

BOMBAY HIGH COURT

Commissioner of Sales Tax

Vs

D.V. Save

(D Madon, and M Kania, J.)

17.01.1975

JUDGMENT

D Madon, J.

1. This is a reference under section 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the Commissioner of Sales Tax. The statement of the case shows that the respondents carry on the business of constructing and repairing buildings. They mainly get contracts for such works from the Government and semi-Governmental bodies. For the purpose of carrying on their business of building contractors the respondents purchase building materials which they utilise either in the construction or in the repairs to buildings, as the case may be. Section 52(1) of the Bombay Sales Tax Act, 1959, confers power upon the Commissioner of Sales Tax to determine certain questions which arise otherwise than in proceedings before a court or before the assessment or reassessment of a dealer has commenced. Amongst the questions which the Commissioner is so authorised to determine are the questions whether any person or any firm is a dealer, whether any particular dealer is required to be registered and whether any tax is payable in respect of any particular sale or purchase or if tax is payable, the rate thereof. Accordingly, the respondents made an application dated 30th December, 1964, to the Commissioner of Sales Tax to determine the three questions, namely : (1) whether the respondents were dealers within the meaning of the said term as defined in clause (11) of section 2 of the said Act, (2) whether they were liable to be registered as dealers under the said Act, and (3) whether they were liable to pay purchase tax on the goods and materials purchased by them from unregistered dealers. The Deputy Commissioner of Sales Tax, Eastern Division, Nagpur, who heard this application by his order dated 21st February, 1966, answered all the said three questions in the affirmative. Against the said decision the respondents went in appeal to the Sales Tax Tribunal and by its judgment delivered on 25th October, 1967, the Sales Tax Tribunal held that the business of the respondents was not of purchasing goods nor of selling goods and that the purchases made by the respondents were purchases made during the course of their business as building contractors, but they were

not purchases made in the course of their business as contemplated by the definition of "dealer" in clause (11) of section 2 of the said Act and, therefore, they could not be held to be dealers. The Tribunal accordingly allowed the respondents' appeal.

2. At the instance of the Commissioner of Sales Tax, the Tribunal has stated a case and referred it to the High Court. The question which is submitted to the High Court by the Tribunal for its decision is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that though the purchases made by the respondent-firm were purchases made in the course of its business as a building contractor's firm, with a profit-motive, still they were not purchases made in the course of a business of a 'dealer' as defined in section 2(11) of the Bombay Sales Tax Act, 1959 ?"

3. Clause (11) of section 2 of the said Act defines a "dealer" as follows :

"dealer' means any person who, whether for commission, remuneration or otherwise carries on the 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."

4. To this definition there is an exception in the case of an agriculturist, with which we are not concerned. Under section 3 of the said Act, every dealer whose turnover either of all sales or of all purchases during the prescribed period exceeds the relevant limit specified in the said section is liable to pay tax under the said Act. "Tax" is defined by clause (32) of section 2 of the said Act as meaning a sales tax, general sales tax, purchase tax or retail sales tax payable under the said Act. The scheme of the Act shows that so far as the levy of tax under the said Act is concerned, the general rule is that the transactions of sales are made taxable and the transactions of purchases are taxed only in certain circumstances, which are set out in sections 13, 14 and 15 of the said Act. Under section 13, as it stood at the relevant time, where a dealer who is liable to pay tax under section 3 purchases any goods specified in Schedule B, C, D or E to the said Act from a person or any Government who or which is not a registered dealer, then unless the goods so purchased were resold, there was to be levied a purchase tax on the turnover of such purchases. The Act also provides for making purchases against certain certificates and where such certificates are given, the sale to the registered dealer giving the certificate is not liable to sales tax. Such certificates contain a declaration given by the purchasing dealer as to the purchase for which the goods are purchased. Under section 14 of the said Act where contrary to such a certificate the goods are used for another purpose, or are not resold or despatched in the manner

