
(1976) 01 BOM CK 0010

In the Bombay High Court

Case No : Sales Tax Reference No. 2 of 1972

The Commissioner of Sales Tax

APPELLANT

Vs

Ramdas Laxmidas

RESPONDENT

Date of Decision : 23-01-1976

Acts Referred:

Bombay Sales Tax Act, 1946 — Section 12A(3), 6(3)
Bombay Sales Tax Rules, 1946 — Rule 1, 26, 41

Citation : (1976) 5 CTR 176 : (1976) 384 STC 354

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

Bench : Division Bench

Advocate : K.H. Bhabha, for the Appellant; P.V. Surte, for the Respondent

Judgement

Madon, J.—This is a Reference u/s 23(1) of the Bombay Sales Tax Act, 1946, made at the instance of the Commissioner of Sales Tax in which the question referred to us is :

"Whether the Tribunal was correct in law in holding that in view of Rule 41-A of the Bombay Sales Tax Rules, 1946, the lower authorities were not justified in demanding the production of declarations as required under Rule 26(2) of the Bombay Sales Tax Rules, 1946, after a lapse of three years from 31-3-1950 and that as such the respondents' claim u/s 6(3) Rule I(ii) for the period from, 1-4-1948 to 31-3-1950 must be accepted ?"

2. The Respondents were registered as a dealer under the Bombay Sales Tax Act, 1946. It is not disputed that for the period April 1, 1948 to October 31, 1952 they duly and regularly filed their returns. They first received a notice on December 12, 1953 calling upon them to attend before the Sales Tax Officer in respect of their assessment for the said period. The order of assessment, which was one composite order in respect of the entire period, was made on April 27, 1954.

3. Both in their return and in the course of the assessment proceedings the

respondents had claimed to deduct the turnover of certain sales from their gross turnover of sales. Some of the deductions so claimed were allowed by the Sales Tax Officer, while others were rejected. The only deductions with which we are concerned in this Reference are the deductions under Rule I (ii)(a) of sub-section (3) of section 6 of the said Act. Under the said Rule I(ii)(a) a dealer is entitled to a deduction from his gross turnover in respect of all his sale or supplies of good in respect of the period in question his turnover of all sales or supplies made during the said period to a registered dealer holding licence u/s 8B of goods certified by him as being intended for resale or for use as containers and other materials for the packing of goods to be sold or supplied by him. Rule 26(2) of the Bombay Sales Tax Rules, 1946, required that a dealer who wished to claim a deduction from his gross turnover under clause (i) of Rule I of sub-section (3) of section 6 "shall, on demand, produce in respect to the sale for which the deduction is claimed the copy of counterfoil of the relevant cash receipt, bill or invoice, if any, and a certificate in writing by the purchasing dealer or by a responsible person duly authorised by the purchasing dealer in this behalf, that the goods in question are required by such dealer either for resale, or for use in the manufacture of goods for, sale, or for the packing of such goods." Sub-rule (3) of Rule 26 prescribes the form of certificate to be given by a purchasing dealer under sub-rule (2) of the said Rule 26. Sub-section (3) of section 12A of the said Act provided as follows :

"12A (3) Every registered dealer whose gross turnover exceeds Rs. 60,000/- a year shall issue a bill or cash memorandum signed and dated by him or his servant, manager or agent to the purchaser in respect of the goods sold or supplied by him showing the particulars of the goods and the price at which the goods are sold or supplied shall keep the duplicate of such bill or cash memorandum duly signed and dated and preserve it for a period of not less than two years from such date."

Section 14(1) of the said Act casts an obligation inter alia upon every registered dealer to keep a true account of the value of the goods bought and sold by him. Rule 14-A of the said Rules provided as follows :

"... 41-A Accounts, etc, to be preserved for three years. Every registered dealer and a dealer on whom a notice has been served under sub-section (1) 10 of the Act shall preserve all books of accounts, registered and other documents including bills, cash memoranda, invoices, vouchers and other documents relating to the stocks, purchases, despatches and deliveries of goods for a period of three years after the expiry of the year to which they relate provided that the books of accounts, registers and other documents pertaining to the year ended 31st March 1947 shall be preserved until 30th September 1950."

