
(1999) 12 RAJ CK 0034

In the Rajasthan High Court

Case No : Sales Tax Revision No's. 463 and 464 of 1999

A.C.T.O.

APPELLANT

Vs

Shakti Scoring and Milling Mills

RESPONDENT

Date of Decision : 16-12-1999

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 5(1), 5(3)

Citation : (2001) 121 STC 24

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; J.L. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—These sales tax revision petitions in respect of same respondent-assessee have arisen in identical facts and circumstances and raises common question of law, which are being heard and decided together.

2. Sales Tax Revision No. 464 of 1999 relates to assessment period ending on March 31, 1990 and Sales Tax Revision No. 463 of 1999 relates to assessment period ending on March 31, 1989. The issues relate to exigibility of packing material used by the assessee in connection with job-work of manufacturing carpet woollen mark by the assessee. For the assessment year 1988-89 the total amount received for job-work as disclosed by the assessee was Rs. 38,950. In this turnover of job-work valuation of packing material was not separately shown. In original assessment order dated February 20, 1992 the total turnover was held as not taxable. However, as the assessing authority held the belief that turnover disclosed by the assessee did not include the price of packing material used therein which was taxable it resorted to Section 12 of the Rajasthan Sales Tax Act, 1954 (hereinafter called "the Act"). Reassessment orders were made on January 4, 1994. In reassessment order dated January 4, 1994 for the period ending on March 31, 1989 the assessing authority in the first place found that assessee has received in totality Rs. 9,88,944.40 towards job-work of carpet

wollen yarn and no material has been used in doing the job-work. The entire receipt was found to be deductible while considering the taxable turnover in respect of sale of goods deemed to have taken place due to value of goods used in execution of work. It was found that the assessee has used packing material worth Rs. 15,170.24 in executing the job-work. With this finding he levied Rs. 759 as tax and also levied interest u/s 11-B of the Act amounting Rs. 948. Likewise for the assessment period ending on March 31, 1990 also on the reopening of the assessment, the reassessment was completed on January 4, 1994 without subjecting any part of the receipt as job-work by the assessee, by holding that entire receipt of Rs. 12,48,210.92 for the job-work was deductible because no material has been used in execution of job-work but subjected an amount of Rs. 13,497.60 to tax at 5 per cent as value of packing material used in execution of job-work and levied Rs. 675 as tax. Rs. 682 as interest u/s 11-B was also levied.

3. On appeal, the Deputy Commissioner (Appeals) found that since the total value of goods involved in execution of work was less than 15 per cent of the total amount payable for the job-work, it was exempt from payment of tax under notification dated November 7, 1988. These orders of the Deputy Commissioner (Appeals) have been affirmed by the Rajasthan Tax Board by common order dated October 9, 1998 made in three appeals of which appeal number 450/96/Bikaner related to assessment period 1986-87 and 1987-88 which relates to period prior to issuance of notification dated November 7, 1988 and is subject-matter of another revision to be decided separately. The two appeals Nos. 451 of 1996 and 452 of 1996 which related to assessment period 1988-89 and 1989-90, are subject-matter of these two revision petitions.

4. The Board while upholding the jurisdiction of the assessing authority to reopen the assessment, found firstly that there was no sale of the packing material itself inasmuch as no separate price was charged from the buyer by the assessee. Secondly, that according to undisputed facts the value of the total material involved in the execution of the work being less than 15 per cent of the full consideration of job-work the same was exempted from payment of tax under notification dated November 7, 1988. Aggrieved with aforesaid decision these revisions have been filed by the assessing authority.

5. Mr. Johari, learned counsel for the Revenue, has urged that whether packing material is sold as part of commodity itself or separately it is liable to tax under last proviso to Section 5(1) of the Act of 1954. There being special provision for levying tax on packing material, the assessee cannot take benefit of exemption under the notification dated November 7, 1988 referred to above. The fact that for both assessment years in question, but for invoking the said proviso to Section 5(1) of the Act, the value of material involved in execution of job-work would not be exigible to tax, as total value of goods involved in execution of work was less than 15 per cent of total value of works, therefore, the same will be exempt under notification dated November 7, 1988.