and within the period certified, then the dealer becomes liable to pay purchase tax on the purchase price of such goods. Section 15 is not material to the present case. Though entry 54 of List II in the Seventh Schedule to the Constitution of India confers power upon the State Legislature to levy "taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I" in the said schedule, our State Legislature has not thought fit to levy tax on all sales and purchases on which it could have levied tax, but, for reasons of administrative convenience, has restricted the levy of tax under the Bombay Sales Tax Act, 1959, only to certain types of sales or purchases, namely, those made by a dealer whose turnover exceeds one of the limits specified in section 3 of the said Act. Unless, therefore, a person were a dealer as defined by clause (11) of section 2 of the said Act, his liability to be taxed would not arise. It is only when a person is found to be a dealer that the questions whether his turnover has exceeded in any period the relevant limit and whether he is liable to get himself registered under the Act would arise. Thus the very levy of tax under the said Act depends upon there being in existence in the eye of law a dealer. The test to ascertain whether a person is a dealer or not as defined by clause (11) of section 2 of the said Act is to see whether he is carrying on the business of buying or selling goods in the State. The first thing, therefore, which is required to be seen is what is meant by the term "business" as used in clause (11) of the said section 2. Almost all Sales Tax Acts of other States define a "dealer" in words similar to those used in the Bombay Sales Tax Act, 1959. Clause (e) of section 2 of the Hyderabad General Sales Tax Act, 1950, defined a "dealer" as meaning any person, local authority, company, firm, Hindu undivided family or any association or associations of persons engaged in the business of buying, selling or supplying goods in the Hyderabad State, whether for a commission, remuneration or otherwise, including a State Government which carried on such business and any society, club or association which bought or sold or supplied goods to its members. Rule 5(2) of the Hyderabad General Sales Tax Rules, 1950, provided that in the case of certain commodities the turnover of a dealer, for the purpose of the said Rules, should be the amount for which the goods were bought by the dealer. In a case which arose under the said Act, namely, *State of Andhra Pradesh v. H. Abdul Bakshi and Bros.*, the respondents, who were registered as dealers under the said Act and were carrying on the business of tanning hides and skins and were selling the tanned skins in the town of Hyderabad, purchased for the purposes of their business undressed hides and skins and also tanning bark and other materials required in their tannery. A certain amount was included in their turnover of purchases by the assessing authorities. The respondents disputed their liability to pay tax on that particular turnover on the ground that the said amount represented the price paid by them for buying tanning bark required in their tannery and that as tanning bark was bought for consumption in the tannery and not for sale, they were accordingly not dealers in tanning bark and, therefore, the price paid by them for buying tanning bark was not liable to tax under the said Hyderabad Act. When the matter came before the Andhra Pradesh High Court, the High Court

held that the turnover of purchases of tanning bark purchased by the respondents was not liable to be included in the respondents' taxable turnover of purchases. Reversing the decision of the Andhra Pradesh High Court the Supreme Court held that such turnover was exigible to tax. As considerable arguments have been advanced before us on what the real ratio of this decision is, it will be convenient to set out what was observed in that case at some length. The Supreme Court observed (at pages 647-648) :

"A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression 'business' though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e., without a profit-motive, will not make a person dealer within the meaning of the Act, but a person, who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The legislature has not made sale of the very article bought by a person a condition for treating him as a dealer : the definition merely requires that the buying of the commodity mentioned in rule 5(2) must be in the course of business, i.e., must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another salable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such salable commodity."

5. Applying these principles the Supreme Court held that tanning bark was not bought by the respondents for any purpose unconnected with the business carried on by them, namely, manufacture and sale of the dressed hides and skins, and its consumption in the business and not sale of the commodity bought therefore did not exclude the respondents from the definition of "dealer" qua the tanning bark.

