

(1991) 04 GUJ CK 0015
In the Gujarat High Court
Case No : Sales Tax Reference No. 1 of 1982

State of Gujarat

APPELLANT

Vs

Diamond Optical Mart

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 36
Central Sales Tax Act, 1956 — Section 9(2)
Gujarat Sales Tax Act, 1969 — Section 69

Citation : (1991) 04 GUJ CK 0015

Hon'ble Judges : S.D. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : Kamal M. Mehta, Assistant Government Pleader, for the Appellant;

Judgement

S.D. Shah, J.—The Gujarat Sales Tax Tribunal by its judgment and order, dated 9th May, 1978, in Revision Application No. 36/77 remanded the matter to the Deputy Commissioner to ascertain the facts and pass suitable orders in the light of directions given by the Tribunal in its judgment. It also ordered the penalty imposed u/s 36(3)(a) of the Bombay Sales Tax Act, 1959, read with section 9(2) of the Central Sales Tax Act, 1956, to be removed since in the circumstances of the case it found that imposition of such penalty was not proper.

2. Being aggrieved by the said judgment and order of the Tribunal the State of Gujarat filed application u/s 69 of the Gujarat Sales Tax Act being Reference Application No. 58/78 requiring the Tribunal to refer question of law to the High Court. By judgment and order dated 7th November, 1979, the Gujarat Sales Tax Tribunal refused the prayer for reference on the ground that the Tribunal had exercised its discretion and had come to the conclusion that there was reasonable cause on the part of the opponent for not paying the disputed amount in time.

3. Being aggrieved by the said order of the Tribunal refusing to make reference to the High Court the State filed Sales Tax Application No. 2 of 1980 before the

High Court of Gujarat and by its judgment and order dated 19th March, 1981, the High Court directed the Tribunal to draw the statement of the case and to raise and refer the following question of law to the High Court. In compliance with the said direction the Tribunal has raised the following question of law for our decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the penalty as improper without assigning any reason and with finality instead of keeping the question of penalty open and remitting it to the competent authority to whom the main question (on which depended the question of penalty) was remanded for a fresh decision in accordance with law inasmuch as both the questions are linked with each other."

4. Relevant facts for the purpose of answering the said question are stated hereunder :

(i) The opponent had effected certain inter-State sales of optical goods in S.Y. 2024 to two parties of Bombay, namely, (i) M/s. Pravinchandra & Co. and (ii) M/s. R. Kantilal & Co. Since the transactions were inter-State sales they were accompanied by "C" forms obtained from respective parties. The Sales Tax Officer who was assessing the opponent wanted to verify the genuineness of said declaration forms and he referred the matter to the sales tax authorities at Bombay for conducting necessary enquiry.

(ii) On the basis of report received from the sales tax authorities of Bombay, the Sales Tax Officer at Rajkot found that the "C" forms produced by the opponent were not issued to the concerned purchasers and one of the concerned purchasers has closed its business while in the case of another his registration certificate was cancelled, and therefore, the said "C" forms could not be accepted as genuine. He, therefore, disallowed the claim of the assessee to tax the said transactions at concessional rate and has subjected the disputed sales to tax at full rate of 10 per cent.

(iii) Being aggrieved by the said order of the Sales Tax Officer the opponent approached the Assistant Commissioner of Sales Tax, Ahmedabad, in appeal who allowed the said appeal.

(iv) The Deputy Commissioner of Sales Tax, Rajkot, thereupon, while scrutinising the order of the Assistant Commissioner of Sales Tax found that there was error in considering the declarations in form "C" as genuine and valid, and he therefore, exercised suo motu revisional jurisdiction and set aside the order passed by the Assistant Commissioner of Sales Tax and restored the order passed by the Sales Tax Officer and he also imposed penalty of Rs. 3,394 u/s 36(3)(a) of the Bombay Sales Tax Act, 1959, read with section 9(2) of the Central Act, 1956.

(v) Dissatisfied with the order in revision passed by the Deputy Commissioner of Sales Tax, Rajkot, the opponent preferred revision application to the Tribunal.

Before the Tribunal it was, inter alia, contended that, in fact, M/s. Pravinchandra & Co. was holding Central registration number as well as local registration number. The sales tax authorities of Bombay in the report have found that said registration certificate of M/s. Pravinchandra & Co. has been cancelled with effect from 1st January, 1958. It was not stated as to which registration certificate was cancelled, namely, Central registration certificate or local registration certificate. Based on that lacuna it was submitted that the opponent cannot be said to have obtained the disputed "C" forms from bogus dealers. In fact, opponent obtained the "C" forms from genuine purchasing dealers. It was also urged before the Tribunal that the report of the Bombay sales tax authorities did not show that the "C" forms as obtained by these dealers were never issued by any of the competent authorities to those dealers at Bombay. It was found that in the case of M/s. Pravinchandra & Co. the registration was cancelled while in the case of M/s. R. Kantilal & Co. it has closed its business. It was not the case of the sales tax authorities at Bombay that the said "C" forms were not issued to the parties and therefore it was urged before the Tribunal that the opponent, in fact, relied upon the "C" forms supplied to him by the parties since he had no reason to doubt the parties holding registration numbers. Since the said "C" forms were bona fide received and used by the opponent, it was contended before the Tribunal that there was no justification for revising the order passed by the Assistant Commissioner of Sales Tax, Rajkot.

