(2012) 05 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : G.S.T.R. No. 18 of 2006

Budhewal Cooperative Sugar Mills Limited — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:
Constitution of India, 1950 — Article 269
Punjab General Sales Tax Act, 1948 — Section 4, 4(1), 5, 6

Citation : (2013) 62 VST 455

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : M.R. Sharma, for the Appellant; Gaurav Garg Dhuriwala, Deputy Advocate-General, for the Respondent

Final Decision : Disposed Off

Judgement

Gurmeet Singh Sandhawalia, J.—In compliance with the order dated August 17, 2005 passed by this court in STC Nos. 9, 10 and 11 of 2003, relating to assessment years 1989-90, 1990-91 and 1991-92, the Tribunal has referred the following questions of law for the opinion of this court:

(1) Whether, in the facts and circumstances of the case, the Tribunal was correct in law in holding that purchase tax was leviable u/s 4B of the Punjab General Sales Tax Act, 1948 on the consumables purchased on the strength of registration certificate and used in manufacturing of taxable and tax-free goods?

(2) Whether the Tribunal was correct in law in holding that purchase tax was leviable on sugarcane u/s 4(1) of the Punjab General Sales Tax Act, 1948?

Briefly, the facts as narrated in the reference application may be noticed. The petitioner is a registered dealer under sales tax laws and is engaged in manufacturing and sale of sugar. It filed all the quarterly returns in time. Not satisfied with the returns, notice in form ST-XIV was issued to the petitioner by the Assessing Officer. After hearing the petitioner, the Assessing Officer framed assessment creating additional demands of Rs. 43,09,611, Rs. 1,06,89,637 and Rs. 1,23,51,885 for the years 1989-90, 1990-91 and 1991-92 vide orders dated December 27, 1995, July 9, 1996 and January 22, 1997, respectively. The Assessing Officer, inter alia, held that purchase tax was leviable on the sugarcane u/s 4(1) of the Punjab General Sales Tax Act, 1948 (in short, "the Act"). Besides, it was also held that purchase tax u/s 4B of the Act was imposable on the purchase of consumables used in the manufacture of the taxable and tax-free goods. Aggrieved by these orders, the petitioner filed three appeals before the DETC (A), Patiala Division, Patiala who after hearing both the parties remanded the cases to the Assessing Officer vide his separate orders dated December 30, 1997 and July 9, 1999. Feeling dissatisfied with these orders, the petitioner filed three appeals before the Sales Tax Tribunal. The Tribunal partly accepted the two appeals for the assessment years 1989-90 and 1990-91 vide its single order dated February 16, 2000 and dismissed the third one for the year 1991-92 vide its order dated May 20, 2003. Still not satisfied, the petitioner filed rectification applications for the years 1989-90 and 1990-91 which were dismissed by the Tribunal vide its order dated May 20, 2003. The State also filed one rectification application in Appeal Nos. 2 and 4 of 1998-99 pertaining to the assessment years 1989-90 and 1990-91 which was allowed to be withdrawn by the Tribunal vide its order dated May 20, 2003. Thereafter, the petitioner filed three reference applications for referring the above-mentioned questions of law to this court for its opinion.

2. The learned counsel for the petitioner submitted that the Tribunal was in error in holding that purchase tax was leviable u/s 4B of the Act on the consumables which had been purchased by the dealer on the strength of registration certificate and were used in the manufacture of taxable and tax-free goods. Reliance was placed upon judgment of the apex court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, . Referring to the second question, it was submitted that u/s 4(1) of the Act, no purchase tax was leviable on the sugarcane. The decision of the Tribunal to the contrary was legally unsustainable.

3. The learned counsel for the State, on the other hand, while supporting the order passed by the Tribunal, canvassed that the purchase tax u/s 4B of the Act was rightly imposed on the consumables which were transformed into end-product by using them in the manufacture of other goods. On the strength of the Division Bench judgment of this court in Indian Sucrose Ltd. Vs. State of Punjab and Others,), it was urged that on the purchase of sugarcane, the same was chargeable to purchase tax u/s 4(1) of the Act.

4. After giving thoughtful consideration to the respective submissions, we find that the Tribunal had rightly adjudicated the issue in favour of the State.

5. Adverting to question No. 1, it would be expedient to reproduce section 4B of the Act, which reads thus:

4B. Levy of purchase tax on certain goods.--Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B, from any source and--

(i) uses them within the State in the manufacture of goods specified in Schedule B, or

(ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the State in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India

and no tax, is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the State Government may direct.

