(1983) 03 KAR CK 0022

In the Karnataka High Court

Case No : WP 16390/79

A.R. Khandasari Sugar Works — APPELLANT

Vs

Asst. Commr. of C.T. (Asst.) and Others — RESPONDENT

Date of Decision : 31-03-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 8A

Citation : (1981) 100 KarLJ 32

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. The petitioner is a partnership firm registered as such under the Karnataka Sales Tax Act, 1957, (hereinafter referred to as the Act) and carries on the business of producing Khandasari Sugar at Boothana Hosur in Mandya District. In order to produce in the Khandasari Unit the Khandasari sugar the petitioner purchases sugar cane. Since the amendment in 1976, under Sec. 25B of the Act, purchase of sugar cane is subjected to levy of purchase tax at the point of purchase by the Factories. The petitioner is a dealer registered under the Act and was paying tax in respect of his sugar cane purchases made by him. There is no clear assertion in the statement of facts filed by the petitioner that the firm is the owner of the factory and produces Khandasari Sugar. When this was pointed out, the learned counsel Shri B.V. Katageri, drew my attention to certain averments in the statement of facts in the petition and also referred me to the correspondence between the petitioner-Firm and the Assistant Commissioner of Commercial Taxes. It is seen from Annexure-A, a rue copy of the letter addressed by the Firm to the Assistant Commissioner of Commercial Taxes Assessments, that they claim exemption from payment of purchase tax for the months of May and June 1978 in view of the notification No. FD 110 CSL 78 dated 1.8.78 exempting sugar factories from payment of purchase tax during May and June 1978. It appears to be so. In any, event the respondents have not disputed that the petitioner is a manufacturer of Khandasari Sugar in its factory.

2. The short question for determination in this writ petition is whether the petitioner is entitled to the benefit of the notification as under:

Finance Secretariat

Notification No. FD 110 CSL 78 Bangalore, dated 1st August, 1978.

In exercise of the powers conferred by Sec. 8A of the Karnataka Sales fax Act, 1957, (Karnataka Act 25 of 1957) the Government of Karnataka hereby exempt the purchase tax payable on sugarcane purchased by the Sugar Factories in the State during May and June 1978.

Sd/- L.S. JagirdarUnder Secretary to Govt.Finance Dept.

3. The respondents have not filed their return in spite of several opportunities given to them. Therefore, the Court has to proceed on the basis that the bare facts necessary for a decision in this case are not in dispute. They may be set down as follows. The petitioner is a firm producing Khandasari sugar in its factory. It is a dealer under the Act. It is assessed to purchase tax under Sec. 25B of the Act in respect of its purchase of sugar cane to produce Khandasari sugar. It claimed exemption from payment of tax for the months of May and June 1978 pursuant to the Government Notification dated 1st August 1978. The same has been refused by the respondents on the ground that the notification does not apply to the petitioner''s sugar factory. Therefore, the petitioner has approached this Court under Art. 226 of the Constitution praying that the Court may issue a writ of mandamus to the respondents to give effect to the benefit of exemption contained in the aforementioned notification to the petitioner''s sugar factory also for the relevant months.

4. Shri Katageri, learned Counsel appearing for the petitioner has contended that in the absence of sugar factory being defined under the Act all sugar factories producing sugar must be deemed to be the beneficiaries under the notification for exemption for the period between May and June 1978. There appears to be some force in this contention.

5. The word ''sugar'' is not defined in the Act. ''Sugar Factory'' is also not defined in the Act. Section 25B of the Act in roduced in 1976 is the charging section. Levy of purchase 1 ax at the point of purchase of sugar cane itself makes only two distinctions. Sugar Cane purchased for manufacture of jaggery and other cases. The point of levy is the last purchase in the State. It is generally the last purchase in the State that would be by the manufacturers of sugar or jaggery. The notification also does not define ''sugar factory.''. Therefore, ''sugar factory'' must be understood and given its normal meaning. However, it is significant to notice that is Schedule-V to the Act the Government have in exercise of the powers conferred on it under Sec. 8A of the Act, included sugar as an item exempted at Entry 31.B of the Vth Schedule to the Act. In other words, the sale of sugar is exempted. Therefore, we must first know what sugar really means in the scheme of the Act. As I have already pointed out it is a term not defined in the Sales Tax Act. But it has been defined under the Central Excises and Salt Act, 1944. It is also defined in the Sugar Control Order, 1955. In Sec. 16 of the Essential Commodities Act, 1955, the word ''sugar'' has been attributed the

meaning as defined in clause 2(d) of the Sugar Control Order 1955. It is also defined in Presivention of Food Adulteration Rules, 1955. Delhi High Court, in the case of Mangoo Mal Ram Kishore v. Sharma, Asst. STO, 33 STC 182, had occasion to consider the scope of the word ''sugar''. The controversy in that case was whether sugar known as ''bura'' is sugar. After applying the well established meaning of a term having regard to its use in common parlance, the learned single Judge in that case came to the conclusion that cane sugar is the crystalised sugar obtained from sugar cane, beet root, etc. and includes the refined product obtained from gur. Sugar also includes bura and Khandasari sugar. I have pointed out in the absence of a definition, we must look to the meaning of the word if it has been used elsewhere in the Act. In the instant case in Schedule-V, Entry 31B of the Act is as follows:

"31-B. Sugar other than sugar candy, confectionery and the like."

6. Crystalised sugar or what is popularly known as Mauritius sugar is not singled out for exemption, while the exceptions are indicated. Sugar has been used in the ordinary sense of the term and therefore while construing it, we must give it the widest meaning. If the Delhi High Court construing the identical question whether ''bura'' sugar is entitled to exemption under the Delhi Act, in identical circumstances as in Schedule-V of Entry 31-B of the Act, I should also hold respectfully agreeing with the view of the learned single Judge that sugar includes, as it occurs in Schedule V of Entry 31B of the Act, all types of sugar which is not jaggery. I have also pointed out earlier that the charging section itself makes only distinction between manufacturers of jaggery and others. If we give the word ''sugar'' occurring in the notification as a prefix to factory, its widest meaning, then sugar factory must (include factories which manufacture all types of sugars. Therefore, there is no justification for the respondent to deny the exemption claimed under the notification by the petitioner.

7. The petition is therefore allowed. Rule is made absolute A mandamus will issue to the respondents directing them to forbear from collecting purchase tax from the petitioner for the months of May and June, 1978 the period of exemption given under the notification.

8. There will be no order as to costs.