6. Learned counsel for the respondent Mr. J.L. Purohit, urged that in the present case the said proviso to Section 5(1) of the Act has no application inasmuch as it is not a case where goods were sold in packed condition which could invite applicability of the said proviso. In the absence of applicability of said proviso, on admitted facts no liability to tax arose, in view of the notification dated November 7,1988.

7. Section 5 of the Act provides rate at which a dealer under the Act is liable to pay tax on the taxable turnover and the point at which such tax becomes exigible. The relevant provision, with which we are concerned, reads as under :

"Section 5. Rate of tax.--(1) The tax payable by a dealer under this Act shall be at such single point in the series of sales by successive dealers as may be prescribed and shall be levied at such rate not exceeding seventy five per cent on the taxable turnover, as may be notified by the State Government in the Official Gazette :

..... (i).....

(a).....

(b).....

(c).....

(ii).....

(a).....

(b).....

(c).....

Provided further.....

Provided further.....

Provided further.....

Provided also that when any goods are sold, packed in any material, the tax shall be leviable on the sale of such packing material, whether charged separately or not, at the same rate as is applicable to the sale of the goods themselves, and if the goods are exempted from tax u/s 4 or have already been subjected to tax under the Act, then at the rate notified for such packing material from time to time."

8. It is to be seen that incidence of tax is on sales or supplies of goods u/s 3 of the Act, that is to say that sale or supply of goods is essential condition before provision relating to rate of tax can be attracted to it. It is only when a sale of particular goods or commodity takes place that question about inclusion of price thereof and applying rate of tax in turnover of the sale of said commodity is required to be determined. Ordinarily in a transaction of sale of goods the

subject-matter is commodity, property in which the parties to transaction intend to transfer from one party, known as seller, to another party, known as buyer, for a given consideration which is termed as price which the buyer has to pay. Such price of the goods, subject-matter of transaction, in its determination may take into consideration several components namely the cost of acquisition of such goods, the cost incurred by the seller for its preservation and storage, or if the dealer is a manufacturer, the cost of manufacturing the same, which may include costs of many inputs. Such price also includes expenses and costs which the seller incur for putting the commodities in deliverable states ; including the cost of packing material or container in which the goods are sold. It also includes profit of his dealer. Without laying the exhaustive list of such expenses, a sum total of all the components goes to constitute the price of goods. Entire price cannot be bifurcated for the purpose of levy, rate of tax differently on the inputs of end-products sold. Ordinarily in such case it is axiomatic to say that the sale of goods packed in a container for a price, constitute the sale of container as well along with the commodity transacted as sale between parties. Where one single price is charged for goods sold in packed condition no difficulty in reality arises, for the principal commodity sold in its entirety and the component of sale price include the cost price of the packing material in which the commodity is contained at the time of sale. There may be a case in which instead of single price unit principal goods is priced independent of the price of the container in which it is packed. In such situations the question may arise, in the absence of statutory provision, to discover the fact whether the transaction is one integrated transaction of sale of principal commodity along with packing material or two separate independent transactions, one of container and another of the goods packed in it, have come into existence. It is perhaps, because question has arisen in large number of cases, whereby separately pricing the principal commodity of transaction and the packing material or container containing the principal commodity also priced independently is adopted as device for evading or reducing the tax liability by reducing the taxable turnover of principal goods subject to higher rates of tax by the cost of packing material sale of which may be taxable at much lesser rate. Inasmuch as the sale of packing material, being usually incidental to sale, is usually subjected to lower rate of tax, a claim for two separate sale is being made. This controversy namely whether they constitute one such sales where price of packing, material has separately been charged or where price of packing material is sought to be bifurcated from the price of commodity sold packed in such material, so as to invite a uniform rate of tax, as is applicable to the commodity or invite different rates of tax, has drawn attention of the Legislature for intervention in different States and such provisions have also received judicial interpretation.