6. The honourable Supreme Court in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, , had succinctly analysed the aforesaid provision as under (pages 351 and 352 in 96 STC):

16. Clause (i) says that purchase tax shall be leviable on the purchase of goods (other than those in Schedule B) if such goods are used in the manufacture of goods specified in Schedule B. Schedule B goods are not taxable at sale point. Since the goods manufactured by the dealer are exempt from tax on their sale, the Legislature sees no reason to exempt the raw material (goods purchased by such manufacturer-dealer) from the liability to purchase tax. Accordingly, section 4B retains and affirms the tax on the goods purchased by such manufacturer-dealer, i.e., it taxes the raw material in the hands of the purchaser-manufacturer-dealer.

17. Clause (ii)--which continues the idea behind clause (i)--says that where the manufacturer-dealer uses the goods purchased by him (raw material) in manufacture of goods other than the goods in Schedule B, (i.e., where the manufactured goods are taxable at the sale point) but sends the goods so manufactured outside the State in any manner other than by way of inter-State sale or export sale, he shall be liable to pay tax on the purchase of raw material. The object is again the same. If the manufactured goods, which are taxable on sale point are sent out of the State, the State does not get any income. If, on the other hand, they are taken out of the State as a result of inter-State sale, the State gets the tax by virtue of article 269 of the Constitution. In the case of export sale, the State forgoes the tax but it does so because it serves the

national interest of promoting exports. (See Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., in this regard.), In other words, according to this clause, if the manufactured goods are taken out of the State in such a manner that State does not derive any tax (nor the national interest aforesaid is served), the purchase of raw material is taxed. Conversely, if the manufactured goods are sold within the State or sold in the course of inter-State trade or commerce or sold in the course of export sale, the raw material is exempted from purchase tax. In case, however, the manufactured goods are those mentioned in Schedule B--not taxable on sale point--clause (i) does not concern itself with their manner of disposal. From the point of Revenue, it makes no difference whether such goods are sold within the State or sold in the course of inter-State trade or commerce or sold in the course of export; in any of the situations, the State does not derive any revenue.

18. Clause (iii) says that where the goods purchased are used for a purpose other than resale within the State or in the course of inter-State sale or export sale, tax shall be levied on the purchase of such goods. This means that if the very goods purchased are resold within the State, no purchase tax shall be leviable on their purchase. Similarly, if the goods purchased are sold in the course of inter-State trade/commerce or in the course of export sale, again no tax will be levied on the purchase of such goods by the purchasing dealer. The idea is again the same. In the case of resale within the State and inter-State sale, the State gets the tax and, therefore, purchase of such goods is exempted from tax. Where goods are sold in the course of export, though the State does not get any tax, national interest is served. In these three situations, the purchase of such goods is not taxed.

19. Clause (iv) reiterates more or less the same idea as in clause (iii). According to it, if the goods purchased are sent out of the State otherwise than by way of inter-State sale or export sale, then the purchase of such goods will be taxed.

20. The above analysis shows up the object and purpose underlying section 4B. Clauses (i) and (ii) deal with situations where the goods purchased are used as raw material while clauses (iii) and (iv) provide for situations where the very goods purchased are dealt with in certain specified modes. Though put in a negative form, section 4B is really intended (a) to avoid taxing the raw material where the manufactured goods are taxable and are sold within the State or sold in the course of inter-State trade or commerce in both of which situations, they fetch revenue to the State or where they are sold in the course of export, which does not fetch any revenue to the State but promotes national interest in promoting exports; and (b) to avoid taxing the purchase of the goods where the very goods are resold within the State so as to fetch tax on their sale (it must be remembered that the goods dealt with by section 4 are goods other than the goods in Schedule B and hence taxable at sale point) or are sold in the course of inter-State sale (in which event too the State gets the revenue by virtue of article 269) or where they are sold in export trade (in which event though no tax

is realised by State, yet the national interest aforesaid is served).

7. It was further noticed that section 4B of the Act was actuated by the same idea as is underlying section 6A of the Andhra Pradesh General Sales Tax Act, section 7A of the Tamil Nadu General Sales Tax Act, section 5A of the Kerala General Sales Tax Act and section 7 of the Madhya Pradesh General Sales Tax Act.

8. The apex court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, was examining the issue where the cashew shells which had been used as fuel in the kiln but did not get transformed into the end-product, whether the provisions of purchase tax u/s 5A(1)(a) of the Kerala General Sales Tax Act were applicable.

9. It was concluded that where the dealer on the strength of his registration certificate purchases consumables which are ultimately used in the manufacture of taxable and tax-free goods, he is liable to pay purchase tax thereon. However, in case the consumables so purchased are used as fuel for consumption for providing taxable or tax-free goods, the same are not exigible to purchase tax. The relevant observations of the apex court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon,) are as under (pages 323 and 324 in 69 STC):

The cashew shells in the instant case, had been used as fuel in the kiln. The cashew shells did not get transformed into the end-product. These have not been used as raw materials in the manufacture of the goods. These have been used only as an aid in the manufacture of the goods by the assessee. Consumption must be in the manufacture as raw material or of other components which go into the making of the end-product to come within the mischief of the section. Cashew shells do not tend to the making of the end-product. Goods used for ancillary purposes like fuel in the process of the manufacture, do not fall within section 5A(1)(a) of the Act. Cashew shells, therefore, do not attract levy of tax under the said section. The same is the position with regard to the lime shell and consumed stores, which have been used only in the maintenance of the kiln and the factory and not used in the manufacture of the end-product. The Revenue therefore, was wrong in its contention on this aspect.

