

PETITIONER:
THE STATE OF BOMBAY

Vs.

RESPONDENT:
M/S. RATILAL VADILAL AND BROS.

DATE OF JUDGMENT:
15/11/1960

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
KAPUR, J.L.
SHAH, J.C.

CITATION:
1961 AIR 1106 1961 SCR (2) 367
CITATOR INFO :
D 1962 SC1326 (4)
R 1973 SC 804 (11)

ACT:
Sales Tax--'Dealer'--Meaning of--Appeal by special
leave--When available--Bombay Sales Tax Act, 1953 (Bom. III
of 1953), ss. 27(1), (b), (c), 30(1), 34(1) and
(2)--Constitution of India, Art. 136.

HEADNOTE:

One Nanalal Karsandas, who was a brick manufacturer, held a priority certificate for purchasing coal under the Colliery Control Order and purchased a certain quantity of coal from M/s. S. G. Rungta Colliery through the respondents who were commission agents. The respondents applied to the Collector for determining whether they could be described as "dealers" under the Bombay Sales Tax Act, 1953. The Collector held that they were dealers but the Sales Tax Tribunal held otherwise. No step was taken thereafter for a reference to the High
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Court under ss. 34(1) and 30(1) of the Act. On appeal by the State of Bombay by special leave,
Held, that the respondents could not be described as "dealers" under the Act as the nature of their business as disclosed by them did not show that they were carrying on the business of selling goods in the State of Bombay but were only commission agents arranging sales to other persons.

The proper course for the appellant was to move the High Court and exhaust all his remedies before invoking the jurisdiction of this court under Art. 136 of the Constitution.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 429 of 1959.
Appeal by special leave from the judgment and order dated December 6, 1957 of the former Bombay Sales Tax Tribunal in Appeal No.6 of 1956.

C. K. Daphtary, Solicitor-General of India, H. R. Khanna and R. H. Dhebar, for the appellant.

N. A. Palkhivala, S. P. Mehta, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the respondents.

1960. November 15. The Judgment of the Court was delivered by

HIDAYATULLAH, J.-The State of Bombay has appealed to this Court with special leave, against an order of the Sales Tax Tribunal, Bombay, dated December 6, 1957, by which the Tribunal allowing the appeal before it, set aside an order of the Collector of Sales Tax passed under s. 27 of the Bombay Sales Tax Act, 1953.

The respondents, Ratilal Vadilal & Bros., are commission agents doing business as clearing and transport contractors. On June 25, 1954, they applied to the Collector of Sales Tax, Bombay, under ss. 27(a), (b) and (c) of the Act describing the nature of their business, citing one instance thereof, for determination of the question whether they could be called "dealers" within the Act. The Collector by his order held that they were dealers, and were required to register themselves under the Act. On appeal, the Tribunal held otherwise, and hence this appeal by the State of Bombay.

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It appears that no action was taken to ask for 'a reference to the High Court of Bombay under s. 34(1) read with ss. 30(1) and (2) of the Act. We have frequently noticed that all the remedies which are open to an appellant are not first exhausted before moving this Court. Ordinarily, this Court will not allow the High Court to be bypassed in this manner, and the proper course for an appellant is to exhaust all his remedies before invoking the jurisdiction of this Court under Art. 136. In the present case, however, the matter is simple, and the learned counsel for the respondent requested us to determine the question, stating that his client who was a small trader and who made the application for the clarification of the law, would be dragged through Courts once again, if we were to decide this appeal on this short point. In view of this, though we decide this appeal, we must not be held to lay down a *cursus curiae* for this Court.

The matter relates to a time after the Colliery Control Order, 1945, came into force. Under that Order, no person could acquire or purchase coal from a colliery except under authority of the Central Government for which purpose he had to obtain a priority certificate from the State Coal Controller. Under the scheme of the Order, *del credere* agents were allowed to act and to charge a commission of one rupee per ton of coal.

One Nanalal Karsandas, a brick manufacturer, was allotted a priority certificate in respect of 22 tons of coal on June 17, 1954. He dealt with M/s. S.C. Rungta Colliery, Burhar, through the respondents. The consignment was in the name of Karsandas, but the bill was sent by the Colliery to the respondents, and the respondents, in their turn, made out a bill in which they charged, in addition to the amount of the bill of the Colliery, a sum of Rs. 22 as their commission. The liability to pay the Colliery rested upon the respondents, but they claimed to be acting as mere "middlemen" between the Colliery and Karsandas. The respondents stated that their business was along these lines with other constituents also, and asked the Collector to determine whether they could be described as "dealers" within the Act, and required registration.

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"Dealer " in the Bombay Sales Tax Act, 1953, is defined as follows:

"dealer " means any person who carries on the business of selling goods in the State of Bombay, whether for commission, remuneration or otherwise..." (Explanation omitted).

It would appear that to be a dealer, the person must carry on the business of selling goods in the State of Bombay. The short question in this case, therefore, was whether the respondents were carrying on such a business in respect of coal.

The scheme of the Control Order shows that no sale of coal could take place except to a person holding a certificate. A sale otherwise was in contravention of the Control Order. The certificate which has been produced in the case, though made out in the name of the respondents, shows the consumer as the consignee. It is thus plain that there was no sale by the Colliery to the respondents, but directly to Karsandas, though through the agency of the respondents. The respondents also, when they made out the bill to Karsandas, mentioned that he was the consignee, and that they were only charging their " middlemen " commission. In these circumstances, it is difficult to hold that the Colliery sold coal to the respondents, and that they, in turn, sold it to Karsandas. There were no two sales involved; there was only one sale, and that was by the Colliery to the consumer. The respondents never became owners by purchase from the Colliery, because the Colliery would not have sold coal to them, nor could they have bought it unless they had obtained a certificate. The position of the respondents was merely that of agents, arranging the sale to a disclosed purchaser, though guaranteeing payment to the Colliery on behalf of their principal. In view of what we have said, no business of selling coal was disclosed in the instance cited before the Collector, and the order of the Tribunal was correct on the facts placed before it.

In the result, the appeal fails and will be dismissed with costs.

Appeal dismissed.