9. Section 6-C(a) was inserted in the Andhra Pradesh General Sales Tax Act, 1957 by Act No. 11 of 1984 which provided that where goods packed in any materials are sold or purchased, the materials in which the goods are so packed shall be deemed to have been sold or purchased along with the goods and the

tax shall be leviable on such sale or purchase of the materials at the rate of tax, if any, as applicable to the sale or as the case may be, purchase of goods themselves.

10. Another relevant provision which needs to be noticed in connection with aforesaid provision of the Andhra Pradesh Act is Clause (g) of Rule 6 of the Andhra Pradesh General Sales Tax Rules, 1957 which provided for computation of net turnover of a dealer assessable to tax. Under the said Clause (g) all amounts relating to charge for services rendered in connection with the packing of goods when specified and charged for by the dealer separately were not to be included in the price of goods. Section 6-C did not extend itself in terms to the case, "whether the price is charged separately or not" in unequivocal terms. It is in aforesaid background when the matter came before the Supreme Court in *Raj Sheel*'s case [1989] 74 STC 379, the court commenting on Section 6-C of the said Act which provided a legal fiction where no price is charged for packing material, the packing material shall be deemed to have been sold along with goods the court, said :

"It is difficult to comprehend the need for such a provision. It can at best be regarded as a provision by way of clarification of an existing legal situation. If the transaction is one of sale of the goods only, clearly all that can be taxed in fact is the sale of the goods, and the rate to be applied must be the rate as in the case of such goods. It may be that the price of the goods is determined upon a consideration of several components, including the value of the packing material, but none the less the price is the price of the goods. It is not open to anyone to say that the value of the different components which have entered into a determination of the price of the goods should be analysed and separated, in order that different rates of tax should be applied according to the character" of the component (for example, packing material). What Section 6-C intends to lay down is that even upon such analysis the rate of tax to be applied to the component will be the rate applied to the goods themselves. And that is for the simple reason that it is the price of the goods alone which constitutes the transaction between the dealer and the purchaser. No matter what may be the component which enters into such price, the parties understand between them that the purchaser is paying the price of the goods".

11. It may be noticed that this part of the observations governs the case where goods are sold contained in container or packed in packing material, and no distinct price of the two appears from the sale transaction. The other part govern the case where goods are apparently sold distinctly from the packing material. The goods concerned were cement and beer. The beer was sold in bottles packed in cartons and the cement was sold in gunnies. The High Court found that containers were necessary concomitants in the transactions and the transfer of property in the containers was incidental or unavoidable, that the sale transaction had to be regarded as composite and integrated sale of the containers and their contents and what was really sold was the bottled beer or

the cement packed in gunny bags. For this reason, the provision was held to be valid. The Supreme Court while affirming the judgment of the High Court on the question of the validity of provision with the reasons directed the assessing authority to determine the question of fact about actual nature of transactions.

12. In Karnataka Sales Tax Act, 1957 after the introduction of Subsection (3D) in Section 5 of the Act, the packing material was brought within the purview of the Act and made exigible to tax. Section 5(3D) of the Act reads as under :

"Section 5. Levy of tax on sale or purchase of goods.....

(3D) Notwithstanding anything contained in this Act, where goods sold or purchased are contained in containers or are packed in any packing materials liable to tax under this Act, the rate of tax and the point of levy applicable to turnover of such containers or packing materials, as the case may be, shall, whether the containers or the packing materials have already been subjected to tax under this Act or not or whether the price of the containers or of the packing materials is charged for separately or not, be the same as those applicable to goods contained or packed :

Provided that no tax under this sub-section shall be leviable if the sale or purchase of goods contained in such containers or packed in such packing materials is exempt from tax under this Act".

13. In this case, the court applied the principles enunciated in the case of Raj Steel and Others Vs. State of A.P. and Another, It may be noticed that while in Andhra Pradesh Sales Tax Act, the expression "where the price of the containers or of the packing materials is charged separately or not" was not used, said expression was used in Section 5(3D) of the Karnataka Sales Tax Act, 1957, which was under consideration before the honourable Supreme Court in Vasavadatta Cements Vs. State of Karnataka and another, which was later on noticed by the honourable Supreme Court in the case of Premier Breweries Vs. State of Kerala,