4. In their assessment proceeding the Respondents were unable to produce any certificate alongwith the duplicate of the cash memos and bills from the purchasing dealers in support of their claim for deduction the said Rule I (ii)(a) to section 6(3) in respect of the period April, 1, 1948 to March 31, 1950. They

however, contended before the Sale Tax Officer that under the said Rule 41-A they were not bound to preserve these documents for more than a period of three years after the expiry of the year to which these documents related, and since the assessment proceedings commenced when the notice of these proceedings was served upon them on December 12, 1953, that is after the lapse of the period prescribed by the said Rule 41-A, their aforesaid claim for deduction could not be disallowed. This contention of the Respondents was negated by the Sales Tax Officer who, however, none the less. In view of the fact that the Respondents had produced declarations for the period commencing from April 1, 1950, granted to them 25 per cent of the total amount of the deduction claimed by them under the said Rule I(ii) (a) to section 6(3). The Respondents went in appeal to the Assistant Commissioner of Sales Tax urging the same contentions. Though the certificates alongwith the duplicates of the bill and cash memos were not produced, the Assistant Commissioner in appeal enhanced the amount of deduction allowed to the Respondents though not to the full extent claimed by the Respondents. The Respondents filed a revisional application before the Deputy Commissioner of Sales Tax against the finding of the Appellate Commissioner, which application failed. Thereafter the Respondents approached the Tribunal in second revision. The Tribunal came to the conclusion that the sales tax authorities were not justified in demanding the production of certificates, which they referred to in their judgment as "declarations" after a lapse of three years from March 31, 1950 and that, therefore, the Appellant's claim under Rule (I)(ii)(a) to section 6(3) must be accepted, and accordingly allowed the entire amount claimed by the Appellant in this respect for the period April 1, 1948 to March 31, 1950. It is against this judgment and order of the Tribunal that this Reference has been made to us.

5. The arguments before us have turned mainly upon the construction to be placed upon the said Rule 41-A. The Respondents were a dealer whose turnover during the relevant period exceeded Rs. 60,000 a year and, while u/s 12A(3) of the said Act they were bound to preserve the documents mentioned in the said sub-section for a period of not less than two years from the date of their issue, under the said Rule 41-A such dealer was bound to preserve the documents mentioned in the said Rule for a period of three years after the expiry of the year to which they related. There may therefore, thus appear to be some conflict between the said sub-section and the said Rule 41-A as regards the period for which the duplicates or counterfoils of bills and cash memoranda of a dealer whose gross turnover exceeded Rs. 60,000 a year were required to be preserved. This question, however, does not arise in the present Reference because the notice of assessment was served upon the Respondents more than three years after the expiry of the year to which the documents in question related, and it is therefore, unnecessary to consider the effect of these provisions which, at the first blush, appear to be conflicting.

6. It will be seen that both section 12A(3) and Rule 41-A casted an obligation upon dealers to reserve certain documents for a particular period. u/s 24(1)(dd)

of the said Act any person who contravened the provisions of section 12A(3) committed an offence, which was punishable with imprisonment which might extend to six months or with fine not exceeding Rs. 1,000 or with both. Under Rule 56 of the said Rules any person contravening any provisions of the said Rules was punishable with fine which might extend to Rs. 1,000. Thus, it will be noticed that not preserving the required documents for the statutory period prescribed by section 12A(3) of the said Act and Rule 41-A of the said Rules attracted penal consequences. If however, a dealer did not preserve his documents after the expiry of the prescribed period, no such consequences could be visited upon him. From this, however, it does not follow that the said section 12A(3) or the said Rule 41-A also cast a converse obligation upon the dealer concerned to destroy the documents which he till then was required to preserve. The statutory obligation upon the dealer was to preserve documents for the specified period. Thereafter it is left to his volition whether he should preserve them or not. If he did not preserve them and they became necessary for him as his evidence in support of any claim for exemption of deduction which he put forward in his assessment proceedings, he must face the consequences which all litigants who fail to produce evidence in Court must face, namely he must fail. In the case of claims for deductions made by dealers u/s 6(3) of the said Act it must be particularly borne in mind that Rule 26 of the said Rules requires them to produce certain documents in support of such claim on a demand being made in respect thereof upon them. It is for an assessee to satisfy the assessing authority that he is entitled to the deduction or exemption claimed by him, and if the statute requires certain documents to be produced in support of such claim and if an assessee voluntarily destroys them, it is hardly open to an assessee to complain if the claim is disallowed.