6. Relying upon this decision it was urged by Mr. Cooper, the learned counsel for the applicant, that whenever any purchase is made either with a view to sell the goods so bought or to consume such goods in the course of trade or use in manufacture, the person purchasing the goods would be said to be carrying on the business of purchasing goods and should be held to be a dealer. Accordingly, Mr. Cooper submitted that when the respondents purchased building materials and consumed them in the construction of buildings or in carrying out repairs to buildings, they were purchasing goods in the course of their business of building contractors and consumed them in

such business with a view to make profit and were therefore dealers within the meaning of the said term as defined by clause (11) of section 2 of the Bombay Sales Tax Act, 1959. Mr. Cooper laid considerable emphasis on the phrase "the integrated activity of buying and disposal" in the judgment of the Supreme Court in *State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* . In Mr. Cooper's submission, the sentence which follows thereafter, namely, "the commodity may itself be converted into another salable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such salable commodity", is merely illustrative of the word "disposal" and does not define it. Mr. Mehta, the learned counsel for the respondents, however, argued that the sentence, just quoted above, defined the scope and ambit of what "disposal" as an integrated activity of buying should be.

7. A Division Bench of this High Court consisting of Abhyankar and Vimadalal, JJ., had occasion to consider what was held by the Supreme Court in the judgment in the case of *State of Andhra Pradesh v. H. Abdul Bakshi and Bros*¹. In that case, namely, *K.S. Films v. State of Maharashtra*² the applicants were motion picture producers. They, however, did not sell the motion pictures which they produced but gave away the pictures under certain financial arrangements. The ownership in the motion pictures was retained by the applicants themselves, including the copyright thereof. For producing motion pictures the applicants used to buy raw films. It was not disputed that the motion pictures were produced by the applicants with the ultimate object of making profit by exhibition of the pictures produced by them. On an application made by the applicants in the said case under section 52 of the Bombay Sales Tax Act, 1959, the Deputy Commissioner held that the purchases of raw films made by the applicants were made in the course of their business. The Sales Tax Tribunal confirmed the view of the Deputy Commissioner. In the reference to the High Court, the Division Bench referred to the judgment of the Supreme Court in the case of *State of Andhra Pradesh v. H. Abdul Bakshi and Bros*³. and quoted the passage which we have reproduced above. It was contended on behalf of the department that the correct ratio of the decision of the Supreme Court in the said case was that any activity of buying goods in the business of a dealer would qualify for his being considered a dealer within the meaning of clause (11) of section 2 of the said Act, provided the article bought by the person was consumed by him in the course of trade or the commodity itself was converted into another salable commodity or was used as an aid to, or ingredient in, the manufacturing process for purchasing any commodity which was salable. In other words, what was contended before the Division Bench was that it was not essential in order that a buying activity in the course of business should attract the charge under the Sales Tax Act, that the article which was used or consumed in producing some other article was necessarily sold in the market and that whether the ultimate article was sold or not sold was not decisive of the question whether the raw materials used in the production of such an article should be considered as goods bought in the course of business so as to attract a charge to sales tax or purchase tax. The

Division Bench accepted the interpretation of the Supreme Court decision contended for by the department. It, however, rejected the contention raised on behalf of the department that purchase of any material by a person, whatever be the nature of his business and whatever be the use to which the material so purchased was put, attracted the charge of purchase tax, irrespective of whether the materials or goods so purchased formed or did not form any integrated activity connected with the purchase of the goods, such as either transformation of the goods produced or production of some other goods which were marketable. The Division Bench held that it was incumbent for the liability for the payment of purchase tax to arise that the goods purchased must be a part of the activity of the business, namely, the business of purchase and sale or supply of goods and that if the purchase of goods was for an altogether different purpose unconnected with the production of any goods, or if it was not for the purpose of making other goods which were capable of being sold, then the mere purchase of goods would not attract a charge under section 13 of the Bombay Sales Tax Act, 1959. According to the Division Bench, a nexus must be established between the article purchased and the article produced, for the production of which the article purchased was used, and the article so produced must be salable, that is, capable of being sold.

8. Relying upon the interpretation put by the Bombay High Court in *K.S. Films v. State of Maharashtra*⁴ upon the decision of the Supreme Court in State of Andhra Pradesh v. H. Abdul Bakshi and Bros. ([1964] 15 S.T.C. 644 (S.C.))(Supra), it was contended before us on behalf of the respondents that the materials, which the respondents purchased, though used in the course of their business of building contractors, were not used for the production or manufacture of any marketable commodity or goods, inasmuch as the said materials were used in the construction of, or repairs to, buildings and their finished form took the shape of an immovable property.

