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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO. 7 OF 2008
IN
REFERENCE APPLICATION NO.286 OF 2007

M/s Kalal Wines ..Applicant.
Vs.
The Commissioner of Sales Tax ...Respondent.

WITH

SALES TAX REFERENCE NO. 8 OF 2008
IN
REFERENCE APPLICATION NO.287 OF 2007

M/s Kalal Wines ..Applicant.
Vs.
The Commissioner of Sales Tax. ...Respondent.

WITH

SALES TAX REFERENCE NO. 9 OF 2008
IN
REFERENCE APPLICATION NO.288 OF 2007

M/s Kalal Wines ..Applicant.
Vs.
The Commissioner of Sales Tax. ...Respondent.

Mr. P.V. Surte a/w S.P. Surte i/b P.V. Surte & Co., for Applicant
Mr. B.B. Sharma, AGP for Respondent.

CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.

DATE : 7th April 2015.

P.C.:

1 All these three References involve common question of law. However, for the sake convenience, facts of the Reference No.7 of 2008 are referred to in the present judgment.

2 The learned Sales Tax Tribunal has made the Reference to this Court for determination of following questions of law:

> "1 Whether on the facts and in the circumstances of the case, the Tribunal was justified in refusing to hold that the assessment orders passed in the trade name by issue of notices in form 27 also in the trade name were void in view of the judgment of the Hon'ble Bombay High Court in the case of M/s Shankar Dhavan & Others (15 STC 392) ?
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> 2 Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the levy of tax at 20% instead of 8% on the sales of foreign liquor effected during the period from 9.12.1998 to 31.12.1999 covered by entry 22 of Schedule C Part II read with entry 16(1)(c) of the notification issued under section 41 on 8.12.1998 whereby the rate of tax was reduced from 20% to 8% when sold by a registered dealer of foreign liquor as per Government Notification No. GNFD.STA-1097/CR-1/Taxation-2 dated 8.12.1998?

3 Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the levy of interest charges under section 36(3)(a) and 36(3)(b) of the Bombay Act when he was not registered and when the said provisions apply to a dealer registered under the Bombay Act on whom there is an obligation to file returns and to pay tax due as per the returns?

3 The facts in brief which are necessary for adjudication of the aforesaid questions of law are as under:

(i) That the Appellant Shri Dhananjay R. Janwekar is the sole proprietor of the business known as M/s Kalal Wines. That the said firm is engaged in the business of buying and selling Indian Made Foreign liquor (IMFL). The business commenced in December 1998. According to the Notification issued by the State of Maharashtra under the provisions of Section 41 of the Bombay Sales Tax Act, 1959 (hereafter referred to as the said Act), all purchases made by the registered dealers were exempted from the tax.

(ii) On 23rd May 2000 the Sales Tax Officer, Enforcement Branch visited the business place of the applicant and took possession of books of accounts and recorded statement and directed the applicant to pay tax at the rate of 8% on the turnover of IMFL from 9.12.1998 till the date of notice. A sum of Rs.76,785/- was collected for the financial year 1998-99 and

Rs.4,30,000/- for the financial year 1999-2000.

(iii) On 30th March 2001, the Sales Tax Officer, Enforcement Branch, Pune paid a visit and collected a sum of Rs.55,531/- for the financial year 2000-01 at 8%.

(iv) The applicant obtained registration certificate w.e.f. from 22.6.2000. The proceedings of assessment commenced after a notice in form 27 was served on the applicant on 28.5.2002. The Sales Tax Officer passed the assessment orders after charging tax at 20% in place of 8% and interest was also added to the said amount. Since the figures are not in dispute, it is not necessary to burden the present judgment with the said figures.

(v) Being aggrieved by the orders passed by the Assessing Authority, three appeals preferred before the learned Deputy Commissioner of Sales Tax (Appeals) Pune. The said appeals were rejected. Being aggrieved thereby, the second appeals were preferred before the learned Tribunal. The learned Tribunal vide its judgment and order dated 17th August 2007 partly allowed the said second appeals. The learned Tribunal set aside the order of penalty, however, confirmed the levy of tax. After the second appeals were dismissed, an application was made by the applicant for referring the aforesaid substantial questions of law for determination of this Court. The said application was allowed resulting into the present Reference.

4 The learned Counsel appearing for the Applicants at the beginning has stated that adjudication of Question No.1 is not necessary, and therefore, he restricted his submissions only with regard to the Question Nos.2 and 3.

5 We have extensively heard Shri Surte, the learned Counsel appearing for the Applicants and Shri Sharma, the learned AGP for the Respondent-Revenue.

