(1996) 07 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13266 of 1995

Amritsar Swadesh Woolen Mills APPELLANT

Vs

The State of Punjab RESPONDENT

Date of Decision : 04-07-1996

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 4B

Citation : (1996) 114 PLR 443

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Raja Ram Aggarwal and M.S. Ratta, for the Appellant; P.S. Chhina, Sr. Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—By this order we are disposing of C.W.P. No. 13266 of 1995 and CWP Nos. 11034 of 1988, 10325 of 1990 and 9361 of 1994 as well as General Sales Tax Reference No. 36 of 1986 because in all these cases, an identical issue relating to the interpretation of the provisions of Section 4B and related provisions of the Punjab General Sales Tax Act, 1948 is involved. The General Sales Tax Reference relates to the assessment year 1975-76. The Sales Tax Tribunal, Punjab referred the following question for decision of the High Court:

"Whether raw-material purchased within the country and used for manufacture of finished product not subject to sales tax in the local market, which ultimately is exported out of the territory of India will be exempted from purchase tax u/s 4-B in view of the provisions of Section 29(1)(a) (ii) of the Punjab General Sales Tax Act? "

2. The aforesaid question was referred by the Tribunal on the basis of order dated 7.6.1979 passed by the Assessing Authority imposing purchase tax and penalty on the petitioner for the assessment year 1975-76 in respect of the goods manufactured by the petitioner. The Assessing Authority, Amritsar, held

that the petitioner was liable to pay purchase tax on various goods purchased by it for manufacture of Shoddy Woolen Blanket Cloth. The Appellate Authority upheld the order of the Assessing Authority and the Sales Tax Tribunal also concurred with the views expressed by the Assessing Authority and the Appellate Authority. CWP No. 11034 of 1988 relates to the assessment year 1978-79. According to the petitioner, it has purchased woolen waste, colours, chemicals, bleaching oil, packing materials, paper tubes and yarn etc., which are goods other than those specified in Schedule - B of ''1948 Act'', for manufacture of Shoddy Woolen Blankets and out of total production, goods worth Rs. 60,19,741/- were exported outside the territory of India. Notwithstanding this, the Assessing Authority declined to grant exemption to the petitioner from payment of purchase tax and passed order dated 4.10.1988 on the basis of the order passed in revision relating to the assessment year 1975-76. By making reference to General Sales Tax Reference No. 36 of 1986, the petitioner has pleaded that once the Tribunal had referred the question of law to the High Court, there was no justification for the Assessing Authority to levy purchase tax on the petitioner.

3. CWP No. 10325 of 1990 involves challenge to the order passed in respect of assessment year 1979-80 and grounds of challenge to the impugned assessment are identical to those raised in CWP No. 11034 of 1988.

4. In CWP. No. 9361 of 1994, the petitioner has questioned the levy of purchase tax for the assessment year 1980-81. Grounds of challenge to the order of assessment etc. are identical to those raised in CWP No. 11034 of 1988. CWP No. 13266 of 1995 relates to the assessment year 1981-82. During this year, the petitioner is said to have exported Shoddy Woolen Blankets worth Rs. 2,59,89,339/- and has claimed exemption from payment of tax on the premise that in respect of the goods exported by it, the petitioner is not liable to pay purchase tax and the, authorities constituted under the ''Act of 1948'' have illegally levied such tax.

5. The principal contention urged by Shri Raja Ram Aggarwal, learned senior counsel appearing for the petitioner is that no purchase tax can be levied u/s 4-B on goods which constitute raw-material for manufacture of goods sent outside the state otherwise than by way of selling in the course of inter-state trade or commerce or in the course of export outside the territory of India. Shri Aggarwal argued that the petitioner has been purchasing goods other than those specified in Schedule-B and goods manufactured out of such goods are exported out of the country and, therefore, no purchase tax can be levied with the help of Section 4-B. Learned counsel submitted that Section 4-B should be constructed as a charging provision as well as the one granting exemption from payment of purchase tax. Learned counsel submitted that export of goods is clearly exempted from levy of purchase tax in view of the clear provision contained in Section 4-B(ii) read with Section 29(1)(a)(ii). He placed reliance on G. P. Singh''s Interpretation of Statutes (1996 Edition (Page-149). Another contention of the

learned counsel is that in view of the provisions contained in the Additional Duties of Excise (Goods of Specified Importance) Act, 1957, no sales tax can be levied on Shoddy Blankets. He referred to the statement of objects and reasons of the ''Act of 1957'' and Entry 5107.10 (b) of the Schedule appended to the ''Act of 1957'' in support of his contention that the petitioner cannot be held liable to pay purchase tax on the goods purchased by it for manufacture of Shoddy Blankets. Learned counsel distinguished the decision of Full Bench of this court in United Riceland Limited and Anr. v. State of Haryana, and two judgments of the Division Benches in CWP No.2300/93, Satnam Overseas Limited v. State of Punjab, decided on 19.10.1995 and CWP No. 10183/88, Sachdeva and Sons v. Asstt. Exciseand Taxation Commissioner, Amritsar, decided on February 6, 1996 by pointing out that the Full Bench decision relates to Haryana General Sales Tax Act, 1973 which is not pari materia with the Punjab Act and in two Division Benches'' decisions Section 4-B has not been correctly interpreted. The learned Senior Deputy Advocate General argued that the purchase tax is being levied on raw-material purchased by the petitioner which is not exciseable under the ''Act of 1957'' and the levy of purchase tax is fully justified in view of the decision of the Full Bench as well as the two Division Benches.