9. We would be bound by this decision of a Division Bench of this Court. Mr. Cooper on behalf of the applicant, however, submitted that in a later decision, namely, Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh, the Supreme Court itself has put a different interpretation upon its decision in *H. Abdul Bakshi and Bros.'s case* ([1964] 15 S.T.C. 644 (S.C.))(supra), and the decision in *K.S. Films v. State of Maharashtra* ([1969] 23 S.T.C. 121)(Supra) is, therefore, no longer good law and not binding upon us. In the alternative, Mr. Cooper submitted that in *Ganesh Prasad Dixit's case*, the principle laid down in *H. Abdul Bakshi and Bros.'s case* ([1964] 15 S.T.C. 644 (S.C.))(Supra) was extended even to cases where materials purchased were used in the construction of a building. In *Ganesh Prasad Dixit's case*, the appellants were a firm of building contractors and were registered as dealers under the Madhya Pradesh General Sales Tax Act, 1958. The appellants purchased building materials and used the materials in the course of their business. They were sought to be taxed on the purchase of these materials. In a reference to the High Court of Madhya Pradesh the High Court held that

the appellants were dealers and that the purchase tax was lawfully levied upon them. An appeal by special leave to the Supreme Court was dismissed. Clause (d) of section 2 of the said Madhya Pradesh General Sales Tax Act defined a "dealer" as meaning, amongst others, any person who carries on the business of buying goods. Section 7 of the said Act provided as follows :

"Every dealer who in the course of his business purchases any taxable goods, in the circumstances in which no tax under section 6 is payable on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State or despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been liable on the sale price of such goods under section 6"

10. The Supreme Court thus summarised the contentions urged before it on behalf of the appellants :

"The counsel for the appellants submitted that the appellants were not 'dealers' within the meaning of the Act because they did not carry on the business of buying goods, and that in any event, the goods purchased by them for use in their construction business were not liable to tax under section 7."

11. This summary of the arguments advanced before the Supreme Court on behalf of the appellants shows that two distinct points were canvassed before it, namely, (1) whether the appellants were not dealers within the meaning of the said Act because they did not carry on the business of buying goods, and (2) whether, assuming they were dealers within the meaning of the said Act, the goods purchased by them for use in their building construction business were not liable to tax under section 7 of the said Act. The Supreme Court referred to the case of *State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* ([1964] 15 S.T.C. 644 (S.C.))(Supra). The Supreme Court also referred with approval to a decision of the Madras High Court in *L. M. S. Sadak Thamby and Co. v. State of Madras*⁵ in which the said High Court held that an assessee who purchased tanning bark and consumed it in tanning raw hides was carrying on the business of buying goods once the tanning bark purchased by the assessee was purchased in the course of business as it was connected with the business of tanning hides carried on with a profit-motive by the assessee. The Supreme Court then dealt with another argument advanced on behalf of the appellants that in the cases of *H. Abdul Bakshi and Bros.* ([1964] 15 S.T.C. 644 (S.C.))(Supra) and *L. M. S. Sadak Thamby and Co.* ([1963] 14 S.T.C. 753)(supra), the assesseees were carrying on the business of selling goods manufactured by them, and for the purpose of manufacturing those goods, they purchased certain other goods and consumed them in the process of

manufacture, but that in Ganesh Prasad Dixit's case , the goods were not consumed in producing another commodity for sale and, therefore, those two cases were distinguishable. The Supreme Court repelled that argument on the basis of section 7 of the Madhya Pradesh General Sales Tax Act. They held that under that section where no sales tax was payable on the sale price of the goods, purchase tax was payable by a dealer who bought taxable goods in the course of his business, and (1) either consumed such goods in the manufacture of other goods for sale, or (2) consumed such goods otherwise, or (3) disposed of such goods in any manner other than by way of sale in the State, or (4) despatched them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. The Supreme Court held that as the appellants were registered as dealers and they had purchased building materials in the course of their business, the building materials were taxable under the Act, and the appellants had consumed the building materials otherwise than in the manufacture of goods for sale and for a profit-motive and, therefore, on the plain words of section 7 of the said Madhya Pradesh General Sales Tax Act, the purchase price was taxable. In the case of *Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh* , the materials purchased by the appellants were thus used not in the manufacture of goods for sale but were used in the construction of a building which was not a movable property. The goods so bought were thus transformed not into a commodity which was marketable or salable but into an immovable property.

