that order a revision application was filed to the Sales Tax Tribunal. On the assumption that the order challenged by appeal to the Assistant Collector was the order refusing to grant refund on the ground that the application was not in the prescribed form and on the view that the Assistant Collector and the Collector were in error in so holding, the Tribunal by order dated 16th April, 1956, set aside the order of the Collector and the Assistant Collector and directed that the applications for refund submitted by the assessee be inquired into and decided by the Sales Tax Officer in accordance with law. Against that order an application was filed praying that a reference be made to this Court u/s 34 of the Bombay Sales Tax Act, 1953. On that application the Tribunal have referred four questions to us, and those questions are :

"(1) Whether an application for refund of tax paid on any particular sales by an assessee can be made at any time within the prescribed period after the assessment proceedings are terminated;

(2) Whether such an application can be made without filing an application for revision against the appellate order within the time prescribed for the filing of application for refund;

(3) Whether in such a case the Sales Tax Officer is bound to reopen the assessment and modify the order of assessment; and

(4) Whether an application for refund which is not made in the form prescribed under rule 35 of the Bombay Sales Tax Rules, 1946, can be accepted as a valid application for the purpose of section 13 of the Act of 1946."

3. From the proceedings of the Assistant Collector and the Collector it appears to us that some unfortunate error has crept into the proceedings of the Sales Tax Tribunal. The Sales Tax Tribunal assumed that by the appeal before the Assistant Collector and the Collector the order refusing to grant refund was sought to be challenged. In fact the appeal filed before the Assistant Collector and the revision application filed before the Collector challenged the validity of the order of assessment made on 28th November, 1952. It is clear from the memo of appeal filed against the judgment of the Assistant Collector that the appeal was only filed against the order dated 28th November, 1952, passed by the Sales Tax Officer, Patan, for the assessment period between 1st May, 1949, and 31st March, 1951. It is conceded before us that there was no appeal before the Assistant Collector against the order refusing to grant refund. Prima facie therefore it was apparent that the Sales Tax Tribunal was incompetent to enter upon an enquiry whether the order passed by the Sales Tax Officer refusing to grant refund was or was not a proper order. But as certain questions have been referred to us on the application by the Collector, we may not be justified in taking a technical view and in raising a new question which substantially does not arise out of the judgment of the Tribunal and in vacating the order passed by the Tribunal after passing orders on that new question. We have therefore heard counsel for the assesseees and counsel for the State of Bombay on the question which have been raised before us and the questions which arise out of the judgment of the Tribunal.

4. The principal question which falls to be determined is whether after an order of assessment has been made by the Sales Tax Officer it is open to the assesseees to apply to that officer for refund of the amount contending that the Sales Tax Officer's order was bad in law. In other words, whether the Sales Tax Officer is entitled to entertain an application for review of his own judgment on a plea of an error of law in the order of assessment discovered since the date of the assessment and to claim refund of tax already paid. Section 13 of the Bombay Sales Tax Act, 1946, in so far as it is material, provides : "The Collector shall, in the prescribed manner, refund to a registered dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act, either by cash payment or, at the option of the dealer, by deducting all such excess from the amount of tax due in respect of any other period." That jurisdiction to grant a refund is conferred upon the Collector of Sales Tax where the amount of tax paid by the dealer is in excess of the amount due from him under the Act cannot be disputed. But the question arises whether in claiming refund the dealer is entitled to call upon the Collector to ignore his previous judgment assessing liability to tax. If a dealer has made payment of tax every quarter as he is required by law to do and if at the final assessment it appears that his liability to pay tax is for an amount less than the amount actually paid, the case will clearly fall within section 13. Similarly, if by an order passed by an appellate authority or a revising authority the tax payable by the dealer is declared to be less than the amount actually paid by the dealer in pursuance of

the order of assessment evidently the Collector is entitled to pass an order for refund. But the Act does not confer upon the Sales Tax Officer power of reviewing his own assessment. There being no provision for the review of assessment, in considering an application for refund, in our view, the Collector is bound to decide an application for refund on the view that an order of assessment of sales tax has been validly passed and the liability declared due thereby is properly imposed. If having regard to the assessment originally made and confirmed or modified by a superior tribunal any adjustment is require to be made an order u/s 13 can evidently be passed. But in our view the Collector cannot be asked to refund tax already paid after reconsidering his own earlier decision. If it was otherwise, the Collector would have the power of sitting in appeal over the judgment of his superior officers. Against an order of assessment an appeal lies u/s 21 to the prescribed authority and the prescribed authority is entitled to set aside the order passed by the Collector on the ground of any error or illegality committed in the assessment. If it be granted that the Collector has the power of reviewing his own assessment, there is nothing in section 13 which would limit the exercise of the power of review even after an order has been passed in appeal. That view of section 13 would unsettle all assessment proceedings which are concluded by orders passed by the assessing authorities after they have been confirmed by authorities exercising appellate and revisional jurisdiction. It may be that the expression "any amount of tax paid by such dealer in excess of the amount due from him under the Act" may be susceptible of the meaning any amount of tax paid by such dealer in excess of the amount lawfully due by him under the Act. But having regard to the fact that the Legislature has not conferred a right of review upon the Collector we are of the view that refund can only be awarded consistently with the order of assessment already made.

5. The Sales Tax Tribunal have raised four questions which we have already set out, but we do not think that the questions have been correctly framed. In our view, only one question falls to be determined on the judgment of the Sales Tax Tribunal and that question is, whether an application for refund of sales tax paid under an order of assessment can be entertained by the Sales tax Officer on the plea that the order was made on an erroneous view of the law, without having the order set aside in proper proceedings by way of appeal or revision. In our view, the answer is in the negative. The assessees will pay the costs of this hearing to the State of Bombay.

6. Reference answered accordingly.