

(1982) 02 GUJ CK 0007
In the Gujarat High Court
Case No : Sales Tax Reference No. 32 of 1980

The State of Gujarat

APPELLANT

Vs

Kolithad Juth Sevadayi Sahakari Mandali Ltd.

RESPONDENT

Date of Decision : 24-02-1982

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 33, 35, 35(1), 7(2)

Citation : (1982) GLH 868 : (1982) 50 STC 375

Hon'ble Judges : D.H. Shukla, J;A.N. Surti, J

Bench : Division Bench

Advocate : R.P. Bhatt, Assistant Government Pleader for Bhaishanker Kanga and Girdharlal, for the Appellant;

Judgement

Surti, J.—The Sales Tax Tribunal, Ahmedabad, has referred to us the following questions of law for our determination :

"(1) Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the reassessment proceedings as initiated on 22nd September, 1975, by serving the opponent with a statutory notice in the prescribed form 28, after the expiry of the period of limitation of five years as computed from 30th June, 1970, was barred by limitation in terms of clause (c) of section 35(1) of the Bombay Sales Tax Act, 1959 ?

(2) Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the longer period of limitation of eight years to start reassessment proceedings against the opponent under clause (b) of section 35(1) of the Bombay Sales Tax Act, 1959, was not available to the department and in accordingly holding that the opponent's sales of groundnuts worth Rs. 1,07,376 as made to M/s. Shah Trading Company of Gondal against form 16 as prescribed under the Bombay Act of 1959, and the Rules framed thereunder, were not liable to levy of any tax ?"

2. In order to answer the questions of law referred to us by the Tribunal, a few

relevant facts may be stated :

The respondent-assessee is a co-operative society registered under the Gujarat Co-operative Societies Act, 1961, and was registered as a dealer under the Bombay Act which was in force on 5th May, 1970. The business of the respondent-assessee was to resell foodgrains, edible oil, oil-seeds, groundnuts, etc., at Gondal Town in Rajkot District. It was the case of the department that the Sales Tax Officer of Jetpur had already assessed the respondent-assessee to tax in respect of the above period of accounting by his order dated 10th November, 1971, u/s 33 of the Bombay Act on the basis of its return and as per the account books.

3. During the aforesaid period, the respondent-assessee had sold groundnuts for Rs. 1,07,376 to one M/s. Shah Trading Company of Gondal for which the latter company as the purchaser (that is to say, M/s. Shah Trading Company of Gondal) had furnished to the respondent-assessee a certificate in form No. 16 as prescribed under the Rules framed under the Bombay Act.

4. In the aforesaid firm, M/s. Shah Trading Company had represented to the respondent-assessee that M/s. Shah Trading Company was a licensed dealer under the Bombay Act.

5. At the time of the assessment which was made by the officer of the department, the respondent-assessee did produce the aforesaid certificate in form No. 16 as issued by M/s. Shah Trading Company of Gondal. In the light of the said certificate, the respondent-assessee was assessed in respect of its taxation liability under the Bombay Act.

6. The learned Sales Tax Officer at the initial stage had allowed the respondent-assessee to deduct the above sales made against form No. 16 under the provisions of clause (iii) of section 7(2) of the Bombay Act. Therefore, the learned Sales Tax Officer had not levied any general sales tax upon the respondent-assessee in respect of sales of groundnuts for Rs. 1,07,376 as made against form No. 16.

7. But it appears that the sales tax department - the officer at Rajkot - came to the conclusion that M/s. Shah Trading Company of Gondal had merely held the certificate of registration as a dealer under the Bombay Act but not as a licensee under the said Act. In view of this conclusion, he came to the conclusion that the sales of groundnuts which the respondent-assessee had made to the purchaser were not valid or authorised as made against form No. 16. Under the aforesaid circumstances, the Sales Tax Officer came to the conclusion that the respondent-assessee was not entitled to deduct the above sales from its turnover of sales and that therefore the respondent-assessee was wrongly allowed deduction of the above sales in the course of the original assessment which was made earlier in point of time. As a result of his aforesaid conclusion, the Sales Tax Officer came to the conclusion that the respondent-assessee was liable to pay general sales tax on the aforesaid sales of Rs. 1,07,376, and therefore, the Sales Tax

Officer issued a notice on 19th September, 1975, in the prescribed form No. 28 u/s 35(1) of the Bombay Act and called upon the respondent-assessee to show cause as to why it should not be assessed to general sales tax in respect of the above sales.

8. The respondent-assessee was found to have been served with that notice on 22nd September, 1975. It may be significantly noticed that the relevant period for the assessment was from 1st July, 1969, to 5th May, 1970.

9. In pursuance to the aforesaid notice served on the respondent-assessee, the respondent-assessee appeared before the Sales Tax Officer and urged that he had belief in good faith that the purchaser was a dealer duly holding a licence under the Bombay Act and that therefore the respondent-assessee had sold groundnuts to that dealer by accepting form No. 16. It appears that the respondent-assessee also admitted before the Sales Tax Officer that before effecting the disputed sales to the abovenamed purchaser against form No. 16, the respondent had not made any inquiry as to whether the certificate issued by M/s. Shah Trading Company in form No. 16 was a genuine certificate or not.

10. After having heard the respondent-assessee the department came to the conclusion that M/s. Shah Trading Company was really not a licensed dealer at any time and therefore the Sales Tax Officer had treated the above sales effected by the respondent-assessee to be unauthorised and had therefore levied general sales tax at 3 per cent on the sales of Rs. 1,07,376 in the course of reassessment proceedings in respect of the above period, by passing an order of reassessment dated 15th March, 1976.