12. Relying upon this later decision of the Supreme Court it was submitted by Mr. Cooper, the learned counsel for the applicant, that, according to the ratio of this judgment, what was required was that goods purchased should have been consumed in the business activity of the purchaser and when they were so consumed, the fact that the consumption was in the production of a salable commodity or in the construction of an immovable property made no difference so far as the liability to pay purchase tax was concerned. In support of this submission, Mr. Cooper also relied upon a judgment of a Division Bench of the Gujarat High Court in *Commissioner of Sales Tax v. K. B. Mehta & Company*⁶ In that case a question arose whether the price paid by the assessee for the purchase of three trucks was exigible to purchase tax under section 13 of the Bombay Sales Tax Act, 1959, as applicable to the State of Gujarat. The assessees in that case were registered as dealers under the said Act and carried on business as building contractors. In an elaborate and detailed judgment, after referring to the scheme of the said Act and several authorities, including the two decisions of the Supreme Court and that of the Bombay High Court, referred to above, the Gujarat High Court laid down the following four broad principles (at page 75) :

"(1) If the goods purchased are found to be indispensable for the purpose of carrying on the business activity of the assessee and were, in fact, purchased with the intention of being consumed or used up in execution of that business activity, then they prima facie

become liable to the payment of tax under section 13 of the Act, as such purchases become an integral part of the business itself and, therefore, bear all the imprints of every characteristic of that business.

(2) If it is shown that the goods purchased were not indispensable for the purpose of carrying on the business of the assessee, then the mere fact that they were purchased 'during the course of' business activity, would not create any prima facie presumption.

(3) If an article purchased during the course of business activity is of capital nature and not totally consumed or used up during the course of that activity, no such presumption about the purchase tax liability would arise. For instance, if for the execution of a contract for building construction, the articles like stone crusher, cement mixture or motor trucks are purchased, they would prima facie be capital assets and since such capital assets are not consumed or used up in execution of the contract, the prima facie presumption, referred to above, does not arise in their case.

(4) The prima facie presumption about the liability to pay purchase tax under section 13 would be a rebuttable one and can be rebutted by an assessee by leading evidence to show that, for some reason, the purchase did not amount to business. While doing so, it would always be open to him to show that the purchase of the goods in question did not bear the imprint of business on account of some other factors such as lack of frequency, continuity, profit-motive, regularity, volume of trade, etc., if, of course, such factors are found to be relevant, looking to the circumstances of the case."

13. The Gujarat High Court then summarised the conclusions in law, which it arrived at, as follows (at page 76) :

"(1) In order that a liability to pay purchase tax is attracted, with regard to the purchases made in execution of a works contract, the contractor, who makes the purchases, must be a 'dealer' as defined in the Act and must also be liable under section 3 thereof.

(2) The definition of 'dealer' which is found in section 2(11) of the Act stipulates that the person concerned should be carrying on the business of buying or selling goods in the State.

(3) Works contract is a 'business' within the meaning of that term as used in section 2(11) of the Act.

(4) Any action, which is unavoidable for the execution of a works contract, becomes an integral part of the business represented by that works contract. Therefore, if it is found

that the purchase of certain goods was essential for the purpose of executing a works contract and if such goods were purchased with the intention of being consumed or used up in execution of that business, then the said purchase becomes an integral part of the business.

(5) Such integral parts of a business bear the imprints of all the main characteristics of that business and, therefore, the purchases, which thus become the integral parts of a 'business', are themselves 'business' within the meaning of section 2(11) of the Act.