14. This question about chargeability of tax on packing material when the goods are sold packed in such material was once again considered by the honourable Supreme Court in the context of the provisions of the Kerala Sales Tax Act in Premier Breweries Vs. State of Kerala, In that case, the assessee was a dealer of Indian-made foreign liquor, who used to sell liquor packed in cardboard cartons. A dispute arose during the course of sales tax assessment for the year 1982-83. The case of the assessee before the assessing authority was that the cardboard cartons will have to be taxed at 8 per cent under entry 97 of the First Schedule to the Kerala General Sales Tax Act, 1963 and not at the rate of 50 per cent applicable to sale of liquor because it had charged its customers separately for the liquor and the cartons. Initially, the above stand of the assessee was accepted. However, later on the Deputy Commissioner, Palghat, thought that an error has been committed in the assessment order and in exercise of his revisional powers u/s 35 of the Act, he set aside the assessment order. He was of

the opinion that the assessing authority had erroneously levied tax at the rate of 8 per cent on packing material, viz., cardboard cartons. He was further of the view that as per the provisions of Section 5(5) of the Kerala General Sales Tax Act, 1963 where goods sold were contained in containers or were packed in any packing material, the rate of tax and the point of levy applicable to sale of such containers or packing materials, as the case may be, should, whether the price of the containers or the packing materials was charged separately or not, be the same as that applicable to goods contained or packed.

15. The provisions of Section 5(5) and 5(6) of the Kerala General Sales Tax Act, 1963, read as under :

"5(5) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), but subject to Sub-section (6), where goods sold are contained in containers or are packed in any packing materials, the rate of tax and the point of levy applicable to such containers or packing materials, as the case may be, shall, whether the price of the containers or the packing materials is charged separately or not be the same as those applicable to goods contained or packed, and in determining turnover of the goods, the turnover in respect of the containers or packing materials shall be included therein.

5(6) Where the sales or purchases of goods, contained in any containers or packed in any packing materials is exempt from tax, then, the sale or purchase of such containers or packing materials shall also be exempt from tax."

16. After considering the above provisions, the honourable Supreme Court held that the underlying idea behind these rules is that the packed goods are to be taxed as composite units. In calculating turnover of the goods, the turnover of the containers will have to be included. The appropriate rate of tax will be the rate payable on the goods. It will not make any difference, if the containers are shown to have been sold and charged separately. The logical corollary to this principle is that when the goods are exempted from tax, no tax is leviable on the containers. This will be the position even when the goods and the containers are sold and charged separately.

17. In Premier Breweries Vs. State of Kerala, their Lordships of the honourable Supreme Court had also occasion to consider both the earlier cases referred to above under the Andhra Pradesh General Sales Tax Act and the Karnataka Sales Tax Act. While considering the case of Raj Steel and Others Vs. State of A.P. and Another, the honourable Supreme Court noticed the distinction in the language of the two statutory provisions vis-a-vis the Kerala General Sales Tax Act and the Karnataka Sales Tax Act and pointed out that Section 6 of the Andhra Pradesh General Sales Tax Act, 1957 did not contain any specific provision for including turnover of the containers or the packing materials in the turnover of the goods. There was also no specific provision in the Andhra Pradesh General Sales Tax Act to levy tax on the packing materials or the containers at the rates applicable to the goods, even in the case where the price of the containers or packing

materials were charged separately.