10. In the present case, the issue is relating to exigibility to purchase tax regarding consumables which were used in the manufacture of taxable and tax-free goods. Following the principles as enunciated by the apex court, the goods would be exigible to purchase tax. Thus, the Tribunal had correctly adjudicated the issue in favour of the State.

11. Referring to question No. 2, the matter is no longer res integra. It stands decided against the petitioner in view of the following observations recorded by the honourable Supreme Court in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, (page 353 in 96 STC):

23. . . . The answer is--section 4(1) itself. Section 4(1) not only levies tax on all

sales but also levies tax on all purchases as well. Of course, in no case will both the sale point and purchase point of the same transaction be taxed, which feature is indicated in sub-section (2A) of section 4 also. It is, therefore, obvious that where the sale of certain goods is exempt from tax by virtue of section 6, their purchase will be taxed and conversely where the Act expressly taxes the purchase of certain goods their sale simultaneously will not be taxed--subject, of course, to any express provisions providing exemptions. In the case of sugarcane, it being an agricultural produce--and in cases where it is sold by the grower himself--such sale is exempt from tax by virtue of section 6 read with Schedule B. If so, the purchaser thereof is liable to pay tax on its purchase by virtue of section 4(1). That is the position in the cases before us. Since section 4B does not apply to Schedule B goods, the said provision is not relevant to the petitioners. The purchase tax on sugarcane is levied by section 4(1), since it being an agricultural produce, and said to be sold by growers themselves, is exempt from tax on its sale u/s 6.

12. Following the aforesaid judgment of the honourable Supreme Court, a Division Bench of this court in Indian Sucrose Ltd. Vs. State of Punjab and Others, held as under (pages 92 and 93 in 37 VST):

10. The first question which would arise for determination is whether three-Judge Bench judgment of the honourable Supreme Court rendered in the case of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, is binding on the parties. In the aforesaid case the question of law was posed in para 4 of the judgment, namely, whether the sugar mill was liable to pay purchase tax on the sugarcane purchased by it from the growers of the sugarcane. In a categorical answer to the aforesaid question it has been held that section 4(1) of the PGST Act, 1948 contemplates levy of purchase tax on all sales and purchases. Once the aforesaid judgment in the categorical terms lays down that purchase tax is leviable u/s 4(1) then it is well nigh impossible for us to say that such a tax cannot be levied on the ground that the PGST Act, 1948 is a statute of general character which deals with sale or purchase tax in respect of all goods whereas the 1953 Act is a special Act which deals with all aspects including levy of purchase tax on sugarcane. The petitioner has canvassed for the contrary view on the basis of the judgment rendered by a two-Judge Bench of the honourable Supreme Court in the case of Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, . The aforesaid judgment has been rendered by interpreting the Bihar Finance Act, 1981 and the Bihar Sugarcane (Regulation of Supply and Purchase) Act 1981 by holding that both the Acts would operate in the same field. The underlying principle followed by the honourable Supreme Court is that the Sugarcane Act being a special Act pertaining to all aspects of control of the sugarcane as well as levy of purchase tax has to be preferred over the Finance Act which empower the State to levy all commercial taxes generally whereas the sugarcane Act empowered the levy of purchase tax only on sugarcane. Such a course would not be available to us as the specific Act which is applicable to the petitioner, namely, the PGST Act, 1948 has been interpreted by a three-Judge

Bench in the case of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, . Furthermore we would prefer the interpretation adopted by the honourable Supreme Court for the PGST Act, 1948 which is in question before us. The judgment of Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, has emerged out of different statute. It is needless to emphasise that the judgment by the honourable Supreme Court is a law declared in respect of the field occupied by it which is binding on all courts within the territory of India including the High Courts. In that regard reliance may be placed on the observations made by a Constitution Bench of the honourable Supreme Court in the case of Behram Khurshed Pesikaka Vs. The State of Bombay, Even otherwise the decision of three-Judge Bench in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, has to be followed because that decision is by a larger Bench than the one deciding the Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, . The three-Judge Bench judgment decision is also under the PGST Act 1948 which is applicable to the petitioner. Therefore, in our view there is no possibility whatsoever to reopen the question by opining that the provisions of section 4(1) of the PGST Act, 1948 would not apply and those of the 1953 Act alone would apply. On the basis of the aforesaid premise, the writ petitions are liable to be dismissed.

13. In view of the above, the questions referred are answered against the petitioner and in favour of the Revenue. The reference is disposed of accordingly.