(6) Such purchases are purchases of 'goods' and hence a person, who makes such purchases (i.e., the purchases referred to above) is a person carrying on the 'business' of buying goods as contemplated by section 2(11) of the Act.

(7) For inquiring whether buying of goods amounts to 'business' it is not necessary to find that the goods purchased are resold or are used in manufacturing other articles for sale. It is enough if it is found that they are disposed of by consumption or otherwise for the purpose of the business concerned.

(8) Purchase of goods, as referred to in the proposition No. (4) above, prima facie becomes liable to payment of tax under section 13 of the Act.

(9) If, however, it is found that the goods purchased were not indispensable for the execution of business, then the mere fact that they were purchased 'during the course of' a particular business activity would not create any such prima facie presumption.

(10) If an article purchased during the course of execution of a works contract is of capital nature, and not totally consumed or used up during the course of that activity, no such prima facie presumption about the purchase tax liability would arise with regard to such an article.

(11) The prima facie presumption, referred to above, regarding the liability to pay purchase tax under section 13 is a rebuttable one."

14. The Gujarat High Court found that the trucks purchased by the assessee in that case were capital assets, and, applying the above principles, held that their purchase did not make the assessee dealers within the meaning of clause (11) of section 2 of the said Act. Mr. Cooper also relied upon a decision of the Rajasthan High Court in *Agrawal Engineering and Construction Co. v. State of Rajasthan* ([1973] 31 S.T.C. 92). In that case the building contractor who purchased materials was held to be a "dealer" within the meaning of clause (f) of section 2 of the Rajasthan Sales Tax Act, 1954, which defined a "dealer" as meaning any person who carried on the

business of buying or selling or supplying or distributing goods. In arriving at its decision, the Rajasthan High Court relied upon the decision of the Supreme Court in *Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh* .

15. On behalf of the respondents the two Supreme Court cases, referred to above, and the aforesaid decisions of the Gujarat and the Rajasthan High Courts were sought to be distinguished on the ground that in each of these cases the assessee was a registered dealer. In our opinion, this is not a valid distinction. Registration as a dealer is not necessarily conclusive. A Division Bench of this High Court has also, in the case of *Aryodaya Spinning and Weaving Company Limited v. State of Bombay* ([1960] 11 S.T.C. 141)(supra) held that the application submitted by an assessee for getting himself registered as a dealer and the registration certificate issued to him might not be decisive of the question whether the assessee was a dealer in a particular commodity or not.

16. The real question is whether, when a person purchases goods, the goods are purchased as part of the integrated activity of buying and disposal, and, if so, whether the word "disposal" should be confined only to resale of the very same goods or consumption of the said goods in the production or manufacture of other salable or marketable goods. In the case of *Ganesh Prasad Dixit* , the materials which were held to be exigible to purchase tax were materials which went into the construction of a building and not into the production or manufacture of other goods. They were thus consumed in bringing into being not a movable property but an immovable property. It was however submitted before us on behalf of the respondents that the decision in *Ganesh Prasad Dixit's* case really turned upon the wording of section 7 of the Madhya Pradesh General Sales Tax Act. We are not prepared to read that Supreme Court decision in such a narrow light. The points, which were contended before the Supreme Court on behalf of the appellants, as summarised by the Supreme Court, have already been set out by us above. That passage clearly shows that there were two distinct points canvassed before the Supreme Court and the contention that the appellants were not dealers because they did not carry on the business of buying goods was separate and distinct from the other contention, namely, that in any event, that is, even assuming that they were dealers, the goods purchased by them for use in their construction business were not liable to purchase tax under section 7 of the said Madhya Pradesh Act. The decision with respect to the first question was rested by the Supreme Court on the interpretation placed by it on its judgment in the case of *State of Andhra Pradesh v. H. Abdul Bakshi and Bros.* . Even were the position otherwise, we fail to see how it would affect the matter before us, for under section 13 of the Bombay Sales Tax Act, 1959, as it stood at the relevant time, that is, as it was in force between 1st April, 1963, to 30th June, 1965, purchase tax was attracted when a dealer liable to pay tax under the said Act purchased any goods specified in Schedule B, C, D or E from a person or any Government who or which was not a registered dealer, unless the goods so purchased were resold by him. The goods here were admittedly not

resold by the respondents. They were thus used for a purpose other than resale and the liability to purchase tax was accordingly attracted.

