**Champalal Vs. Deputy Commissioner of Sales Tax, Eastern Division, Nagpur and 3 ors.**

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**SooperKanoon Citation** : sooperkanoon.com/332262

**Court** : Mumbai

**Decided On :** Jul-18-1966

**Reported in** : [1966]18STC424(Bom)

**Judge** : Deshmukh and ;Patel, JJ.

**Acts** : Bombay Sales Tax Act - Sections 2(13); General Clauses Act

**Appeal No.** : Special Civil Application No. 722 of 1965

**Appellant** : Champalal

**Respondent** : Deputy Commissioner of Sales Tax, Eastern Division, Nagpur and 3 ors.

**Advocate for Def.** : S.M. Hajarnavis, Additional Government Pleader

**Advocate for Pet/Ap.** : C.J. Thakar and ;R.S. Singhania, Advs.

**Judgement** :

**Patel, J.**

1. The petitioner challenges the orders of the Sales Tax Authorities below which had not given him a set-off in respect of certain amount of tax recovered from him

by the State Government. The petitioner is a forest contractor. The Forest Department held auction of a coupe of the forest on 28th July, 1960, and the petitioner's bid for the same was accepted for a sum of Rs. 60,100. The amount was to be paid in four installments. The actual contract was executed on 22nd September, 1960. The petitioner had applied for registration under the Bombay Sales Tax Act as a dealer on 21st November, 1960. He was registered as such with effect from that date. At the time of the contract, the State Government recovered a sum of Rs. 1,803 as sales tax as he was not a registered dealer on the date of the contract under the provisions of Bombay Sales Tax Act. At the time of final assessment, the petitioner claimed a set-off in respect of this amount, on the ground that there was no sale under the contract in any event until the petitioner received the forest in his possession, i.e., after 9th December, 1960. This contention was negatived by the Sales Tax Officer, in appeal by the Collector of Sales Tax, and in revision by the Commissioner of Sales Tax. The petitioner seeks to challenge these orders.

2. It is not necessary for us to decide when the sale became effective in favour of the petitioner. There is great deal to be said on behalf of the petitioner when he contends that the sale did not become effective until passes were issued by the Forest Department and until he became fully authorised to deal with the goods. In any case he says that the property in the goods could not pass until he was handed over possession of the forest.

3. We have no doubt that standing timber in the forest for the cutting of which the contract was given to the petitioner is not 'goods' within the definition of 'goods' contained in section 2(13) of Sales Tax Act which defines 'goods' to mean 'all kinds of movable property'. We are left to refer to the General Clauses Act for finding out the meaning of the words 'movable property' which clearly does not include anything attached to the earth. Standing trees are very much attached to the earth and, therefore, they cannot be regarded as movable property. It is not necessary to elaborate the discussion inasmuch as in Husenali Adamji & Co. v. Commissioner of Sales Tax, M.P. [1956] 7 S.T.C. 88, this Court has expressly decided so.

4. In the result, we allow the application and direct the Sales Tax Authorities to grant the set-off for the amount of tax recovered by the Government at the time of the contract. The petitioner will get his costs from the respondents. The point of penalty is not pressed.

5. Application allowed.