
(1975) 01 BOM CK 0014

In the Bombay High Court

Case No : Sales Tax Reference No. 20 of 1969

The Famous Cine Laboratory and Studio Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 18-01-1975

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2(11), 2(17), 3, 52, 52(1)

Citation : (1975) 36 STC 104

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : D.D. Shah, for the Appellant; K.S. Cooper and R.J. Bhatt, for the Respondent

Judgement

Madon, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the applicants, the Famous Cine Laboratory and Studio Limited. The applicants are a public limited company and own a film studio and a film laboratory. The applicants do not themselves produce motion pictures but hire out their studio and their equipment to film producers for shooting films. For the purposes of their studio they purchase certain materials such as bricks, wood, plaster, paint, etc. A part of these materials is utilised in the maintenance of the applicants' studio and a part in making film sets which the applicants make available to the producers, who hire their studio. The applicants also purchase chemicals and other processing materials for processing the films of their customers in their laboratory. In respect of both these activities the applicants enter into a separate type of contract, the contract for the hire of their studio being headed "studio hire agreement" and the contract for the processing of a film being headed "processing and raw stock agreement". We will refer to the relevant terms of these two types of contracts a little later.

2. u/s 52 of the Bombay Sales Tax Act, 1959, the Commissioner of Sales Tax has the power to determine certain questions provided they have arisen for determination prior to the commencement of assessment or reassessment

proceedings. Amongst the questions which the Commissioner is so entitled to determine is the question whether, for the purposes of the said Act, any person, society, club or association or any firm or any branch or department of any firm is a dealer, as also the question whether for the purposes of the said Act any particular thing done to any goods amounts to or results in the manufacture of goods within the meaning of that term. Availing themselves of the provisions of sub-section (1) of the said section 52 the applicants made an application dated 23rd May, 1963, to determine the question whether their purchases of goods, both in respect of maintenance of their studio and making sets and in respect of their activity of processing films, constituted them a dealer within the meaning of clause (11) of section 2 of the said Act and, if so, whether in respect of these activities they were manufacturers. Similar applications were also made by some other film studios some of whom carried on the activities of hiring out film sets as well as of running a laboratory. All the said applications were heard together and disposed of by a common judgment by the Deputy Commissioner of Sales Tax, who decided both these questions against the applicants. In appeals to the Sales Tax Tribunal in all the said applications the view taken by the Deputy Commissioner of Sales Tax was confirmed.

3. Arising out of the said order of the Tribunal the following two questions have been referred to us for our decision :

"(1) Whether, on the facts and in the circumstances of the case, the applicant is a dealer within the meaning of 2(11) of the Bombay Sales Tax Act, 1959 ?

"(2) If the answer is in the affirmative, whether the applicant is a manufacturer within the meaning of section 2(17) of the Bombay Sales Tax Act, 1959 ?"

4. In our opinion, the said two questions do not bring out the real questions of law which we have to decide. The case before the Tribunal fell into two distinct parts, one with respect to the purchases made by the applicants for the purposes of their studio and for making sets with the intention of hiring them out along with the studio and the other with respect to the purchases made by the applicants for their activity of processing films. It may be that in respect of neither type of purchases the applicants are dealers or it may be that they are dealers so far as both these activities are concerned or it may be that they are dealers in respect of one type and not in respect of the other type of activity. We have accordingly reframed the said two questions as follows :

"(1) Whether, in purchasing materials for the maintenance of their film studio and the manufacture of sets intended for hire, the applicants were carrying on the business of buying goods and hence were a "dealer" as defined by clause (11) of section 2 of the Bombay Sales Tax Act, 1959 ?

(2) If the answer to question No. (1) be in the affirmative, whether the making of such film sets intended to be hired out by the applicants constituted "manufacture" within the meaning of clause (17) of section 2 of the said Act and, if so, whether the applicants were a "manufacturer" of goods ?

(3) Whether, in purchasing chemicals and other processing materials for processing films of their customers in the applicants' laboratory, the applicants were carrying on the business of buying goods and hence were a "dealer" as defined by clause (11) of section 2 of the Bombay Sales Tax Act, 1959 ?

(4) If the answer to question No. (3) be in the affirmative, whether the processing of films by the applicants with the chemicals and processing materials purchased by them constituted "manufacture" as defined by clause (17) of section 2 of the Bombay Sales Tax Act, 1959, and, therefore, whether the applicants were a "manufacturer" for the purpose of the said Act ?"

