(1992) 08 BOM CK 0073

In the Bombay High Court

Case No : Writ Petition No. 529 of 1988

Bashir Oil Mills and another — APPELLANT

Vs

Maharashtra Sales Tax Tribunal and others — RESPONDENT

Date of Decision : 28-08-1992

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 41, 52
Central Sales Tax Act, 1956 — Section 13, 8(2A)

Citation : (1993) 1 MhLj 133 : (1993) MhLj 133

Hon'ble Judges : V.A. Mohta, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; B.P. Jaiswal, (A panel counsel), for the Respondent

Judgement

DR. B.P. Saraf, J.—The petitioner, a registered partnership firm, runs an oil-mill at Warora in district Chandrapur and manufactures vegetable oil and oil-cakes for sale. It is registered as a dealer, both under the Bombay Sales Tax Act, 1959 and the Central Sales Tax Act, 1956.

2. Oil-cakes fall under entry 13, Part I of Schedule C to the Bombay Sales Tax Act and sales and purchase thereof in the State of Maharashtra are taxable at the rate of 2 per cent. Entry 13 is reproduced below :

By a notification dated July 24, 1981, issued u/s 41 of the Bombay Sales Tax Act, the State Government exempted all sales of oil-cakes including oil-cakes for the purpose of cattle feed within the State of Maharashtra from payment of whole of tax payable under the provisions of the Act. The said notification is set out below :

"Finance Department Sachivalaya, Bombay, December 28, 1959. Bombay Sales Tax Act, 1959.

No. STA. 1059-(iii)-G-I. - In exercise of the powers conferred by section 41 of the Bombay Sales Tax Act, 1959 (Bom. LI of 1959), the Government of Bombay hereby exempts from the payment of tax, to the extent specified in column 3 of the Schedule hereto appended, the classes of sales or purchases specified in column 2 thereof, on the conditions, if any, specified against each of such classes of sales in column 4 of the said Schedule.

Thus, by the aforesaid notification all sales of oil-cakes in the State of Maharashtra were exempted from tax under the Bombay Sales Tax Act. That being so, according to the petitioner, no sales tax could be levied on the inter-State sales of oil-cakes by virtue of the provisions contained in section 8(2A) of the Central Sales Tax Act. However, to avoid any dispute in future, the petitioner made an application to the Deputy Commissioner of Sales Tax, Nagpur Division, seeking the determination of tax payable on oil-cakes sold by it in the inter-State trade in view of the aforesaid notification. It may be mentioned herein that section 52 of the Bombay Sales Tax Act provides for determination of the disputed questions including a question whether any tax is payable in respect of any part of the sale or purchase. The Deputy Commissioner examined the dispute referred to him and came to a conclusion that the oil-cakes being fully exempted from tax under the Bombay Sales Tax Act by virtue of notification dated July 24, 1981, issued by the Government of Maharashtra u/s 41 of the Act, sales of such goods made in the course of inter-State trade also would not be liable to tax in view of section 8(2A) of the Central Sales Tax Act. This order was, however, set aside by the Additional Commissioner of Sales Tax in exercise of suo motu power of revision by his order dated April 26, 1984. The Additional Commissioner of Sales Tax was of the opinion that as in a hypothetical case if a dealer purchases oil-cake from unregistered dealer and despatches the same to his branches outside the State, such purchases would be liable to purchase tax u/s 13 of the Act, it cannot be said that oil-cake as a commodity as such is wholly exempted under the Bombay Sales Tax Act by virtue of the notification in question. He, therefore, held that inter-State sales of oil-cakes were not exempted u/s 8(2A) of the Central Sales Tax Act. Against the order of the Additional Commissioner the petitioner preferred an appeal before the Maharashtra Sales Tax Tribunal. The Tribunal upheld the order of the Additional Commissioner. It was also of the opinion that as under the notification u/s 41, sales of oil-cakes were only exempt, without mentioning anything about the tax on purchases thereof, it could not be termed as a general exemption which will attract section 8(2A) of the Central Sales Tax Act. The petitioner has challenged the aforesaid order of the Tribunal by filing this writ petition.

3. The contention of the petitioners is that under the Bombay Sales Tax Act, tax is leviable on the sales of oil-cakes by virtue of its inclusion in Schedule C to the Act under item 13. There is no provision for levy of purchase tax as such. Section 13 of the Act to which reference has been made in the order of the Tribunal simply provides for levy of a purchase tax on the turnover of certain purchases of goods specified in Schedule B or C only when a dealer, who is liable to pay tax under the provisions of this Act, purchases the same from a person or Government who or which is not a registered dealer implying thereby that the

purchases are made without payment of tax, and uses them for purposes which may not attract the levy of sales tax in his hands on such goods. This, in fact, is a provision enabling the State to realise tax in certain specific circumstances from dealers liable to pay tax under the Act who make purchases of taxable goods without payment of sales tax for certain uses and later utilise the same for other purposes. Section 13 presupposes liability to pay sales tax under the Act. It does not apply in case of goods, the sales of which are totally exempt from sales in the State under the provisions of the Act, because in such cases it does not make difference as to from whom the purchases are made as in any event they are not liable to sales tax.

