

**(1991) 02 GUJ CK 0014**  
**In the Gujarat High Court**  
**Case No : Sales Tax Reference No. 36 of 1980**

State of Gujarat

APPELLANT

Vs

Esso Standard

RESPONDENT

**Date of Decision :** 28-02-1991

**Acts Referred:**

Bombay Sales Tax Act, 1959 — Section 36(3), 61(1)  
Central Sales Tax Act, 1956 — Section 6, 6(2), 8, 8(1), 8(4)

**Citation :** (1991) 02 GUJ CK 0014

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

**Bench :** Division Bench

**Advocate :** K.A. Mehta, Additional Government Pleader, for the Appellant; R.D. Pathak, for the Respondent

## Judgement

G.T. Nanavati, J.—The question which is referred to us by the Sales Tax Tribunal for our decision is :

"Whether, on the facts and in the circumstances of this case, and having regard to the provisions of section 9(1) of the Central Sales Tax Act, 1956 read with the proviso thereto, with particular reference to the expressions "obtained" and "could have obtained" used therein, and having regard to the other relevant provisions of that Act, the Tribunal was right in law in holding that State of Gujarat had no jurisdiction to levy Central sales tax on the opponent's impugned subsequent sales of Rs. 2,92,398.84 and in accordingly setting aside the levy of Central sales tax thereon and in also removing the penalty of Rs. 8,127.61 imposed u/s 36(3) of the Bombay Sales Tax Act, 1959 read with section 9(2) of the Central Sales Tax Act, 1956 ?"

The opponent is a dealer in petroleum products. It has its head office in Bombay and branch office in Gujarat. It is registered as a dealer at both the places under the Central Sales Tax Act. Between August 23, 1969 and October 12, 1969, the opponent through its local office in Gujarat purchased certain petroleum products from Indian Oil Corporation's refinery situated at Koyali near Vadodara. As the

said goods were purchased for the head office at Bombay they were sent to Bombay, and there is no dispute that the said sales took place in the course of inter-State trade and commerce. The opponent had furnished declarations in form "C" as provided by section 8(1)(b) read with section 8(4)(a) of the Central Act, and had, thus obtained the benefit of concessional rate of sales tax at 3 per cent. The "C" forms which the opponent had furnished to the selling dealer were obtained by the opponent's head office from the State of Maharashtra. While the goods were still in movement from one State to another, the opponent effected second sales of these goods to certain dealers in Maharashtra State by transferring railways receipts in their favour. These subsequent sales were of the value of Rs. 2,92,398.84. Initially, in the quarterly returns for the period, the opponent had included its subsequent sales in its turnover of sales and had claimed deduction of said sales believing that they were exempt from the levy of Central sales tax under sub-section (2) of section 6 of the Central Act. But after coming to know that the Maharashtra dealers in whose favour the subsequent sales were effected were not registered under the Central Act, and the sales were, therefore, not entitled to the exemption u/s 6(2) of the Central Act, the opponent filed a revised statement excluding the said subsequent sales.

2. Before the Sales Tax Officer it was contended on behalf of the opponent that the subsequent sales did not fall u/s 6(2) of the Central Act, but the appropriate State which could levy and collect the tax under the Central Act would be the State of Maharashtra and not the State of Gujarat. The Sales Tax Officer did not accept this contention and subjected the opponent's turnover of disputed sales to levy and collection of sales tax at the full rate of 10 per cent. He also imposed penalty upon the opponent in terms of section 36(3) of the Bombay Sales Tax Act, 1959, read with section 9(2) of the Central Act read with section 88 of the Gujarat Act of 1969. Against that order of the assessment and penalty the opponent preferred an appeal before the Assistant Commissioner of Sales Tax. What was contended before the Assistant Commissioner was that the levy and collection of tax on the turnover of Rs. 2,92,398.84 and imposition of penalty was not proper and legal. It was also urged before the Assistant Commissioner that the first sale was really to the Bombay head office and for that reason the "C" forms of the Maharashtra State were furnished to the Indian Oil Corporation Ltd. The Assistant Commissioner did not accept the said contention as he found that the sales were reflected in the account books and registers maintained by the local office situated within the State of Gujarat and that no such entries were made in the account books or the registers maintained by the head office. He, therefore, confirmed the order passed by the Sales Tax Officer and dismissed the appeal. The opponent, thereafter, filed an appeal before the Tribunal.