18. The honourable Supreme Court also noticed that the Karnataka Sales Tax Act takes notice of the fact that where the goods are sold in containers or packing materials such packing materials may have already been subjected to tax under the Act but the provisions of Section 5(3-D) of the Karnataka Sales Tax Act, 1957 will apply even (i) when the containers or packing materials have already borne tax ; and (ii) the containers or packing materials were charged separately. Their Lordships held that Sub-section (3D) of Section 5 of the Karnataka Sales Tax Act, 1957 specifically provides that where the goods were sold or purchased in containers or packing materials liable to tax under the Act, the rate of tax and the point of levy applicable to turnover of such containers or packing materials, as the case may be, shall be the same as applicable to the goods contained or packed. Their Lordships held that this rule will apply even in a case where the containers or packing materials had already been subjected to tax under the Act. It also provides that the rule will apply "whether the price or the containers or the packing materials is charged separately or not". The honourable Supreme Court held that in view of the clear provisions of Section 5(3D) of the Karnataka Sales Tax Act, 1957 and the corresponding provisions of Section 5(5) of the Kerala General Sales Tax Act, 1963 there is no basis for the argument that if the price of the goods and the price of the containers or packing materials are separately charged, the provisions of the aforesaid two sections will not be applied at all. In the context of these provisions, there was no scope for invoking the principle laid down in *Raj Steel and Others Vs. State of A.P. and Another*, for making any inquiry as to whether the containers or packing materials were sold along with the goods or separate bills were made in respect of them or whether they were separately charged. The law is quite clear that when the goods contained in containers or packed in packing materials are sold, the containers and the packing materials will have to be taxed at the same rate at which the goods are liable to be taxed. It will not make any difference if the price payable for the containers or packing materials are shown separately in the bills raised by the seller.

19. The honourable Supreme Court then dealt with the question that when the cardboard cartons have already borne the tax, it cannot be taxed again when sold along with the beer under the provisions of the Kerala General Sales Tax Act. The honourable Supreme Court held that there are two answers to this contention. Sub-section (5) of Section 5 specifically provides that the rate of taxes and point of levy applicable to the containers shall be the same as those applicable to the goods sold. Therefore, even if the cartons have already been subjected to tax by virtue of specific provisions of Section 5(5) of the Act, they will be liable to tax at the same point and at the same rate as the goods contained therein. Moreover, the packing materials as such are not being taxed under Sub-section (5) of Section 5 of the Act. The subject-matter of tax are the goods packed in the containers. In calculating the turnover of the goods, packing materials will have to be taken into account.

20. The honourable Supreme Court also commented upon the decision in Vasavadatta Cements Vs. State of Karnataka and another, and held :

"We are of the view that in Vasavadatta Cements Vs. State of Karnataka and another, this Court overlooked the marked dissimilarity between Section 6-C of the Andhra Act and Section 5(3D) of the Karnataka Sales Tax Act. We are also of the view that Sub-sections (5) and (6) of the Kerala General Sales Tax Act will have to be construed uninfluenced by the decision of this Court in Raj Steel and Others Vs. State of A.P. and Another, where Pathak, C.J., construed the deeming provisions in Section 6-C of the Andhra Act in a narrow sense. Section 6-C did not contain any specific provisions for including the turnover of the containers of the packing materials in the turnover of the goods. There were also no specific provisions in the Andhra Act to levy tax on the packing materials and the containers at the rate applicable to the goods even in a case where the price of the containers or the packing materials were charged separately. We are also of the view that the mere fact that the containers and the goods were sold separately or charged separately will not make any difference in the matter of computation of the turnover of the goods and determination of tax or the rate of tax and the point at which the tax will be levied u/s 5(5) of the Kerala Act.

21. It may be noticed that one thing is common in different statutes, viz., where the goods are sold in the containers or packed in packing materials, the statute deals with the question of taxing packing materials or containers at the same rate at which principal goods were being sold. On this basic premises, the provision had to be construed in the light of its own contents. The provision of one statute cannot be read into or compared ipso facto with the provision of other statute.

22. Now we may notice the relevant provisions of the Rajasthan Sales Tax Act, which reads as under :

"5. Rate of tax.--(1) The tax payable by a dealer under this Act shall be at such single point in the series of sales by successive dealers as may be prescribed and shall be levied at such rate not exceeding fifty per cent on the taxable turnover, as may be notified by the State Government in the Official Gazette.

Provided

Provided

Provided

Provided

Provided also that when any goods are sold, packed in any material, the tax shall be leviable on the sale of such packing material, whether charged separately or not, at the same rate as is applicable to the sale of the goods themselves, and if the goods are exempted from tax u/s 4 or have already been subjected to tax under the Act, then at the rate notified for such packing material from time to

time."