5. We will first turn to the purchases made by the applicants for the purposes of the maintenance of their film studio and for making sets. It is not disputed that the activities of the applicants in this behalf are correctly represented by the studio hire agreement dated 28th November, 1963, entered into between the applicants and one Messrs. R.S. Movies. It is also not disputed that this studio hire agreement is typical of all the agreements of this nature which the applicants entered into with those film producers who wanted to hire their studio. Under the said agreement the applicants are referred to as the "company" and the producers who contract with them to take on hire the applicants' film studio for shooting the films are referred to as the "hirer". Under the said agreement the applicants have agreed to give on hire a floor space in their studio to the film producer for the purpose of producing a motion picture mentioned by name in the said agreement upon the terms and conditions contained in the said agreement. These terms and conditions provide for a charge to be paid by the producer for the use of the floor space per shift of eight working hours, the charge for each floor varying with its area. Such floor space is hired out for a shift of eight working hours and the agreement provides for extra charge per hour for any extra time taken over and above the shift of eight working hours. Under the said agreement the applicants also contracted to provide the producer with the requisite services for every shift, the charges for the services so provided being included in the charge per shift of floor space, while the services provided outside the shift timings are to be paid for extra. The applicants are also to provide to the producer per every shift their make-up rooms, the make-up materials to be provided by the producer. So far as providing the use of the film sets to the producer is concerned, the relevant clauses of the said agreement are clauses 3 and 5, which provide as follows :

"3. The company reserves the right to give the setting to the hirers in their stage according to its availability.

5. Sets : - (a) Sets will be according to the sketches and designs furnished subject to the requisite materials being available on hand from the company's stores.

(b) In case the hirers have to purchase any extra setting material which is not available in the company's stores, the same shall be at the cost of the hirers;

the labour charges incurred on any set made out of the raw materials so purchased and availed of by the hirers will be borne either by the company or by the hirers and if it is the latter, consideration will be given by the company. In the case of plaster work required for the set, the hirers shall directly provide the company with the requisite materials and labour for such work at the hirers' own expenses. In either case, the set or sets made out of such materials shall be property of the company.

(c) Sets will be unfurnished; property articles, if any, available with the company will be supplied on request.

(d) Sets will be dismantled immediately after the last shooting day.

(e) Alterations and additions after the sketches and designs have been accepted will be at extra cost.

(f) The company reserves the privilege of giving the same set or sets to anyone else provided the said set is not one of the main sets of the hirer's picture."

6. It will be seen from the above clauses that the sets made by the applicants, which may either be ready-made or may be made or altered at the requirements of the particular producer hiring the studio, belonged and continue to belong to the applicants and at no stage become the property of the producer. If any extra setting material is required to be utilised in the making of sets, the materials have to be supplied by the producer or, if purchased by the applicants, it is purchased on the producers' behalf and the producers are responsible for the cost thereof. The labour charges incurred on any set made out of the raw materials so purchased and availed of by the producer is to be borne either by the applicants or the producer. In the case of plaster work, the producer is to provide the applicants with the requisite materials and labour for such work at the producer's own cost. In either case, it is expressly agreed that the set or sets made out of such materials are to be the property of the applicants.

7. With this background we will now turn to the position in law. Clause (11) of section 2 of the said Act defines "dealer" as follows :

""Dealer" means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State, and includes the Central Government or any State Government, which carries on such business, and also any society, club or other association of persons which buys goods from, or sells goods to, its members."

8. The said clause contains an exception in the case of an agriculturist which is not material for our purposes. Clause (17) of the said section 2 defines "manufacture" as follows :

""Manufacture", with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods; but does not include such

manufactures or manufacturing processes as may be prescribed."

