

(1995) 02 BOM CK 0040

In the Bombay High Court

Case No : Sales Tax Reference No. 12 of 1995 in Reference Application No. 26 of 1993

Zenith Computers Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-02-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1995) 02 BOM CK 0040

Hon'ble Judges : D.K. Trivedi, J;B.P. Saraf, J

Bench : Division Bench

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the assessee, the Maharashtra Sales Tax Tribunal has referred the following questions of law to this Court for opinion :

"(1) Whether, on the facts and under the circumstances of the case, and upon the correct interpretation of the notification, the Tribunal was justified in holding that the computers were not scientific and laboratory equipments within the meaning given to it under notification dated February 21, 1972, issued u/s 8(5) of the Central Act ?

(2) Whether, on the facts and under the circumstances of the case, the Tribunal was justified in not considering the expert opinion tendered before it after having taken the same on record without any objection from the State."

2. The assessee is a manufacturer of computers. It is registered as a dealer under the Bombay Sales Tax Act, 1959 ("the Bombay Act") as well as the Central Sales Tax Act, 1956 ("the Central Act"). For the period from May 1, 1986 to April 30, 1987, it was assessed both under the Central Act and the Bombay Act by the Assistant Commissioner of Sales Tax (Assessment) by his orders of assessment dated March 20, 1990. In its assessment order under the Central Act, the Assistant Commissioner rejected the claim of the assessee for being assessed in

respect of the sales of computers made to educational institutions at the concessional rate of tax applicable to sales of scientific equipments and instruments to educational institutions, etc., by virtue of the notification issued by the State Government u/s 8(5) of the Central Act. According to the assessee, the computers sold by it in the course of inter-State trade or commerce to educational institutions for use in the teaching of science and to laboratories or institutions which carried on research work for the promotion of scientific or educational object were scientific equipments and instruments covered by the said notification.

The Assistant Commissioner did not accept the above contention of the assessee, as he was of the opinion that the benefit of the above notification was available only in respect of sales of scientific equipments and instruments falling under entry 33 of part II of Schedule C to the Bombay Act and not on sales of computers falling under entry 97(a) of Part II of Schedule C. He, therefore, rejected the claim of the assessee to the assessed at the concessional rate of tax in respect of the sales of computers. While doing so, he made the following observations :

"The assessee has effected the sales of computers to the educational institutions and research laboratories at Rs. 27,16,630 and the same were disallowed and taxed at 10 per cent as the entry 90 of notification issued u/s 41 and Notification No. STA-1571/408/M-2 dated February 21, 1972, issued u/s 8(5) of the Central Sales Tax Act, 1956 as amended by notification dated February 20, 1976, the sales of scientific equipments and instruments, are only taxable at concessional rates specified therein. The scientific instruments are covered by entry 33 of Part II of Schedule C and the goods covered by this entry alone will be eligible for concessional rate of tax. The computer is covered by Schedule entry C-II-97(a) and will not therefore be eligible for concessional rate of tax, therefore, held subjected to Central sales tax at full at 10 per cent."

Aggrieved by the above order of the Assistant Commissioner (Assessment), the assessee appealed to the Deputy Commissioner of Sales Tax (Appeals). The Deputy Commissioner (Appeal) upheld the findings of the assessing authority, the Assistant Commissioner (Assessment) and confirmed the levy of tax at full rate of tax. Against the order of the Deputy Commissioner (Appeals), the assessee preferred further appeal before the Maharashtra Sales Tax Tribunal (Tribunal). The Tribunal held that computers, being used in large number of cases for other than scientific or laboratory purposes, was not scientific or laboratory instrument within the meaning of the notification u/s 8(5) of the Central Act. Hence this reference at the instance of the assessee.

3. The question that falls for our determination in this reference is whether computers sold by the assessee can be regarded as scientific instrument or equipment falling under notification dated January 21, 1972, issued by the State Government u/s 8(5) of the Central Sales Tax Act, 1956. To decide the same, it is necessary to peruse the said notification, which is set out below :

"Notification No. STA1571/408/M-2, dated the 21st February, 1972.

(Maharashtra Government Gazette, Extraordinary, Part IV-A, dated 21st February, 1972).

In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (LXXIV of 1956) and in supersession of Government Notification, Finance Department No. STA.1558/163235-G-1, dated the 22nd September, 1959, the Government of Maharashtra hereby directs that in respect of scientific equipment and instruments, components and spare parts of such equipment and instruments and chemicals (hereinafter referred to as "the said goods"), the tax payable under the said Act by any dealer having his place of business in the State of Maharashtra in respect of the sale by him from such place of business of the said goods in the course of inter-State trade or commerce to an educational institution for use in the teaching of science or to a hospital for its use, or to a laboratory or institution which carries on any research work for the promotion of a literary, scientific, artistic or educational object and which is not run with the motive of making profit, shall be calculated at eight per cent of the sale price of the goods so sold, if -

(a) such sale does not fall within sub-section (1) of section 8; and

(b) the educational institution, hospital, laboratory or institution, as the case may be, furnishes to the dealer, a certificate in the form appended hereto and the dealer produces on demand such certificate before the assessing authority.