(vi) The Tribunal in its judgment while reappreciating the evidence and the acceptability of the report received from the sales tax authorities at Bombay found that firstly the issuance of "C" forms by the sales tax authorities at Bombay was not in dispute; secondly it found that the "C" form books bearing Nos. Y/O 531976 to Y/O 532125 were issued to M/s. Dhirendra & Co. whose registration certificate was cancelled with effect from 1st April, 1968, due to closure of business; thirdly it found that M/s. Pravinchandra & Co. was not carrying on business and as such its registration certificate has been cancelled with effect from 1st January, 1968; fourthly, it found that the registration certificate of M/s. Kantilal & Co. was also cancelled. However, the Tribunal noted that issuance of "C" forms by the sales tax authorities at Bombay was not in dispute and in that sense it found that the "C" forms could not be said to be totally bogus. However, the Tribunal found substance in various objections raised by the advocate for the opponent-assessee in treating the "C" forms as invalid or unauthorisedly obtained and it notified that certain facts were required to be established before treating the said "C" forms as invalid or unauthorisedly obtained. The Tribunal, therefore, thought it proper to remand the matter to the Deputy Commissioner of Sales Tax to ascertain the facts, more particularly stated in para 13 of its judgment, and after verifying them to pass suitable order.

5. However, it may be mentioned that the Tribunal in the course of its discussion has categorically found that the genuineness of "C" forms produced by the opponent was not in doubt inasmuch as the said "C" forms were not bogus, got-up or concocted or were not those which were not issued by the sales tax

authorities at Bombay. The Tribunal also found that, in fact, the "C" forms were issued to M/s. Pravinchandra & Co. but its registration certificate was cancelled, and therefore, it could not have utilised those "C" forms. Similarly, in the case of M/s. R. Kantilal & Co. the Tribunal found that the "C" forms were issued to the said company but the said company has closed its business, and therefore, it could not have utilised those "C" forms. Therefore, the opponent could not have known that the "C" forms which were supplied to him by the said parties were unauthorised and could not have been utilised by the opponent. In fact, the Tribunal has referred to those circumstances in its judgment and order and having referred to those circumstances it has found that the penalty imposed u/s 36(3)(a) of the Bombay Act read with section 9(2) of the Central Act was not proper and the same was therefore ordered to be removed. Mr. K. M. Mehta, for the applicant-State submits that u/s 36 of the Bombay Act the Tribunal has no jurisdiction to quash and set aside the order of penalty while remanding the matter to the Deputy Commissioner of Sales Tax for assessment. In the alternative, he submits that if the Tribunal has such jurisdiction, the Tribunal ought to have given reasons for removing the order of penalty.

6. We may mention at this stage that the Tribunal was not exercising its original jurisdiction. It was exercising its revisional jurisdiction. In its revisional jurisdiction it can uphold the order in its entirety or it can set aside a part of the order and can remand the matter for the rest. It is not correct reading of section 36. It is true that the matter was remanded for assessment and penalty order was removed. However, it should not be overlooked that the Tribunal was exercising its revisional jurisdiction. The Tribunal has, in fact, given reasons for removing the order of penalty and therefore passed the order of removing the penalty. Firstly, the Tribunal has found that the "C" forms produced by the opponent were not bogus or fake in any manner in the sense of having not been issued by the sales tax authorities at Bombay. Secondly, the Tribunal has also found in the course of its reasoning that the two dealers of Bombay who furnished to the opponent the "C" forms were in fact registered dealers. The registration of one of them was cancelled while another dealer stopped its business. Impliedly, therefore, the Tribunal accepted those two dealers were genuine purchasers. The record also shows that both the dealers had their business, but on registration of one being cancelled and on another closing its business they could not have utilised the "C" forms in their possession. No attempt, whatsoever, was made by the sales tax authorities to show and it was not even their case that the opponent (assessee) believed that he was not selling his goods to genuine purchasing dealers and this was not in dispute. These facts have, in fact, weighed with the Tribunal. Therefore, though the Tribunal has not specifically stated in para 15 of its judgment these very reasons which it has earlier referred to, these circumstances constitute a reasonable cause for non-payment of tax and the Tribunal has therefore found that in the circumstances of the case imposition of penalty was not good and same was required to be removed. We, therefore, hold that the Tribunal had that jurisdiction and for the

reasons recorded by it in the earlier part of its judgment though not specifically stated in para 15 of its judgment, it has, in fact, reached the finding that there was reasonable cause for non-payment of tax on the part of opponent-assessee, and therefore, the penalty was not required to be imposed.

7. In the result, we answer the question in the affirmative, i.e., in favour of opponent-assessee and against the department. There shall be no order as to costs.

8. Reference answered in the affirmative.