

Supreme Court of India

Commissioner Of Sales Tax, Bombay vs Amandi Pvt. Ltd. on 4 March, 1993

Equivalent citations: JT 1993 (2) SC 181, 1993 (1) SCALE 779, 1993 Supp (2) SCC 322, 1993 90 STC 167 SC

Bench: K Singh, N Kasliwal, S Bharucha

JUDGMENT

1. The High Court at Bombay rejected the Sales Tax Application made on behalf of the Commissioner of Sales Tax, Maharashtra to direct the Sales Tax Tribunal to refer to the High Court the following question:

Whether the Tribunal was correct in holding that in purchasing materials for the construction of the barges intended for use in the business of sea transport the opponent company was not carrying on the business of buying goods and hence was not a dealer as defined by Clause (II) of Section 2 of the Bombay Sales Tax Act, 1959?

2. The High Court rejected the application in limine stating that the Sales Tax Tribunal had been right in holding that the case was covered by the High Court's decision in Famous Cine Laboratory and Studio Ltd. v. State of Maharashtra (1975) 36 STC 104. The Commissioner of Sales Tax has been given special leave to appeal.

3. The assessee (respondent) carries on the business of hiring out barges. It owns two barges, both of which were built by the assessee itself after purchase of the requisite raw materials. The Deputy Commissioner of Sales Tax held, upon an application made to him by the assessee under Section 52 of the Bombay Sales Tax Act, 1959, that the assessee was a dealer within the meaning of Section 2(11) of the Act. The decision of the Deputy Commissioner was set aside by the Sales Tax Tribunal, reliance being placed upon the afore-mentioned judgment in the case of Famous Cine Laboratory and Studio Ltd. Basing itself upon the same judgment, the High Court, as aforesaid, declined to call for a reference.

4. The Famous Cine Laboratory and Studio owned a film studio and a film laboratory and hired out the studio and equipment to film producers for shooting films. It purchased materials such as bricks, wood, plaster, paint, etc. and utilised them in the maintenance of the studio and in the making of film sets. It was held that in processing the said goods for the said purposes what the assessee was doing was either making additions to its capital assets or providing itself with further capital assets and it was, accordingly, not carrying on the business of buying goods and was not a dealer within the meaning of Section 2(11).

5. Learned counsel for the Commissioner of Sales Tax has drawn our attention to the judgment of the same High Court, delivered just a day earlier, in the case of Commissioner of Sales Tax v. D.V. Save (1975) 36 S.T.C. 47. This was a case where the assessee purchased building materials in the course of its business as building contractor and consumed them in the construction of buildings or in carrying out repairs to buildings. It was held that the assessee was a dealer within the meaning of Section 2(11). Learned counsel submitted that to the facts of the case before us it was the judgment

in D.V. Save's case which was applicable.

6. Having heard counsel we are of the view that the question afore-mentioned is a question of law and that it requires consideration in the light of the judgment in D.V. Save's case, which, prima facie, appears to us to be more on point than the judgment in the case of Famous Cine Laboratory and Studio Ltd..

7. In the result, the appeal is allowed. The order of the High Court rejecting the Sales Tax Application, passed on 24th January, 1977, is set aside. The Sales Tax Application is made absolute. The Sales Tax Tribunal shall refer the afore-mentioned question to the High Court for decision. The High Court shall consider the reference in the light of the judgments afore-mentioned as also such other judgments as may appear to it to be relevant.

8. There shall be no order as to costs.