FORM OF CERTIFICATE

[To be issued by an educational institution, hospital, laboratory or institution situated outside the State of Maharashtra, in respect of its purchase of (scientific equipment and instruments, components and spare parts of such equipment and instruments and chemicals) made in the course of inter-State trade or commerce from a dealer in the State of Maharashtra].

I,.....the officer in-charge of the management of [Here state the name of the institution, hospital or laboratory, as the case may be]situated at.....(place) hereby certify that the (scientific equipment/instrument/components/spare parts/chemicals) specified in invoice/bill No.....dated.....of Messrs.....of.....have been purchased by the said -

[Strike out whichever is not required] (i) institution for use in the teaching of science;

[Strike out whichever is not required] (ii) hospital for its use;

[Strike out whichever is not required] (iii) laboratory or institution for use in research work and that the said laboratory or institution carries on research work in.....and is not run with the motive of making profit.

From a plain reading of the above notification, it is clear that the benefit of

reduced rate of tax is available in respect of inter-State sales of -

- (i) scientific equipment and instruments,
- (ii) component and spare parts of such equipment and instruments, and
- (iii) chemicals;

made to -

- (a) educational institutions for use in teaching of science, or
- (b) to a hospital for its use, or
- (c) to a laboratory or institution which carries on any research work for the objects specified therein, on furnishing a certificate from the educational institution, hospital, laboratory or institution concerned in the form prescribed therein.

The admitted position in the present case is that the sales of computers in respect of which the benefit of assessment at concessional rate is claimed by the assessee were made to the following parties :

1. Advisory Board of Energy, New Delhi.
2. National Institute of Science, Technology and Development Studies, New Delhi.
3. Remote Sensing Applications Centre for Resource Evaluation and Geoengineering, Aligarh.
4. Guru Govind Singh College of Commerce, University of Delhi, New Delhi.
5. National Metallurgical Laboratory Council of Scientific and Industrial Research, Jamshedpur.
6. Institute of Management Technology, Gaziabad.
7. Central Scientific Instrument Organ, Chandigarh.
8. Regional Research Laboratory Council of Scientific Industrial Research ,Hyderabad.

and certificate in the prescribed form, duly filled-up issued by all these institutions were produced before the authorities. According to the assessee, it was entitled to get the benefit of reduced rate of tax under the above notification in respect of the sales of the computers in question. The above contention of the assessee was rejected by the sales tax authorities including the Tribunal not on interpretation of the expression "scientific equipment and instruments" appearing in the notification in question but with reference to entries 33 and 97(a) of Part II of Schedule C to the Bombay Act. According to the Tribunal, the expression "scientific equipment and instruments" appearing in the notification u/s 8(5) of the Central Act, would mean "scientific equipment and instruments falling under entry 33 of Part II of Schedule C" to the Bombay Act.

4. We have heard the learned counsel for the parties and read the other of the Tribunal. We have also perused the notification u/s 8(5) of the Central Act issued by the State Government. On careful consideration of the same, we are of the opinion that the Tribunal was not justified in reading the expression "scientific equipment and instruments" as "scientific equipments and instruments falling under entry 33 of Part II of Schedule C to the Act". The language of the notification is clear and unambiguous and does not warrant such an interpretation. All "scientific equipments and instruments" are covered by the notification. Its ambit cannot be restricted by adding the qualifying words "falling under entry 33 of part II of Schedule C to the Bombay Act." Moreover, a notification u/s 8(5) of the Central Act has to be construed in the light of the scheme of section 8 of the Central Act which deals with the rates of tax on sales in the course of inter-State trade or commerce. Sub-section (2)(ii) of the said section lays down that tax payable on the turnover of goods (other than declared goods), not falling under sub-section (1) thereof, shall be calculated at the rate of ten per cent or at the rate applicable to sale or purchase of such goods inside the appropriate State whichever is higher. Sub-section (5) thereof empowers the State Government to direct, by a notification, that no tax shall be payable by any dealer under that Act on the inter-State sales of any goods specified therein made by him or that it shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification. It reads :

8. Rates of tax on sales in the course of inter-State trade or commerce. - (1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

.....

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct, -

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may

be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification.

