(1988) 05 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 85 of 1988

Baba Rice and General Mills APPELLANT

Vs

The State of Haryana and Others RESPONDENT

Date of Decision : 13-05-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : (1988) 71 STC 266

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : B.K. Jhingan, for the Appellant; L.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This judgment will also dispose of Civil Writ Petition No. 122 of 1988 as the question involved is common in both the cases.

2. The petitioners are registered dealers under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act") and are engaged in the business of sale and purchase of paddy and manufacture and sale of rice and by-products. They are also carrying on the business of rice milling in accordance with the Haryana Rice Procurement (Levy) Order, 1979 and the Haryana Rice Procurement (Levy) Order, 1985, issued by the State of Haryana with the concurrence of the Central Government u/s 3 of the Essential Commodities Act.

3. In the case reported as Food Corporation of India v. State of Haryana [1987] 66 STC 7, it was held by the Division Bench of this Court on 26th November, 1986 that the earlier orders which were subject-matter of the decision in Vishnu Agencies (Pvt.) Ltd. Vs. Commercial Tax Officer and Others, were different from the levy order under which the State Government sets of machinery for compulsory acquisition of the essential commodities. It was therefore held by this Court that the Supreme Court decision in Chittar Mal Narain Das v.

Commissioner of Sales Tax [1970] 26 STC 344, relied upon by the Division Bench earlier in the case of Food Corporation of India v. State of Punjab [1976] 38 STC 144, still holds the field and does not stand overruled in toto. It was, therefore, held by the Bench that these transactions could not be held to be sales which could be taxed.

4. In a subsequent case reported as Shiam Lal Sunder Lal v. State of Haryana [1987] 66 STC 37, a Division Bench of this Court held that after the Forty-sixth Amendment of the Constitution, and the amendment of the Haryana General Sales Tax Act, 1973, by Act No. 11 of 1984, which came into force retrospectively with effect from 2nd February, 1983, the State Government will be entitled to levy sales tax on the dealers in regard to the transactions of procurement of rice with effect from 2nd February 1983, under the aforementioned levy order. After the said decisions by this Court, the petitioners approached the Sales Tax Tribunal, Haryana, for review of the various orders passed by it. The Tribunal vide order dated 15th May, 1987 in C. W. P. No. 85 of 1988 (copy annexure P3) came to the conclusion as under:

In view of the above decisions, the transactions, under the Haryana State Levy Orders, before 2nd February, 1983 cannot be considered to be transactions of sale and will not be exigible to tax. In all the 57 cases concerning the present review applications, the transactions took place before 2nd February, 1983 and, therefore, following the Division Bench judgments in the two cases cited above, the orders of the Assessing Authorities in these cases levying sales tax would not be correct under the law. Therefore, the orders of the Tribunal in these cases upholding the findings of the lower authorities would need to be reviewed.

The said orders are hereby reviewed and following the decision of the Punjab and Haryana High Court, the appeals in all the 57 cases are accepted as these transactions, having taken place before 2nd February, 1983, cannot be considered to be transactions of sale and cannot be subjected to levy of sales tax. The appeals having now been accepted, if the dealers have deposited any part of the tax, the same should be refunded to the petitioners as per law.

5. After the aforesaid order of (he Tribunal, the petitioners vide their application dated 11th November, 1987 (copy annexure P4) approached the Deputy Excise and Taxation Commissioner, Hissar, for refund of Rs. 22,080 in C. W. P. No. 85 of 1988, and a sum of Rs. 15,276 in C. W. P. No. 122 of 1988. Since the amounts were not refunded by the department, they filed the present writ petitions in this Court, seeking directions to the respondents to refund the said amounts with interest recovered as tax on rice procured under the "Levy Order" and as supplied to the District Food and Supplies Controller, for the assessment year 1978-79.

6. In the return filed on behalf of respondents Nos. 1 and 2 the stand taken is that the Haryana State has gone in appeal in the Supreme Court against the aforementioned two judgments of this Court and, therefore, the position of law

on the issues involved continues to be in a fluid state. In these circumstances the petitioners were not entitled to any refund, whatsoever. In any case, there is no question of discovery of mistake. It is further averred that if the petitioners are aggrieved by the order of assessment, they can get it upset in the appropriate forum.

7. Learned Counsel for the petitioners submitted that the petitioners were entitled to the refund after the mistake was discovered when this Court decided the matter finally in the abovesaid two writ petitions and it was again reiterated by the Sales Tax Tribunal vide its order dated 15th May, 1987 (copy annexure P3) on the review applications filed by the petitioners and, therefore, their claim for refund was within limitation. According to the learned Counsel, the cases are fully covered by the following judgments of the Supreme Court reported as Sales Tax Officer, Banaras v. Kanhaiya Lal Makund Lal Saraf [1958] 9 STC 747, State of Kerala v. Aluminium Industries Ltd. [1965] 16 STC 689 and Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, .

8. After hearing the learned Counsel for the parties, I find force in the contentions raised on behalf of the petitioners. In Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others, the Supreme Court observed in para 9 of the judgment as under:

Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe that any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief even though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public, etc.

9. Thus, taking into consideration the test laid down by the Supreme Court, the petitioners are entitled to the refund of the amount as the mistake will be deemed to have been discovered when this Court decided the matters in the abovesaid two writ petitions on 26th November, 1986 and 11th February, 1987. Immediately thereafter they approached the Sales Tax Tribunal, which also decided in their favour on 15th May, 1987. They filed the present writ petitions in this Court on 31st December, 1987. Thus, there is absolutely no delay on the part of the petitioners to approach this Court for the refund of the amount.

10. The stand taken by the State of Haryana that it has gone in appeal against the judgments of this Court to the Supreme Court is of no consequence unless any stay orders are obtained from the Supreme Court in this behalf.

11. In the aforementioned circumstances, both the petitions succeed and are allowed. The petitioners are entitled to the refund of the amount as held by the Sales Tax Tribunal on the basis of the judgments of this Court. The amounts as claimed by the petitioners in these writ petitions be refunded to them after verification within three months from today, failing which the petitioners will be entitled to interest at the rate of 6 per cent from the date of the order till realisation. There will, however, be no order as to costs.