

State of Maharashtra Through the Secretary

Vs

Suresh Trading Company

Civil Appeal No. 1506 of 1982

07.02.1996

ORDER

In CA No. 1506 of 1982

1. Mr. V. B. Joshi states that he has filed his appearance for the respondents. It shall be taken on record.
2. The respondents were registered dealers under the Bombay Sales Tax Act, 1959. During the period 1-1-1967 to 31-12-1967 they purchased goods from M/s Sulekha Enterprises Corporation (hereinafter referred to as "Sulekha Enterprises"). Sulekha Enterprises were also registered dealers under the said Act and the bills given to the respondents contained a certificate to the effect that the registration of Sulekha Enterprises was in force on the date of the sales. The respondents thereafter resold within the State of Maharashtra the goods purchased by them from Sulekha Enterprises. They claimed to deduct from their turnover of sales for the relevant accounting year the resales of the goods purchased from Sulekha Enterprises.
3. The Sales Tax Officer disallowed the respondents' said claim for deduction upon the ground that the registration of Sulekha Enterprises had been cancelled on 20-8-1967, with effect from 1 - - 1967, and that, therefore, on the dates on which the respondents had purchased the goods from a Sulekha Enterprises, Sulekha Enterprises could not be said to be a registered dealer. The Sales Tax Officer also imposed a penalty upon the respondents. The appeal by the respondents to the Commissioner of Sales Tax was dismissed. They went up to the Maharashtra Sales Tax Tribunal. It upheld the disallowance but ordered deletion of the penalty. On the application of the respondents. it stated the following question of law to the High Court :

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the Sales Tax authorities were justified in treating the purchases of the applicants made from Sulekha Enterprises as from an unregistered dealer on the ground that even though the registration certificate of Sulekha Enterprises was cancelled on 25-8-1967, the cancellation thereof was operative with effect from January 1967 insofar as the purchases of the applicants effected from the said party prior to 25-8-1967 were concerned ?"
4. The High Court answered the question in the negative and in favour of the respondents. The High Court noted that the effect of disallowing the deductions claimed by the respondents was, in substance, to tax transactions which were otherwise not taxable. The condition precedent for becoming entitled to make a tax-free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax-free sale accrued to

him. Thereafter to hold, by reason of something that had happened subsequent to the date of the purchase, namely, the cancellation of the selling dealer's registration with retrospective effect, that the tax-free resales had become liable to tax, would be tantamount to levying tax on the resales with retrospective effect.

5. In our view, the High Court was right. A purchasing daler is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates.

6. It must also be noted that the learned Advocate General, appearing for the department before the High Court, stated that the genuineness of the transactions between the registered dealer and the respondents was not in doubt and not disputed. This being so, it is difficult to see how there could have been a cancellation of registration with effect from a date that preceded the dates of the transactions and how, accordingly, the respondents could be made liable to pay tax.

7. In the result, the appeal is dismissed with no order as to costs. a Civil Appeals Nos. 150 of 1982, 1469 & 4594-95 of 1990

8. For the reasons aforesated, these appeals are also dismissed with no order as to costs.