

(1957) 01 BOM CK 0026
In the Bombay High Court
Case No : Civil Ref. No. 26 of 1956

Steelage Industries Ltd.

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 17-01-1957

Acts Referred:

Bombay Sales Tax Act, 1946 — Section 2, 23, 5, 6

Citation : AIR 1957 Bom 160 : (1957) 59 BOMLR 347 : (1957) ILR (Bom) 474

Hon'ble Judges : Shah, J;Gokhale, J

Bench : Division Bench

Advocate : N.A. Palkhiwala and S.P. Mehta, for the Appellant; P.N. Bhagwati and Little and Co., Attorneys, for the Respondent

Judgement

Shah, J.—Messrs. Steelage Industries, Ltd., whom we will refer to as "the assesseees" are registered dealers Under the Bombay Sales Tax Act, 1946, and also under the Bombay Sales Tax Act, 1953. The assesseees carry on the business of manufacturing end Belling steel furniture. In the application submitted by the assesseees for registration as dealers, Bales in motor cars was not mentioned as one of the lines in which they were dealing or intended to deal. On 15th July, 1948, the assesseees purchased a motor car and paid Rs. 604/- as sales tax on the purchase. The motor car was purchased for the use of the Managing Director of the assesseees. This motor car was subsequently sold by the assesseees on 14th December, 1951, at a small profit. The Sales Tax Officer, Bombay, included the sale price of the motor car in the assessment of the assesseees for the period between 1st April, 1951, and 31st October 1952, as part of the taxable turnover and subjected the price to sales tax. Against that order an appeal was preferred to the Assistant Collector and that order was confirmed in appeal. An application in revision was filed by the assesseees before the Sales Tax Tribunal at Bombay. The Sales Tax Tribunal held that the motor car having been purchased for the use of the Managing Director of the assesseees, and the cost of its purchase and the proceeds of its sale having been debited and credited in the assesseees books of account, and the motor car having been actually shown as part of the assets of

the assessees, the price was liable to be included in the taxable turnover and subjected to payment of sales tax. An application was submitted to the Sales-Tax Tribunal for referring three questions to this Court u/s 23 of the Bombay Sales Tax Act, 1946. The Tribunal by their judgment, dated 20th August, 1956. have referred the following question to this Court:

"Whether the applicants (assesseees) are liable to pay sales tax in respect of the re-sale of the car purchased by them for the use of their Managing Director after it had been used by the said officer for more than 3 years."

2. It is undisputed that the assesseees deal only in steel furniture. Sale of motor cars, new or second-hand, is not a part of their business. It is also undisputed that the sale of the motor-car was a casual transaction of a part of their assets. The question which falls to be determined in this Reference is whether the price received for sale of the motor car can be included in the taxable turnover of the assesseees.

3. The expression "dealer" is defined by Section 2 (c) of the Bombay Sales Tax Act, 1946, in so far as it is material, as

"any person who carries on the business of selling or supplying goods in the State of Bombay, whether for commission, remuneration or otherwise."

The expression "sale" is defined" by Section 2 (g) , as "any transfer of property in goods for cash or deferred payment or other valuable consideration...." and the expression "sale price"" is defined by Section 2 (h) as

"the amount payable to a dealer as valuable consideration for the sale or supply of any goods, less any sum allowed as cash discount according to trade practice".

Section 5 of the Act, which is the charging section, renders every dealer, whose gross turnover exceeds the amount specified, in the year immediately preceding the commencement of the Act, liable to pay sales tax under the Act, and Section 6 provides for the levy and the rates of general and special taxes on the taxable turnover of the dealer. The expression "turnover" is defined in Section 2 (j) as

"the aggregate of the amounts of sale prices received and receivable by a dealer in respect of sale or supply of goods effected or made during a given period. . . .".

It is evident from the terms of Sections 5 and 6 that the liability to pay sales tax is of a dealer whose gross turnover exceeds the amount specified and the rate of tax is computed on the "taxable turnover" of the dealer. That the assesseees in the present case are dealers cannot be disputed. They have applied for registration and are in fact registered as dealers. But the sale of the motor car purchased by them initially for the Use of their Managing Director was not a sale in the course of their business. A "dealer" being defined as a person who carries on the business of selling or supplying goods and the obligations to pay tax being

imposed upon a dealer, in our judgment, a dealer is liable to pay sales-tax only in respect of sales effected by him in the course of his business.

4. We are unable to agree with the view of the Sales Tax Tribunal, which was sought to be supported before us by Mr. Bhagwati on behalf of the State of Bombay, that any transaction of sale of goods by a dealer, even if it has no connection with the business carried on by him, must be regarded as a sale liable to tax, and the price received at such sale is liable to be included in the taxable turnover. If the sale is a casual sale having no connection with the business for which the dealer is registered or is liable to be registered, in our view, the sale price will not be included in the taxable turnover, nor will the price be taxed. It is true that the charging section renders every dealer liable to pay tax whose gross turnover exceeds the amount specified therein, and the expression "turnover" means the aggregate amounts of prices received in respect of sale or supply of goods. But, reading Section 5 with Section 2 Clause (c) and (j), we have no doubt that the Legislature intended that only those transactions, which were carried out in the course of the business of the dealer, are liable to be taxed under the Bombay Sales Tax Act, 1946.

5. Mr. Bhagwati contended that in any event the transaction of sale of the motor car by the assessee even as a second-hand motor car must be regarded as carried out in the course of their business and liable to payment of tax. We are unable to accept that contention. It has not been found by the Tribunal that the sale of the motor car was a part of the business activity of the assessee. It is true that they have found that the motor car was a part of the assets of the assessee; but a transaction of sale of a part of the assets is not necessarily a sale in the course of the business of the assessee. In order that a transaction may be regarded as part of a business the test of volume and the degree of frequency of similar transactions must be fulfilled. A casual sale of an item of the assets of the assessee does not make it a sale in the course of the business of the assessee. We are, therefore, of the view that the Tribunal were in error in holding that the assessee was liable to pay sales tax on the sale of the motor car in question.

6. We accordingly answer the question referred to us by the Tribunal in the negative. The State to pay the costs of this Reference. The deposit of Rs 100/- made by the assessee to be refunded.

7. Answered in negative.