9. In *Commissioner of Sales Tax v. D. V. Save* [1975] 36 S.T.C. 47 (Sales Tax Reference No. 17 of 1972), decided by us yesterday, we have considered what type of purchases constitute the purchaser a dealer within the meaning of the definition of "dealer" contained in clause (11) of section 2 of the said Act. In that case we have held that where the goods purchased are indispensable for carrying on the particular business activity of the purchaser and that where without such goods such activity would not exist, the purchaser of this type of goods must be held to be carrying on the business of buying goods and hence a "dealer" within the meaning of the aforesaid definition. We have pointed out in the said judgment that the goods so purchased must be such as are necessarily indispensable for the carrying on of the particular business activity in respect of which they are purchased and that they must not be goods which are adjuncts to the carrying on of the business activity or goods which form part of the capital assets of the purchaser. The same type of goods may form in a given case the goods in which a man deals by reselling or utilising them in the manufacture of goods for the purpose of carrying on his business activity, but in another case, they may constitute goods which are adjuncts to the carrying on of the business activity or goods which form part of the capital assets of the purchaser. A person who deals in selling paper, when he purchases his stocks of paper for retail sale carries on the business both of purchasing papers and of selling them, but a bank or an insurance company, which may purchase stationery or account books, is not carrying on the business of purchasing these goods because stationery and account books are merely adjuncts to the carrying on to the business of banking or insurance and do not constitute the essence of the business of banking or insurance.

10. From the facts in the present case it is clear that in purchasing materials for the maintenance of their studio or in making sets which remain their own property which they hire out, what the applicants were doing was either making additions to their capital assets, which is their building or their studio, or providing themselves with further capital assets, namely, sets, the hiring of such sets being a part of the integral activity of hiring out their studio along with providing services to the producer for the production of the producer's film. We, therefore, hold that in purchasing this type of goods the applicants were not carrying on the business of buying goods and were, therefore, not dealers within the meaning of clause (11) of section 2 of the said Act.

11. Since, in our opinion, the applicants were not dealers, the question whether the making of sets by them which they intended to hire out constituted a manufacture for the purposes of the said Act does not arise, because the importance of a dealer being a manufacturer lies in the fact that u/s 3 of the said Act the limit specified for making a manufacturer liable to the payment of tax is lower than in the case of other dealers.

12. Turning now to the work of processing films carried out by the applicants, as

mentioned above, for the purpose of processing such films the applicants purchase chemicals and other materials. These chemicals and processing materials were not merely adjuncts to the carrying on of the business of processing films nor constituted a part of the capital assets of the applicants. Without these chemicals and processing materials, there could not be the business activity of processing films. The applicants purchased these materials and consumed them in the course of their business activity of processing films, and in accordance with the ratio of our judgment in *Commissioner of Sales Tax v. D. V. Save* [1975] 36 S.T.C. 47 (Sales Tax Reference No. 17 of 1972), it must be held that in purchasing chemicals and other processing materials for the purpose of processing the films of their customers the applicants were carrying on the business of buying the goods and were, therefore, a "dealer" within the meaning of clause (11) of section 2 of the said Act. Since we have held the applicants to be a dealer in respect of this activity, the question whether the processing of films constituted the applicants a manufacturer directly arises. The definition of "manufacture" is very wide and includes several activities which, in ordinary parlance, one would not describe as manufacture. We are not concerned with the ordinary meaning of the word "manufacture" but with the statutory meaning given to it by clause (17) of the said section 2. Under the said clause processing any goods is expressly stated to be "manufacture", Raw film is a commodity which after being processed becomes processed film, a commodity commercially different from raw film and, accordingly, processing raw films must constitute "manufacture" within the meaning of the said clause (17) of section 2.

13. It was, however, submitted on behalf of the applicants that in order to constitute "manufacture" within the meaning of clause (17) of section 2 of the Bombay Sales Tax Act, 1959, manufacture must be of the goods belonging to the manufacturer. There is nothing in the definition of the term "manufacture" contained in clause (17) of the said section 2 or in any of the other sections of the Act which would warrant placing such a limitation upon the term "manufacture". The activities which are comprehended in the term "manufacture" may be carried out by a person either in respect of his own goods or in respect of goods belonging to another. For instance, a man may carry out the ornamenting, finishing or processing of his own goods or of goods belonging to the other. It is not necessary that the processor must process his own goods. We are, therefore, unable to accept this submission.

14. For the above reasons, we hold that the processing of their customer's films by the applicants with the chemicals and materials purchased by the applicants constituted "manufacture" as defined by clause (17) of the said section 2 and the applicants were, therefore, manufacturers for the purposes of the said Act.

15. For the reasons set out above, we answer the four questions reframed by us as follows :

Question No. (1) in the negative.

Question No. (2) does not arise.

Questions Nos. (3) and (4) in the affirmative.

16. Since the applicants have succeeded in a part of this reference, while they have failed with respect to the other part, there will be no order as to costs of this reference.

17. Reference answered accordingly.