11. The respondent-assessee was grieved by the order passed by the Sales Tax Officer and ultimately he preferred an appeal before the learned Assistant Commissioner of Sales Tax. One of the grounds which was urged by the respondent-assessee in the appeal before the Assistant Commissioner of Sales Tax was that reassessment proceedings initiated u/s 35(1) of the Bombay Act by the Sales Tax Officer against the assessee was after the expiry of five years to be computed from the end of the relevant year of account. It may be emphasised that the relevant year of account ended on 30th June, 1970, whereas the notice calling upon the respondent-assessee was served on 22nd September, 1975, by giving an opportunity to the respondent-assessee to show cause as to why the respondent-assessee should not be reassessed having regard to the conclusion arrived at by the department that M/s. Shah Trading Company had furnished to the respondent-assessee a false certificate in form No. 16 as stated above.

12. The Assistant Commissioner of Sales Tax rejected the contention of the respondent-assessee and in substance took the view that the facts of the case attracted the provisions of clause (b) of section 35(1) of the Bombay Act and therefore if the department had opened its case within a period of eight years to be computed from the end of the concerned relevant year, the department was justified in reassessing the respondent-assessee on the basis that the sales

which were effected by the respondent-assessee should be taken into consideration for the purpose of determining the pecuniary liability under the Bombay Act. Under the circumstances, the Assistant Commissioner of Sales Tax held that the Sales Tax Officer had rightly reassessed the respondent-assessee within a period of eight years and that the assessment proceedings were initiated within time and that therefore the order of reassessment was valid in law. Suffice it to say that no useful purpose was served even as a result of the respondent-assessee filing the appeal before the Assistant Commissioner of Sales Tax.

13. The respondent-assessee was grieved by the aforesaid two different orders passed - (1) by the Sales Tax Officer and (2) by the Assistant Commissioner of Sales Tax and preferred a second appeal before the Gujarat Sales Tax Tribunal, being Second Appeal No. 15 of 1978.

14. The Tribunal considered the grievance of the respondent-assessee and came to the conclusion that the reassessment order passed by the Assistant Commissioner of Sales Tax and the Sales Tax Officer was bad in law, inasmuch as the reassessment proceedings were initiated by the department after a period of five years to be computed from the end of the concerned relevant year of accounts.

15. In coming to the aforesaid conclusion, the Sales Tax Tribunal did take into consideration the provisions of section 35 of the Bombay Act, which provides as follows :

"35. (1) If the Commissioner has reason to believe that any turnover of sales or turnover of purchases of any goods chargeable to tax under this Act, or any earlier law, has in respect of any year escaped assessment, or has been under-assessed or assessed at a lower rate, or that any deductions have been wrongly made, then the Commissioner may, -

(a) (deleted)

(b) where he has reason to believe that the dealer has concealed such sales or purchases or any material particular relating thereto, or has knowingly furnished incorrect returns, at any time, within eight years, and

(c) " (It is not necessary to reproduce at this stage the rest of the section.)

16. In the case before the Tribunal, it was an admitted fact that reassessment proceedings were initiated after the lapse of five years as stated and explained above. Under the circumstances, the short point which the Tribunal had to consider was whether the respondent-assessee had concealed such sales or purchases or any material particular relating thereto, or had knowingly furnished incorrect returns at any time within eight years to be computed from the end of the concerned relevant accounting year.

17. From what has been stated above, it is clear to us that, in the instant case,

the respondent-assessee produced before the Sales Tax Officer a certificate given to it by M/s. Shah Trading Company who was the purchaser of the goods. The respondent-assessee did receive that certificate from M/s. Shah Trading Company obviously in the ordinary course or customary course of normal business. There is no evidence on the record of the case, nor any was pointed out to us by Mr. R. P. Bhatt, the learned Assistant Government Pleader for the revenue, who had tenaciously searched the whole record, showing to us that the respondent-assessee did know that the certificate in question was a forged one or a false one or a fictitious one, and that the same was used by the respondent-assessee knowing it to be false, forged or fictitious. In other words, there is no evidence on record, nor even the ghost of any evidence, to come to a conclusion that the respondent-assessee concealed the aforesaid sales or purchases or any material particulars relating to the sales effected by the respondent-assessee, or that the respondent-assessee knowingly furnished incorrect returns. In the absence of any such evidence or even title thereof (sic), it is impossible for us to take the view that in the instant case the respondent-assessee had concealed the aforesaid sales, or had concealed any material particulars relating to the aforesaid sales, or had knowingly furnished incorrect details. On the contrary, this is a clear case where the respondent-assessee did act in the ordinary course of his customary usual business, and that being so, the department was obviously in error in foisting the additional liability by way of imposing general sales tax liability on the respondent-assessee. This is a case of no evidence for concealment of any sales by the respondent-assessee to M/s. Shah Trading Company, and hence we are in entire agreement with the reasoning and the ultimate conclusion arrived at by the Tribunal.

18. In view of our aforesaid discussion, we need not burden this judgment by referring in detail form No. 16 which is given along with the Bombay Sales Tax Rules, 1959, nor we should refer to any conditions for the issuance of such a certificate.

19. Under the aforesaid circumstances, the two questions which are referred by the Tribunal could have been formulated only in one question, and had it been so formulated, some confusion could have been avoided and our task would have been easier and simpler.

20. As a result of the aforesaid discussion, we answer both the questions referred to us in favour of the respondent-assessee and against the State. Having regard to the fact that the respondent-assessee has not chosen to appear before us, we make no order as to costs.

21. Reference answered accordingly.