
(1976) 02 BOM CK 0004
In the Bombay High Court
Case No : S.T. Ref. No. 11 of 1971

The Commissioner of Sales Tax		APPELLANT
	Vs	
Economic Traders		RESPONDENT

Date of Decision : 20-02-1976

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 37(1), 61(4), 62

Citation : (1976) 5 CTR 254

Hon'ble Judges : Madon, J;Kania, J

Bench : Division Bench

Advocate : K.S. Cooper, for the Appellant; B.C. Joshi, for the Respondent

Judgement

Madon, J.—The reference u/s 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the Commissioner of Sales Tax appears to us, in the light of subsequent facts, to be unnecessary to decide and in light of the facts as existing at the date of the original Application for Rectification from which this Reference arises, as one which could easily have been avoided.

2. The brief facts which are necessary for an understanding of this Reference are that the Respondents are a firm registered as a dealer under the Bombay Sales Tax Act, 1959. For the assessment period, April 1, 1960 to March 31, 1961, the Respondents were assessed to tax under the said Act. By his assessment order the Sales Tax Officer levied a penalty of Rs. 1,200 upon the Respondents u/s 37(1) of the said Act. Against this order the Respondents went in appeal, and the Assistant Commissioner of Sales Tax in appeal deleted the penalty imposed upon the Respondents. Thereafter on October 20, 1966 the Deputy Commissioner of Sales Tax issued a notice calling upon the respondents to show cause why the said order of the Assistant Commissioner should not be revised by him. After hearing the Respondents, by his order dated November 7, 1966 the Deputy Commissioner held that if the Assistant Commissioner thought it fit to set aside the penalty, he should have forfeited to the State Government the sums collected by the Respondents in contravention of the provisions of the Bombay Sales Tax

Act, 1959, and that he not having done so, his order was liable to be revised and he accordingly revised the said order and directed the said sum of Rs. 1,200 to be forfeited to the Government.

3. Thereafter on January 21, 1967 the Tribunal in Revision Application No. 682 of 1965 Motor Machinery Manufacturers Ltd. vs. The State of Maharashtra heard along with Appeal No. 6 of 1967 in which the said Motor Machinery Manufacturers Ltd. were also the appellants, held that the Deputy Commissioner of Sales Tax had no jurisdiction or power to revise an appellate order passed by the Assistant Commissioner of Sales Tax. Relying upon his judgment the Respondents filed on October 3, 1967 an Application for Rectification before the Deputy Commissioner u/s 62 of said Act requesting him to rectify his said order in view of the said judgment of the Tribunal. By his order dated November, 1967 the Deputy Commissioner dismissed the said Application for Rectification. He held that the decisions of the Tribunal, unlike those of the Supreme Court and the High Court, were not binding upon the Sales Tax authorities. He further observed that the Department had not accepted the decision of the Tribunal in the case of Motor Machinery Manufacturers Ltd. vs. The State of Maharashtra and that at the instance of the Commissioner of Sales Tax a Reference had been made to the High Court and was pending.

4. Against this order of the Tribunal an appeal was filed to the Sales Tax Tribunal. It appears from the judgment that the appeal was heard at considerable length, and not only the parties but the Sales Tax Tribunal Bar Association appeared at the hearing of the said appeal. After hearing detailed arguments and considering various authorised and textbooks cited at the Bar, the Tribunal held that its decisions were binding upon the Sales Tax Authorities and that the Deputy Commissioner was in error in refusing to follow the aforesaid judgment of the Tribunal. The Tribunal accordingly allowed the Respondents' appeal and directed the Deputy Commissioner to make the necessary rectification. At the instance of the Commissioner of Sales Tax the Tribunal has stated this case and referred to us the following question :

"Whether on the facts and in the circumstances of the case the Tribunal was correct in holding that there was a mistake apparent from the record in the order of the Deputy Commissioner (Adm) I, Bombay City Division, dated 7-11-1966 requiring that officer to make the necessary rectification on the ground that the decisions of the Tribunal on law points constitute precedents binding on the Sales Tax authorities administering the sales tax law in the State.

5. While this Reference was pending, on January 6, 1976 we decided Sales Tax Reference No. 12 of 1971. The Commissioner of Sales Tax vs. Motor Machinery Manufacturers Ltd., namely, the Reference which was made to this High Court from the said judgment of the Tribunal in Revision Application No. 682 of 1965 and Appeal No. 6 of 1967. In that Reference we held that the Deputy Commissioner had the power and jurisdiction to revise *suo motu* an order passed in appeal by an Assistant Commissioner of Sales Tax. In view of this judgment

delivered by us, it is obvious that the Application for Rectification made by the Respondents before the Deputy Commissioner was not maintainable and could not be allowed.