3. Before the Tribunal the contention of the opponent was that as it was a registered dealer under the Central Act, and as the "C" forms were obtained u/s 8(4)(a) of the Central Act from the State of Maharashtra in order to purchase the said goods from Indian Oil Corporation Ltd., the proviso to section 9(1) of the Central Act applied to the facts of the case, and therefore, the State of

Maharashtra alone was competent to levy and collect the tax on the subsequent sales. As against that the case of the department before the Tribunal was that the proviso to section 9(1) was not attracted in this case as the opponent was admittedly registered in Gujarat State as a dealer under the Central Act, and therefore, it was incumbent upon the opponent to have obtained the "C" forms in Gujarat State, in order to qualify its inter-State purchases from Indian Oil Corporation Ltd. for concessional rate of tax and in order to exclude or deprive the jurisdiction or authority of the Gujarat State under the proviso to section 9(1) of the Central Act. The Tribunal held that the present case was covered by section 9(1) of the Central Act, and therefore, the Gujarat State had no jurisdiction to levy and collect the tax on the said subsequent sales. It, therefore, allowed the appeal and set aside the order of assessment and penalty.

4. The State of Gujarat feeling aggrieved by the decision of the Tribunal has applied u/s 61(1) of the Bombay Sales Tax Act, 1959, for referring the above stated question of law to this Court. The Tribunal agreeing with the applicant's contention that the question of law does arise has referred the said question for our decision.

5. It was contended by the learned counsel appearing for the applicant that liability to pay sales tax in on the registered dealer selling the goods, and as the selling dealer in this case is registered within the State of Gujarat, only the Gujarat Government has the right to collect the tax. It was further submitted that even according to proviso to section 9(1) of the Act the tax could have been validly collected only in the State of Gujarat as the opponent which had effected the subsequent sales was required to produce declarations in connection with the purchase of goods and it could have procured such declarations only from the authority in the Gujarat State, since the goods were purchased in Gujarat. It is not in dispute that as per the indents received from the head office of the opponent at Bombay the local office in Gujarat had furnished "C" forms obtained from the State of Maharashtra. At no point of time the department had raised any objection as regards the validity of those forms or the legality of such forms before any authority. It is, for the first time, before this Court that the learned counsel for the applicant has tried to raise that point, and that too, indirectly by submitting that the opponent ought to have procured such declarations only from the authorities in Gujarat State as the goods were purchased in Gujarat.

6. As state earlier, the opponent is a dealer registered both in State of Maharashtra and State of Gujarat under the Central Sales Tax Act. It had obtained "C" forms for the purpose of clause (a) of section 8(4) in connection with the purchase of the goods from the authorities in the State of Maharashtra. The goods purchased by the opponent were to be delivered at Bombay pursuant to the first inter-State sale. Therefore, necessary "C" forms could have been obtained by the appellant from the State of Maharashtra. The subsequent sales were made during their movement from the State of Gujarat to the State of Maharashtra. Admittedly, said sales did not fall within sub-section (2) of section 6

of the Central Act. Therefore, the proviso to section 9 becomes applicable to these sales. The proviso provides that "in such cases the tax shall be levied and collected in the State from which the registered dealer effecting the subsequent sale obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods". As pointed out earlier, in connection with purchase of goods the opponent had obtained necessary forms for the purpose of clause (a) of sub-section (4) of section 8 from the authorities in the State of Maharashtra. Those forms were accepted by the department inasmuch, at no point of time any dispute regarding their validity was raised by it. The applicant, therefore, cannot now contend and there is also no substance in the contention that with respect to the purchases of these goods the opponent could have obtained necessary forms only from the authorities in the State of Gujarat.

7. In support of its contention the learned advocate appearing for the applicant has relied upon the decision of the Supreme Court in the case of State of Uttar Pradesh v. Kasturi Lal Har Lal reported in [1987] 67 STC 154. That was a case where the goods were sold by an unregistered dealer to the registered dealer. Moreover, the Supreme Court in that case was not concerned with the applicability of proviso or the question with which we are concerned in this reference. Therefore, that decision cannot be of any help to the applicant. On plain reading of the proviso and on consideration of the admitted facts of this case it will have to be held that necessary forms were obtained and could have been obtained from the authorities in the State of Maharashtra and that State alone has right to levy and collect the sales tax in respect of the sales in question. The Tribunal was, therefore, right in holding that the levy of tax of Rs. 29,239.88 and the imposition of penalty by the Sales Tax Officer in Gujarat was without jurisdiction, and therefore illegal. The question referred to us is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the applicant-department. There shall be no order as to costs.

8. Reference answered in the affirmative.