Thus, in the absence of the notification in question, tax would have been leviable on inter-State sales of scientific equipments and instruments at the rate of ten per cent or at the rate applicable to sale of such goods inside the State whichever is higher. In the Bombay Sales Tax Act, scientific equipments and instruments are classified under different heads for the purpose of specifying the rate of tax. Entry 33 of Part II of Schedule C to the said Act specifies the rate of tax applicable to sale or purchase of scientific and laboratory instruments, implements and tools "other than those specified elsewhere." This entry, at the material time, read as follows :

A plain reading of the above entry clearly goes to show that "scientific and laboratory equipments" are also specified elsewhere in the Schedule in other entries. In the absence of separate specification under different heads, they would fall under this entry. On perusal of Part II of Schedule C, we find that a number of items specified in other entries might have fallen under this entry, if they were not specified in those entries. Take for example, electrical instruments, apparatus and appliances specified in entry 44(b), cinematographic equipments specified in entry 52, computers specified in entry 97 of Part II of Schedule C. It is because of their being specified separately for the purpose of levy of tax under the Bombay Act and the language of entry 33 of Part II of Schedule C, which expressly excludes such scientific and laboratory instruments, implements and tools which are specified elsewhere from the purview of the said entry, that they cannot be regarded as scientific instruments, equipments for the purpose of determining the rate of tax leviable under that Act. The qualifying expression "other than those specified elsewhere" would however be relevant only for deciding whether a particular scientific instrument or equipment falls within entry 33 or not and for no other purpose. Computers being specified in entry 97(a) cannot be regarded as "scientific equipment or instrument" falling under entry 33 in view of the specific exclusion contained therein. But that would not mean that computers are not scientific equipments or instruments.

5. The benefit of reduced rate of tax under the notification in question issued u/s 8(5) of the Central Act is available in respect of inter-State sales of "scientific equipment and instruments" which meet the requirements specified therein. The only controversy therefore is whether the "computers" sold by the assessee can be regarded as "scientific equipments or instruments" which has to be decided with reference to the true meaning of the expression "scientific equipment and instrument", and not from the language of entry 33 of Part II of Schedule C to

the said Act.

6. The expression "scientific equipment and instrument" is an expression of wide import and takes within its sweep not only instruments which in ordinary definition or in the acceptance of experts would fall within that category, but also instruments which are designed for use and principally employed, in any branch of science, either for the purpose of observation, experiment, or instruction or in connection with the professional practice of a particular science. It may be relevant in this connection to quote the definition of scientific instrument from Corpus Juris Secundum, Volume 44, page 419 which reads as follows :

""Scientific instruments" - Two principal definitions have been given for this phrase, one considering the use of the instrument and the other intrinsic character or nature as the determining factor. From the latter standpoint the phrase has been defined as any instrument which, in ordinary definition or in the acceptance of experts, would fall within that category, and it has been said that what is and what is not such an instrument is to be determined according to the nature of the thing itself, and not necessarily according to the use for which it is primarily designed or in which it is primarily employed; and from the standpoint of use it has been defined as embracing such instruments as are specially designed for use, and principally employed, in any branch of science, either for the purpose of observation, experiment, or instruction, or in connection with the professional practice of a particular science."

Obviously, computers meet the above description. Computer is capable of accepting data, performing operations according to instructions, and providing the results of the operations. It is, in fact, scientific instrument which is used extensively for innumerable purposes. It is used in educational institutions for teaching of science, and in hospitals and laboratories as equipment for specialised investigation, diagnosis and research, etc. It can be hardly disputed that computers are "scientific equipments and instruments". That being so, the notification issued by the State Government u/s 8(5) of the Central Sales Tax Act would apply to the sales of computers on fulfilment of the conditions specified therein.

7. In view of the above, we are of the clear opinion that the Tribunal was not justified in holding that computers were not scientific and laboratory equipments referred to in the notification dated February 21, 1972, issued u/s 8(5) of the Central Sales Tax Act, 1956. Accordingly, we answer the first question referred to us in the negative and in favour of the assessee. Having regard to the answer to the first question in favour of the assessee, question No. 2 has become academic and hence need not be answered.

8. Before parting with the case, we would like to observe that it was pointed out to us by the counsel for the Revenue that the Tribunal has indicated in its order that in the declarations issued by the purchasers in terms of the notification u/s 8(5) of the Act, some of the inapplicable words have not been struck off. We do

not propose to express any opinion in that regard. Suffice it to say that if the Tribunal is of the opinion that there is any deficiency in the declarations filed by the assessee which is material or substantial, while giving effect to our opinion in this reference, it may give an opportunity to the assessee to rectify the same.

9. In the result, this reference is answered in favour of the assessee and against the Revenue.

10. In the facts and circumstances of the case, we make no order as to cost. Reference answered in favour of the assessee.