6. The first question that strikes one in this matter is why the Deputy Commissioner, if he felt that the said judgment of the Tribunal was not correct, when he in fact knew that a Reference was pending before the High Court, should not have adjourned the hearing of that Application until the said Sales Tax Reference No. 12 of 1971 was decided. We were informed that he did so because he did not want the said Application for Rectification to be kept pending for a long time, but wanted expeditiously to dispose it of. A moment's pause for reflection would have, however, shown the Deputy Commissioner that since there was judgment of the Tribunal holding that a Deputy Commissioner had no power or jurisdiction to revise an order in appeal passed by an Assistant Commissioner, the Respondents were bound to go in appeal to the Tribunal, that following its decision the Tribunal was bound, or at least very likely, to decide against the Department and that there would in either event be a Reference to the high court in view of the pendency of the said Sales Tax Reference No. 12/1971. Had he so paused for reflection, the Deputy Commissioner would have realized that instead of expediting and disposing of the matter, all that he was doing was to give rise to multiplicity of proceedings, causing further delay and exposing the parties to unnecessary expenses all of which could easily have been avoided. The Book of Ecclesiastes says, "To every thing there is a season, and a time to every purpose under the heaven," and thus there is a time for despatch and a time for discretion, and in the matter of the said Application for Rectification the purpose would have been much better served by the Deputy Commissioner exercising some discretion in the matter. Enough public time and public money have, however, already been spent in this matter by reason of the Deputy Commissioner insisting on disposing of the matter. As mentioned earlier, the matter was argued at considerable length before the Tribunal and a number of authorities and text books had been cited which no doubt would be cited again before us. Mr. Cooper, learned Counsel for the Applicant, has also informed us that in addition to citing the authorities and text books which have been cited before the Tribunal, he proposes to cite further authorities, Mr. Joshi, who appears as amicus curiae, has also intimated to us has intention to join in this assault upon public time. In view of the facts we have already set out above, we feel that the question upon which so much time was spent by the Tribunal and upon which we are called upon to spend an equal if not a greater amount, of public time has now become wholly academic and of no practical interest whatsoever. The real question at issue was the jurisdiction of the Deputy Commissioner to revise an order in appeal passed by the Assistant Commissioner. The Deputy Commissioner held that he had jurisdiction to do so. Undoubtedly, he held so in spite of the judgment of the Tribunal holding that he had no jurisdiction to do so. Therefore, though assuming he was wrong in holding that the decision of the Tribunal was not binding upon him, non the less

the final order which he passed rejecting the Respondent's Application was correct in view of the fact that the decision of the Tribunal in the case of Motor Machinery Manufacturers Ltd. was wrong in law as held by this High Court. After we decided this matter and opined whether the Deputy Commissioner was right or wrong in not considering himself bound by the decision of the Tribunal, the matter has to go back to the Tribunal u/s 61(4) of the said Act, and upon receiving a copy of our judgment the Tribunal will have to dispose of this case in the light of what we have stated in our judgment. Any judgment which we give must necessarily point out, as we have already pointed out, that the case of Motor Machinery Manufacturers Ltd. was not correctly decided by the Tribunal and that a Deputy Commissioner has jurisdiction to revise an order in appeal passed by an Assistant Commissioner. Therefore, when passing final orders even assuming we decide the question submitted to us against the Applicant, the Tribunal must say that though the reasoning of the Deputy Commissioner was incorrect and not supportable in law, his final conclusion that the Respondents Application for Rectification should be dismissed was correct, and must, therefore, on that ground dismiss the said appeal filed by the Respondents. Even assuming the Tribunal does not follow this course or it is open to it not to follow it, immediately the Tribunal passes an order confirming its order allowing the appeal, the State can presumably make an Application for Rectification before the Tribunal u/s 62(2) of the said Act requesting it to rectify its order in view of the subsequent decision of the High Court in the said Sales Tax Reference No. 12 of 1971. Thus, in any event, the decision on the actual question submitted to us appears to us to involve unnecessary waste of public time and money and to be academic and of no interest whatsoever as this question has ceased to be of practical importance and is now not in issue. We, therefore leave this question open and express no opinion on the point whether the Tribunal was right in law or in error in holding that its decisions are binding upon the Sales Tax authorities.

7. We accordingly for the reasons stated above decline to answer the question referred to us, except to state that the Tribunal, while disposing of the case u/s 61(4) of the Bombay Sales Tax Act, 1959, when it receives a copy of our judgment, will pass final orders in accordance with our judgment delivered in Sales Tax Reference No. 12 of 1971, The Commissioner of Sales Tax vs. Motor Machinery Manufacturers Ltd. decided on January 6, 1976.

8. There will be no order as to the costs of this Reference.