6 Shri Surte submitted that the incidence of sales tax is on the sales and purchases of the goods. He submits that if the incidence of tax is on sales and purchases, it is not permissible for the Authority to discriminate the said sale of goods, only on the ground that it is sold by a registered dealer or a unregistered dealer.

7 The learned Counsel submits that since the goods which are sold are the same, merely because they are sold by unregistered dealer, an higher rate would not be permissible. The learned Counsel submitted that if this is permitted, it will be violative of Article 14 of the Constitution of India. The learned Counsel further submitted that since the Notification which is issued under Section 41 of the said Act, itself provided that no conditions are made applicable while granting exemption to payment of sales tax or directing the sales tax to be levied at concessional rate, the view taken by the learned Tribunal that since the applicant was not a registered dealer at the relevant time, he was not entitled to exemption and/or lower rate of sales tax under notification issued under Section 41 of the said Act is without any substance. He, therefore, submitted that the Reference needs to be answered and needs to be held that the discriminatory treatment to the registered dealer qua the unregister dealer in respect of same goods is not permissible.

8 Insofar as the Question No.3 is concerned, the learned Counsel submitted that the said question is incidental and if the Question No.2 is answered in favour of the assessee, then there is no question of levying of interest. The learned Counsel, however, submitted that if a dealer is not registered dealer, then there is no question of levy of interest. The learned Counsel submitted that the Legislature having awakened after noticed the error committed by it, has specifically brought Section 30 on the Maharashtra Value Added Tax by way of amendment which has come into effect on 1st April 2005. The learned Counsel submitted that for the first time even an unregistered dealer has been made liable to pay interest by virtue of the said provisions. The learned Counsel, therefore, submitted that since there was no provisions prior to the said amendment being brought on the statute book, levying of interest would not be sustainable.

9 Per contra, Shri Sharma, the learned AGP submitted that the incidence of tax as could be gathered from Section 3 is a dealer. The learned AGP submitted that the Notification issued under Section 41 of the said Act specifically provides that the Notification is only applicable to the sales or purchases made by the registered dealer. The learned AGP submitted that on perusal of clause 11 of Section 2 and clause 25 of Section 2, it would reveal that the Legislature has recognized the dealer and registered dealer as two separate classes. The learned AGP submitted that the requirement of the registration is compulsory. He submitted that if a dealer choses not to register himself, then he could not be heard to say that a special treatment which is given to a registered dealer, should also be made applicable to him. He further submitted that levy of the tax is provided under Section 8. He submitted that the normal rate of tax which is required to be paid by a dealer would be as per Schedule 'C' read with Section 8. He, however, submits that only such of the class of sales or purchases are granted exemption under Section 41 of the said Act would be entitled to the special treatment. He, therefore, submits that when the Legislature has itself recognized the registered dealer as a special class to which special treatment would be given, no error could be found in the view taken by the learned Tribunal.

10 Insofar as second contention raised by Shri Surte with regard to Question No.3 is concerned, the learned AGP submitted that sub-section 3(a) of Section 36 specifically provides for payment of interest. He submits that it refers to a dealer and therefore every dealer whether registered or unregistered, is liable to pay an interest as provided under the said sub-section.

11 For appreciating the rival contentions, it will be necessary to make reference to the following provisions of the said Act:

<u>Section 2-</u>

11-“dealer” means any person who whether for commission, remuneration or otherwise carries on 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.

13- “goods' means every king of moveable property (not being newspapers, or actionable claim or money, or stocks, shares or securities), and includes growing crops, grass, and trees and plants (including the produce thereof) and all other things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

25- “Registered dealer” means a dealer registered under section 22.

<u>Section-3-Incidence of tax-</u>

(1) Every dealer whose turnover either or all sales or of all purchases, during-

(i) the year ending on the 31st day of March 1981

(ii) the year commencing on the 1st day of April 1981

has exceeded or exeeds the relevant limit specified in sub-section (4), shall until such liability ceases under sub-section (3), be liable to pay tax under this Act on his turnover of sales, and on his turnover of purchases, made, on or after the notified day.

Provided that, a dealer to whom sub-clause (i) applies (and whose turnover either of all sales or of all purchases, first exceeds the relevant limits specified in sub-section (4) after the notified day shall not be liable to pay tax in respect of sales and purchases which take place upto the time when his turnover of sales, or turnover of his purchases as computed from the 1st day of April 1981 first exceeds the relevant limit applicable to him under sub-section (4).