7. Mr. Surte, learned Counsel for the Respondents, however submitted that no assessment proceedings were initiated by the Department until more than three years after the expiry of the year to which the documents in question related. According to Mr. Surte, the assessment proceeding were initiated only when the said notice dated December 12, 1954 issued by the Sales Tax Officer was served upon the Respondents. As the record shows, the said Notice was issued u/s 11 (2) (a) of the said Act under which a notice was to be issued when the Collector was not satisfied without requiring the presence of a registered dealer who furnished the returns the production of evidence that the returns furnished in respect of any period were correct and complete. We are unable to accept this submission of Mr. Surte. Under the said Act every registered dealer was required to file his returns by such dates and to such authority as might be prescribed by Rules made under the said Act. Under Rule 17 of the said Rules every registered dealer was to furnish to the Sales Tax Officer quarterly returns in the prescribed form within one calendar month from the expiry of the quarter to which the return related. As mentioned above, there is no dispute before us that the returns were filed by the Respondents within the prescribed time, as they were filed within one calendar month from the expiry of each of the quarters which

went to make up the period of assessment in question. In *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, a case under the C.P. and Berar Sales Tax Act, 1947 of which the provisions for filing returns and making assessments were similar to the provisions under the said Bombay Sales Tax Act, 1946, the Supreme Court held that the assessment proceedings started when a return was made or when a notice was issued to a dealer either u/s 10 (3) or section 11(2) of the C.P. and Berar Sales Tax Act, 1947. The said section 10(3) and 11(2) dealt with cases of a registered dealer failing to file his returns within the prescribed period and of a dealer who did not get himself registered under that Act, though he had become liable to do so are not relevant, for in the present Reference the Respondents were registered as a dealer and had duly filed their returns. Thus according to the said decision of the Supreme Court so far as the Respondents were concerned the assessment proceedings commenced when they filed their returns. It the Respondents after filing their returns and before the assessment proceedings were completed were so imprudent as to destroy the evidence which they would require to produce in support of their claim for deduction, they had only to think themselves if their claim was rejected. We must, however, make it clear that this would apply only to original assessment proceedings. A dealer should normally preserve even after the expiry of the statutory period his books and documents until the assessment proceedings initiated by the filing of his returns are finally concluded, but once he has been given a deduction or an exemption which he claimed, he is not bound to preserve any documents which he required for evidence in support of such claim beyond the statutory period and if he destroyed them the Department cannot thereafter in suo motu revision proceedings or in reassessment proceedings draw any adverse inference against the dealer on the ground that he had not persevered his books of account or other documents because the liability cast by section 12A (3) and Rule 41-A was to preserve such documents for the statutory period only, we would like to make it clear that the rule of prudence we have enunciated above that even after the expiry of the statutory period the dealer, though not under statutory obligation to do so, should preserve his evidence until the proceedings are completed, would apply not only until the conclusion of the assessment proceedings and also until the disposal of any appeal, revision or reference therefrom but not thereafter. Thus, a dealer is not required thereafter to preserve his books of account, duplicates and counterfoils of bills and cash memoranda, certificates and declarations given to him by those dealers who purchased goods from him, etc., until the expiry of the period of limitation for the initiation of suo motu revisions, proceedings or reassessment proceedings or, when no period of limitation is prescribed for the initiation of such proceedings, for all times; and if he does not preserve such documents, no adverse inference can be drawn against him by the reassessing of revision authority nor can such authority in suo motu revision or reassessment proceedings cancel or withdraw any deduction or exemption allowed to him in his assessment proceedings on the strength of such documents produced in the course of his assessment proceedings or in appeal or revisions proceedings.

arising therefrom. There are no statutory obligation in a dealer to so preserve these documents, and to hold otherwise on the grounds of an implied obligation or as a rule of prudence would run counter to commonsense and notions of justice, equity and good conscience.

8. For the reasons aforesaid, we answer the question submitted to us in the negative.

9. Looking to the fact that in this particular case the Department chose not to issue any notice of hearing in respect of the returns filed by the assessee until after the lapse of four years in respect of the assessment year ending on March 31, 1949 and after the lapse of three in respect of the assessment year ending on March 31, 1950, in our opinion the fair order of costs would be that each party should bear and pay his own costs of the Reference.