4. The petitioner submits that on a proper interpretation of the notification exempting oil-cakes from whole of tax on all sales in the State, it is abundantly clear that the present case falls within the express language of section 8(2A) of the Central Sales Tax Act and, as such, the inter-State sales of oil-cakes will be exempt.

5. The counsel for the respondents submits that section 8(2A) of the Central Sales Tax Act will not apply in the instant case as the notification does not refer to purchases of oil-cakes. It has only exempted all sales of oil-cakes made in the State of Maharashtra from payment of tax. The submission is two-fold, firstly, that the exemption is conditional in the sense that it is restricted to sales made in the State of Maharashtra. Secondly, that the goods cannot be said to be exempt generally within the meaning of section 8(2A) of the Central Sales Tax Act. In support of the second submission, reliance is placed on a decision of the Supreme Court reported in International Cotton Corporation (P) Ltd. v. Commercial Tax Officer [1975] 35 STC 1. Before we proceed to deal with these submissions, it may be expedient to set out the provisions of section 8(2A) of the Central Sales Tax Act which read as follows :

"8(2A). Notwithstanding anything contained in sub-section (1A) of section 6 or sub- section (1) or clause (b) of sub-section (2) of the section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nit or, as the case may be, shall be calculated at the lower rate."

6. From a reading of the sub-section, it is obvious that it has an overriding effect over the other provisions of the Act. It clearly provides that if the sale or purchase of any goods is exempt from tax generally under the sales tax law of the appropriate State, the tax payable under this Act by a dealer in respect of its turnover relating to the sale of such goods under this Act shall also be nil. It also provides that if the goods are subject to tax under the sales tax law of the State at a rate which is lower than 4 per cent, the tax on the turnover of such goods under this Act also shall be calculated at the lower rate. Explanation added to

this sub-section makes it clear that if under the State law, the sale or purchase of such goods is exempt only in specified circumstances or under specified condition or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods the sale or purchase of such goods shall not be deemed for the purposes of this sub-section to be exempt from tax generally under the sales tax law of the State. In the instant case, looking at the notification dated July 24, 1981, it is clear that all sales of oil-cakes including oil-cakes used as cattle feed within the State of Maharashtra are exempt from whole of tax without any condition. It may be observed that under the column "condition" it has been clearly mentioned "nil". The contention of the respondents that the use of the expression "within the State of Maharashtra" itself is a condition is untenable as admittedly the power of the State Government under the State sales tax law is to levy tax or to grant exemptions only in respect of sales or purchases taking place within the State. The State or the authorities under the State law do not have power to make any order in respect of inter-State sales. If the sales or purchases are generally exempt from tax under the State law, section 8(2A) automatically comes into operation and no tax can be levied on the inter-State sales of such goods. No further notification under the Central Sales Tax Act is needed for that purpose. By no stretch of imagination, can it be said that the expression "within the State of Maharashtra" is a condition to the exemption. So far as the second submission is concerned, on a careful perusal of the scheme of the Bombay Sales Tax Act, in particular section 13 thereof, it is clear that purchase tax is leviable under certain specified circumstances in respect of purchases of those goods only which are liable to sales tax under the Act. Section 13, therefore, does not make the goods which are wholly exempt from sales tax in the State liable to purchase tax.

7. So far as the decision of the Supreme Court in International Cotton Corporation (P.) Ltd. v. Commercial Tax Officer reported in [1975] 35 STC 1 is concerned, it appears that the reliance on the same is completely misplaced. In that case, the admitted position was that purchase tax was leviable on the goods in question. The contention was that as there was no sales tax under the State law, section 8(2A) of the Central Sales Tax Act would be attracted. It is this contention which was repelled by the Supreme Court. That is not the position in the present case. The said decision, therefore, has no application.

8. In view of the foregoing discussion, we are of the clear opinion that the sales of oil-cakes in the State of Maharashtra were generally exempt from tax within the meaning of section 8(2A) of the Central Sales Tax Act by virtue of the notification dated July 24, 1981. There were no conditions attached to the exemption. That being so, section 8(2A) will be attracted and the inter-State sales of oil-cakes will also be exempt from tax. The impugned orders of the Additional Commissioner and the Tribunal are, therefore, not correct and hence set aside.

9. In the result, the writ petition is allowed. No order as to costs.

10. Writ petition allowed.