Section 8- [Single point levy of] sales tax on goods specified in Schedule-C- (1) There shall be levied a sales tax on the turnover of sales of goods specified in Schedule-C at the rate set out against each of them in column 3 thereof, but after deducting from such turnover-

(I) resales of goods on the purchase of which the dealer is liable to pay purchase tax under section 14;

(II) resales of goods purchased by the dealer on or after the appointed day from a registered dealer, otherwise, than on a declaration furnished under section 11 or 12, if the requirements of section 12A are satisfied [Provided that, resales of goods purchased by the dealer from a registered dealer during the period commencing on the 1st July 1981 and ending on the day immediately preceding the date of commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 1988 (Mah. 9 of 1988), on a declaration furnished under section 8A shall not be deducted from such turnover]

(III) resales of goods purchased by the dealer on or after the appointed day from a dealer liable to pay tax under section 4, if a certificate as provided in sub-division (2) of section 12A is furnished and

(IV) sales of goods to a Commission agent holding a permit who purchases on behalf of principal upon such commission agent furnishing a declaration as provided in section 12];

(V) sales of goods to be a dealer holding the Certificate of Entitlement, who purchases such goods by furnishing a declaration as provided in clause (g) of section 12].

Section 22. Registration:- (1) No dealer shall, while being liable to pay tax under section 3 of under sub-section (6) of section 19, carry on business as a dealer, unless he possesses a valid certificate of registration as provided by this Act;

Provided that, the provisions of this sub-section shall not be deemed to have been contravened if the dealer having applied for such registration as in this section provided within the prescribed time or, as the case may be, within the period specified in sub-section (6) of Section 19, carried ono such business.

Sub-section 3(a) of Section 36- if a dealer or a person does not pay the tax within the time he is required by or under the provisions of this Act to pay it, then he shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum equal to two per cent, of the amount of such tax, for each month or for part thereof after the last date by which he should have paid such tax.

Section 41 Exemption-
(1) Subject to the such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt any specified class of sales or purchases from payment of the whole or any part of any tax payable under the provisions of this Act [any notification issued under this section may be issued so as to be retrospective to any date not earlier than the 1st January 1960]

12 We will firstly answer the Question No.2. Perusal of Section 3 which deals with incidence of tax, would reveal that every dealer whose turnover either or all sales or of all purchases during the year ending on 31st day of March 1981 or the year commencing on the 1st day of April 1981, has exceeded or exceeds the relevant limit specified in sub-section (4), shall until such liability ceases under sub-section (3), be liable to pay tax under this Act on his turnover of sales, and or his turnover of purchases, made on or after the notified day. Since the facts are not in dispute, it will not be necessary to refer to them. However, perusal of Section 3 would abundantly make it clear that the liability to pay tax is on a dealer on the basis of either the turnover of sales or the purchases.

13 Clause '11' of Section 2 defines the a 'dealer'. Perusal it reveals that the 'dealer' means any person who whether for commission, remuneration or otherwise carries on 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.

14 Sub-section 13 defines “goods”. The perusal of the same would show that the 'goods' means every king of moveable property not being newspapers, or actionable claim or money, or stocks, shares or securities and includes growing crops, grass and trees and plants including the produce thereof and all other things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale.

15 Section 8 provides that there shall be levied a sales tax on the turnover of sales of goods specified in Schedule C at the rate set out against each of them in column 3 thereof, but after deducting from such turnover resales of goods on the purchase of which the dealer is liable to pay purchase tax under Section 14 or resales of goods purchased by the dealer on or after the appointed day from a registered dealer, otherwise than on a declaration furnished under section 11 or 12, if the requirements of section 12A are satisfied.

16 Sub-section 1 of Section 22 reveals that the dealer who is liable to pay tax under section 3 or under sub-section (6) of Section 19, cannot carry out business unless he possesses the valid certificate of registration as provided by the said Act. Proviso thereof says such dealer can carrying on such business, if he has applied for registration as provided within the prescribed time or as the case may be, within the period specified in sub-section 6 of Section 19, can carries on such business.

17 Upon perusal of Section 41, it would reveal that the State Government is empowered if it is necessary to do so in the public interest, to issue a notification in the Official Gazettee thereby exempting any specified class of sales or purchases from payment of the whole or any part of any tax payable under the provisions of the said Act.

18 It would thus be abundantly clear that the State Government is empowered to specify a class of sales or purchases who in its opinion in the larger public interest, are entitled to exemption from payment of tax either in whole or any part.