17. It was next submitted by the learned counsel for the respondents that purchase and sale are integrated activities and there can be no purchase of goods until it is linked with the ultimate disposal of the goods by sale. We are unable to accept this argument. Purchase and sale are two aspects of the same transaction. Viewed from the point of view of a seller, a transaction is a sale. Viewed from the point of view of a purchaser, the same transaction would be a purchase. It is open to a State Government, in exercise of the legislative powers conferred upon it by the relevant entry in the Legislative List in the Constitution, to tax either of these aspects of a transaction of sale and purchase. It may levy tax in respect of such transaction on the seller or it may levy it on the purchaser. Provided the goods are purchased in the course of the business of purchasing goods, the tax under the Act would be attracted subject to the other statutory conditions being fulfilled. The real question is, when can a person be said to be carrying on the business of purchasing goods? A person carries on business with a profit-motive and in order to earn money. When a man purchases goods, by the very act of purchase he is not earning, but he is spending money. Therefore, the business of purchasing goods must necessarily be linked with some activity which will result in profit. It is however not necessary that the activity with which the purchase of the goods must be linked must itself be the activity of selling goods. There is no provision in the Act which supports such a view, and this view has been negated by the Supreme Court in the case of *Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh*. If the position canvassed by the respondents were correct, we would have expected to find in the definition of the term "dealer" in clause (11) of section 2 of the Bombay Sales Tax Act, 1959, the phraseology "carried on the business of buying and selling goods" and not "carries on the business of buying or selling goods". So long as the goods purchased are either resold with a profit-motive or consumed in the very business activity, for the carrying on of which they were purchased, the purchaser must be held to be carrying on the business of purchasing goods. We are in respectful agreement with the principles enunciated by the Gujarat High Court in the case of *Commissioner of Sales Tax v. K. B. Mehta & Company* ([1971] 28 S.T.C. 47)(Supra). We are also of the opinion that the decision in the case of *K.S. Films v. State of Maharashtra* ([1969] 23 S.T.C. 121)(supra), in so far as it lays down that the utilisation of the goods purchased should be in the production or manufacture of a marketable commodity, is no longer good law in view of the decision of the Supreme Court in *Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh*(Supra). We would however like to make it clear that purchases of all goods by a dealer which he needs for his business would not necessarily be purchases made in the course of his business of buying goods. The goods purchased must be such as are indispensable for carrying on of the particular business activity of the purchaser and must be goods without which such business activity would not exist. They must not be goods which are adjuncts to the

carrying on of a business or goods which form part of the capital assets of the dealer. Applying this test, building materials purchased by a building contractor would be purchases made in the course of the business of buying goods, for without building materials there would be no business of building construction, but stationery, account books and similar article which are required in the carrying on of a business would not be goods of this type; they are adjuncts to the carrying on of a business. In the modern commercial world it may well-night be impossible to carry on business without account books or without stationery, but it is not the account books or stationery which constitutes the business of a manufacturing company or a bank or an insurance company. These goods are adjuncts to the carrying on of the actual business activity of such company. In the case before us, the respondents purchased building materials which they admittedly used in carrying on of their business activity of building construction and building repairs. Without the building materials, their business would not have existed. These building materials were not adjuncts to the carrying on of their business of building contractors and, therefore, in purchasing these building materials the respondents were carrying on the business of buying these goods.

18. Accordingly, we answer the question referred to us in the negative.

19. The respondents will pay to the applicant the costs of this reference.

20. Reference answered in the negative.

Cases Referred.

1[1964] 15 S.T.C. 644 (S.C.)

2([1969] 23 S.T.C. 121)

3[1964] 15 S.T.C. 644 (S.C.)

4([1969] 23 S.T.C. 121)

5([1963] 14 S.T.C. 753)

6([1971] 28 S.T.C. 47) 