6. In regard to the first contention of Shri Aggarwal, we deem it appropriate to mention that although the case decided by the Full Bench relates to the Haryana Act, the levy of purchase tax on the goods manufactured by a dealer and exported outside the State was specifically under consideration before the Full Bench. Section 9 of the Haryana Act which was repealed by Haryana Ordinance No.2 of 1990 (subsequently replaced by Haryana Act No.4 of 1991) and Section 15-A added by the amendment Act No.4 of 1991 were considered by the Full Bench and then it has been held:-

".... The doubt created vide Section 9, if any, regarding the liability to pay the purchase tax was intended to be removed by substituting Section 15-A of the Act and making corresponding amendment in Sections 6 and 15 of the Act. The effect of Section 15 is that in case no specific exemption is granted there shall be levied on the taxable turn-over of a dealer a tax, at such rates as specified in Sub-section (1) of Clauses (a) and (b). Admittedly, no specific or implied exemption is in existence in favour of the petitioners after the omission of Section 9 substitution of Section 15-A and amendment of Section 15 retrospectively. The liability to pay tax is, therefore, regulated by Section 6 read with Section 15 and adjustments, if any, are permissible u/s 15-A of the Act. The petitioners have not claimed nay adjustments within the meaning of Section 15-A of the Act and rightly so because they are claiming exemption from payment of initial tax on the purchase of paddy used for the purpose of husking rice intended to be exported.

39. Keeping in view the principles of interpretation of statutes, as noted hereinabove, the intention of the Legislature to impose tax on the purchase of paddy used for export of rice is so well demonstrated that there is no escape

than to accept the contention raised on behalf of the respondent-State and hold the petitioners liable to the tax liability.

The Full Bench concluded :-

"(i) That the provisions of Haryana Act No.4 of 1991 are legal, valid and constitutional;

(ii) the provisions of Section 15-A of the Act as substituted by Act No. 9 of 1993 is intra vires of the provisions of the Constitution rightly imposing the liability upon the petitioners to pay the purchase tax retrospectively;

(iii) Section 9 of the Act was validly omitted and this Section had not granted any exemption to the petitioners from payment of the tax demanded;

(iv) the petitioners are liable to pay the purchase tax on the paddy used by them for husking paddy which was ultimately exported out of the country."

7. In Satnam Overseas Limited (supra) as well as Sachdeva and Sons (supra), the two Division Benches have examined the provisions of Punjab Act and have applied the ratio of the Full Bench decision in United Riceland Limited (supra) in order to uphold purchase tax on the raw-material purchased by the petitioners. Both the Division Benches have repelled the argument that levy of purchase tax is not supported by Section 4-B. While making reference to the decision of the Supreme Court in Jagatjit Sugar Mills v. State of Punjab the Division Bench which decided the case of Sachdeva and Sons observed: -

"A careful reading of the judgment of the Apex Court in Jagatjit Sugar Mills'' case (supra) shows that their Lordships have examined the issue relating to the liability of the petitioner to pay purchase tax on the sugarcane purchased by it. The argument advanced on behalf of the petitioner was that sugarcane being a commodity covered by Appendix ''B'', it was not liable to pay purchase tax. Repelling this argument, the Supreme Court held that the purchase tax is leviable u/s 4(1) and Section 4-B and is intended only to grant exemption in certain circumstances. This is how the Full Bench in United Riceland Limited v. State of Haryana has under stood the law laid down by the Full Bench. The Division Bench in Satnam Overseas Ltd. v. State of Punjab (supra) has held that levy of purchase tax on the paddy cannot be termed as a purchase tax on rice exported by the petitioner.

In our opinion, the reasoning given by the Full Bench and the Division Bench in upholding the purchase tax on the paddy cannot be termed as erroneous requiring reconsideration of the issue afresh by a larger Bench. We also find that in the light of proviso to Section 4-B read with Section 4(1), the petitioner cannot avoid its liability to pay purchase tax."

8. In view of these three decisions, two of which directly relate with the issue raised in the reference as well as these writ petitions, we do not find any ground to accept the submission of Shri Aggarwal that purchase tax is not leviable on

the goods purchased by the petitioner.

9. Argument of Shri Aggarwal, which is based on the provisions of ''1957 Act'', deserves to be rejected on two counts. Firstly no such plea has been raised in the writ petition and there is no factual foundation for the argument that the petitioner is not liable to pay purchase tax in view of the provisions contained in ''1957 Act,'' Secondly item No. 5107-10 (b) of the Schedule appended to the Act of 1957 refers to the raw material used for manufacture such blankets and, therefore, provision of ''1957 Act'' cannot be invoked for claiming exemption from payment of purchase tax under 1948 Act.

10. In view of the above, we do not find any merit in the writ petitions and the same are dismissed. The question referred by the Sales Tax Tribunal is also answered against the assessee. However, we direct that levy of interest upon the petitioner should be decided afresh in the light of the observation made by the Full Bench of this Court in United Riceland Limited and another (supra).