19 Perusal of the aforesaid provisions would clearly reveal that a dealer is mandatorily required to get himself registered, if sales or purchases made by him are liable to payment of sales tax under the said Act. Perusal of the provisions would further reveal that the said Act distinguishes between a dealer and a registered dealer. A registered dealer is one who has registered himself under the provisions of Section 22. Whereas a dealer would include everyone who for commission, remuneration or otherwise carries on business of buying or selling goods in the State. It could thus be seen that a dealer, as contemplated under the provisions of the said Act, encompasses everyone who for commission, remuneration or otherwise carries on business of buying or selling goods in the State. Whereas the term 'registered dealer' is restricted to the dealer who has registered himself under the provisions of Section 22.

20 The provisions of Section 8 read with Section 41 would reveal that a tax would be levied on the turnover of the sales of goods as specified in Schedule-C. As already discussed hereinabove, a special class of sales or purchases would be entitled to either exemption in whole or any part, if notified by the State under Section 41 of the said Act. It could thus be seen that a normal levy of tax would be as per Schedule C of the said Act, whereas to a particular classes of sales or purchases in respect of which notification is issued under Section 41, a facility would be available either for entire exemption from payment of tax or payment at the lesser rate.

21 The only question that arises for consideration is, as to whether for sale in respect of same goods a special treatment would be given to a registered dealer qua a unregistered dealer.

22 As already discussed hereinabove, the statute itself recognizes two classes of dealers, i.e. a larger class of dealer which includes any person who whether for commission, remuneration or otherwise carries on business of buying or selling goods in the State, and a smaller class of registered dealers who have registered under Section 22 of the said Act. Section 41 empowers the State Government to issue a notification thereby providing exemption from payment of whole or any part of the tax to the specified class of sales or purchases. It is only a specified class of sales or purchases which are notified under Section 41 would be entitled to the benefit of the notification under Section 41.

23 By now it is a settled principle of law that a classification is permissible under Article 14 of the Constitution of India. However, the only requirement is that the classification should be such which has a nexus with the object to be achieved. The statute itself recognizes two class of dealers i.e. a dealer simplicitor and a registered dealer. Giving special treatment to a 'class of sales or purchases by the registered dealer', in our considered view, would not be hit by Article 14 of the Constitution of India. When the Act itself provides for compulsory registration under Section 22 and restricts the benefit of the notification to only a class of sales or purchases made by the registered dealer, in our considered view, will have reasonable nexus which the object to be achieved. If the object of enactment is to provides for compulsory registration by dealers, an incentives given to a class of registered dealers, in our view, would not violate the doctrine of equality as enshrined in the Constitution of India. The purpose for restricting the benefit in the notification under Section 41 only to sales or purchases by the registered dealer appears to provide incentives to the dealers who have registered themselves and as such to ensure that the maximum number of dealers get themselves registered under the provisions of the said Act. It is to be noted here that the notification specifically uses words "sales or purchases by the registered dealer".

24 In that view of the matter, we do not find that any error has been committed by the learned Tribunal in holding that only such of the dealers who had registered themselves were entitled to benefit of the notification issued under Section 41 of the said Act. The Question No.2 is answered accordingly. It is held that sales or purchases by the registered dealer form a separate class and they only are entitled to get the benefit of the notification issued under section 41 of the said Act.

25 That leaves us to a third question, which is referred for our determination. For determination of the said question, it will be necessary to refer to sub-section 3(a) of Section 36. Perusal of the said provisions would clearly show that if a dealer or a person does not pay the tax within the time he is required by or under the provisions of this Act to pay it, then he shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum equal to two per cent of the amount of such tax, for each month or for part thereof after the last date by which he should have paid such tax. We are unable to accept the contention of Shri Surte that it is the only registered dealers who would be required to pay interest and interest cannot be charged on an unregistered dealer.

26 By now it is a settled principle of law that each and every words used by the legislature has to be given meaning. Sub-section 3(a) of Section 36 does not refer to registered dealer, but refers to a dealer. As already discussed hereinabove, the word 'dealer' is wider and takes into its ambit all the persons falling within the definition. As such even a person who is not registered would be required to pay an interest in view of sub-section 3(a) of Section 36 of the said Act. In any case, if the contention of Shri Surte is to be accepted, it will be giving a premium to a person who chooses not to follow law when the statute mandates every dealer to register himself and inspite of that if a dealer does not register himself, if the contention is accepted, he will be squat-free and not required to pay interest. On the contrary, a registered dealer who follows mandate of law and gets registered himself would be required to pay interest, whereas a law-breaker would not be entitled to pay the same.

27 In that view of the matter, in our considered view, we find that the Question No.3 also requires to be answered in favour of the Revenue. It is thus held that each and every dealer whether registered or unregistered, would be required to pay an interest, as required under sub-section 3(a) of Section 36 of the said Act.

28 All the References are answered accordingly.

(A.S. GADKARI, J.) **(B.R. GAVAI, J.)**