23. From the above, it is clear that the Rajasthan Act levies the tax on the total taxable turnover. Section 5 of the Act provides for the rate of tax on which the tax is to be levied. It provides a single point tax on the sale at the rates as may be prescribed by the State Government through appropriate notification. The last proviso to Section 5(1) of the Act clearly provides that it comes into operation only when the goods are sold packed in any packing material and whether the packing material has been charged separately or not, the tax has to be levied on the sale of such goods at price which includes price of packing materials/containers in which goods are sold. It further provides that such packing material is to be taxed at the same rate as applicable to the sale of goods themselves. It also provides, deviating from scheme of other State Acts, that if the goods sold are exempted from tax u/s 4 or have already been subjected to tax under the Act, then packing material is to be taxed at the rates notified for such packing materials from time to time. It may be noticed that the basic underlying idea of this provision is also like the provisions contained in Andhra Pradesh, Kerala and Karnataka Sales Tax Acts is that the packed goods are to be taxed as a composite unit. It differs from Andhra Pradesh Act but is like the provision of the Kerala and Karnataka Acts in subjecting the packing material/container in which goods are sold to tax as a composite unit, whether the packing material is charged separately or is part of the sale consideration for making any separate charge for the same. The rate at which such packing materials is to be taxed along with the goods sold is the same as is applicable to the sale of goods contained therein. These incidents are like the provisions contained in Kerala and Karnataka Acts but distinguished from Andhra Pradesh Act. Lastly the provision contained in Rajasthan Act is different from all other three Acts in so far as it taxes packing material even in case where the goods contained therein are exempted from tax u/s 5 or cannot be subjected to tax because they are already sales tax paid goods and even packing material itself is differently taxed at the rates applicable on packing materials from time to time in accordance with the law. In taxing such packing material, in the last event, the question would have to be determined whether such packing material at the hands of the dealer otherwise taxable or not. If the packing material itself is exempted or it is already sales tax paid, the same may not be subjected to tax because the tax being a single point levy. This again makes clear the scheme of the Rajasthan Act somewhat different from the scheme of the Kerala Act as noticed by the honourable Supreme Court in *Premier Breweries Vs. State of Kerala*, because Kerala Act provides for taxing packing material along with the sale of goods irrespective of the fact whether packing material has already been subjected to tax or not, the Rajasthan Act does not make any such provision. However, the basic feature remains the same in all the cases and which is a condition precedent for invoking this provision that the goods must be sold contained in packing material which is sought to be subjected to sales tax. If the goods sold is not packed or contained in packing material in question, the applicability of

second proviso could not arise. This question gains importance in the case where packing material is used in execution of a works contract. It may be noticed that execution of works contract or the ultimate work that has been executed itself is not subject-matter of sale. What is subject-matter of sale is "goods involved in the execution of works contract" and liability to pay the tax is also on the value of the goods involved in execution of works contract. The provision for taxing such goods by deeming that property in the goods involved in the execution of the works is transferred to the person for whom the work is executed. The rate of tax on the value in respect of such goods is separately provided. The goods involved in execution of works contract is dealt with by a specific provision and is not to be considered ordinarily as the goods sold are packed in container or packing material. Ordinarily where the tax is to be levied on any goods involved in the execution of the works, the applicability of the provision in question, viz., last proviso to Section 5(1) of the Act would not arise unless it is proved by the revenue that the works executed or delivered or sold to the buyer in a packing material as a part of works contract and not otherwise. In the present case, it is an admitted position that it was because of the packing material was used in execution of the works. No tax has been levied on the basis of the goods having been sold in a container or packing material. In fact, the proviso has not at all been invoked by the assessing authorities. In this view of the matter, the packing material in question is not liable to be taxed because of the operation of Notification dated November 7, 1988 and there being no foundation to hold that goods were sold packed in any material, there is no scope to invoke proviso to Section 5(1) in question. Even if the value of packing material used in execution of works contract, it is not subjected to tax at the rate applicable to packing material but at the uniform rate at which value of goods involve in such execution of works contract is subjected to. That invites applicability of notification dated November 7, 1988 which exempts from levy of tax such amount of value of goods used in execution of works contract, where it falls less than 15 per cent of the amount of works executed.

24. In the result, these revisions are hereby dismissed. There will be no order as to costs.