
(1988) 08 RAJ CK 0053
In the Rajasthan High Court
Case No : Sales Tax Revision No. 19 of 1986

Commercial Taxes Officer

APPELLANT

Vs

Hukumat Rai Asudamal

RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1989) 73 STC 409

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; Arjun Kotwani, for the Respondent

Final Decision : Allowed

Judgement

S.C. Agrawal, J.—This is a revision u/s 15 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act") as amended by the Rajasthan Sales Tax (Amendment) Act, 1984.

2. M/s. Hukumat Rai Asudamal, respondent herein, carries on business as commission agent and is registered as a dealer under the provisions of the Act. During the assessment year 1974-75 and the period from 1st April, 1974 to 31st March, 1975 the respondent purchased taramera, an oil-seed, valued at Rs. 4,49,663.07, but no tax was paid on the said transaction of sale of taramera to the respondent in view of the fact that the respondent had given a declaration in form S.T. 17. The respondent delivered the said goods to M/s. Chhedi Lal Gaya Prasad of Bharatpur on whose behalf the said goods were claimed to have been purchased by the respondent. The assessing authority, namely, Commercial Taxes Officer, Circle "E", Jaipur, included the said transaction of purchase of taramera of the value of Rs. 4,49,663.07 in the taxable turnover of the respondent and assessed tax on the same on the view that the respondent had sold the said goods to M/s. Chhedi Lal Gaya Prasad, Bharatpur. On appeal the Deputy Commissioner (Appeals), Commercial Taxes, Jaipur (hereinafter referred to as "the Deputy Commissioner") disagreed with the findings recorded by the

assessing authority that the respondent had sold taramera of the value of Rs. 4,49,663.07 to M/s. Chhedi Lal Gaya Prasad. The Deputy Commissioner held that the relationship between the respondent and the Bharatpur dealer, namely, M/s. Chhedi Lal Gaya Prasad, was of a commission agent and principal and that the transaction in question was "buying agency transaction" and not sale. Before the Deputy Commissioner, the respondent had produced books and vouchers as well as the books of the Bharatpur dealer and also produced the affidavit of the Bharatpur dealer dated 25th February, 1980 affirming that the respondent had purchased taramera worth Rs. 4,49,663.07 during 3rd July, 1974 to 2nd September, 1974 on their behalf on commission agency basis which was duly accounted for in the books of account and for which they hold themselves liable to pay tax and that all the said commission agency transactions have been subjected to assessment of tax by their Commercial Taxes Officer Reassessment orders dated 30th April, 1977. The Bharatpur dealer also produced their original books of account for the year 1974-75 (ending 30th November, 1974) before the assessing authority of the respondent. The Deputy Commissioner was, however, of the view that the respondent was bound to satisfy the assessing authority that due tax on the transactions of purchases of taramera had been paid by the Bharatpur principals and that there was no conclusive evidence on the record to establish that tax due on the purchase of taramera valued at Rs. 4,49,663.07 had been paid by the Bharatpur principals. The Deputy Commissioner also observed that the Bharatpur principals may also claim their non-liability to tax on the ground that they had not issued any declaration in form S.T. 17 or otherwise. In these circumstances the Deputy Commissioner held that further inquiry was needed in this behalf and he, therefore, remanded the matter to the assessing authority with the direction that he will make necessary inquiries from the Commercial Taxes Officer, Bharatpur to find out whether the turnover of taramera in question is included in the Bharatpur principals' turnover and was subjected to tax by him in their hands and in case it was so established, he will take action in the light of the observations of the Board of Revenue in Chandra Roop Mining Co., Udaipur, Revision No. 188/1669 S.T./Udaipur decided on 6th February, 1970. Feeling aggrieved by the said order of the Deputy Commissioner the assessing authority filed a revision which was decided by the learned single Member of the Board of Revenue. The learned single Member of the Board of Revenue allowed the said revision and set aside the tax levied on transactions of the taramera oil-seeds worth Rs. 4,49,663.07 and held that since the respondent was not liable to tax in the first instance, it was totally incorrect to maintain the tax liability levied on him till it was established that the tax was paid at the correct stage and that in these circumstances the appellate authority should not have remanded the case to the assessing authority for further inquiry. A special appeal was filed by the petitioner against the order of the learned single Member but the same was dismissed by the Division Bench of the Board of Revenue. Hence, this revision.

3. In the revision petition, the petitioner has submitted that the following

question of law arises out of the order of the Board of Revenue :

Whether, under the facts and circumstances of the case, the Board of Revenue was justified in setting aside the levy of tax amounting to Rs. 13,489.89 on the purchase of oil-seed?

4. After perusing the orders passed by the Board of Revenue and after hearing the learned counsel for the petitioner as well as the learned counsel for the respondent, I reframe the question which arises for consideration in the following terms :

Whether, under the facts and circumstances of the case, the Board of Revenue was justified in setting aside the order passed by the Deputy Commissioner remanding the case for further inquiry to the assessing authority ?

5. As noticed earlier the Deputy Commissioner as well as the Board of Revenue have found that relationship between the respondent and the Bharatpur dealer, namely, M/s. Chhedi Lal Gaya Prasad, was of a commission agent and principal and transactions in question relating to purchase of tarameera oil-seeds for Rs. 4,49,663.07 were buying agency transaction and not a sale by the respondent to M/s. Chhedi Lal Gaya Prasad.

6. It has been urged by Shri Bapna, the learned counsel for the petitioner, that even though the said transactions were buying agency transactions the respondent is liable for payment of tax on the said transactions because the respondent had submitted declaration in form S.T. 17 wherein he had declared that the goods were being purchased for the purpose of sale in Rajasthan and since the respondent had not used the goods for the purpose mentioned in the said declaration, he is liable for payment of tax for the said transactions. In view of the second proviso to Clause (iv) of Sub-section (s) of Section 2 of the Act, Shri Bapna has also urged that the respondent could escape the liability for payment of tax in respect of the said transactions only if he could show that tax in respect of these transactions has already been paid by the Bharatpur principals, namely, M/s. Chhedi Lal Gaya Prasad and, therefore, the Deputy Commissioner was right in remanding the matter for further inquiry as to whether the Bharatpur principals had paid tax on the said transactions. Shri Bapna has urged that the Board of Revenue was not right in setting aside the said order on the view that the Deputy Commissioner was not justified in remanding the matter to the assessing authority for further inquiry.

7. Shri Kotwani, the learned counsel for the respondent, on the other hand, has urged that no liability for tax can be fastened on the respondent in view of the finding recorded by the Deputy Commissioner which has been affirmed by the Board of Revenue that the relationship between the respondent and the Bharatpur principals was of commission agent and principal and the transactions in question were buying agency transactions. The learned counsel has submitted that in respect of sales by a commission agent on behalf of the principal, a specific provision has been made in Section 9B of the Act whereby the

commission agent has also been made liable for the tax, but no such provision has been made in respect of purchases by a commission agent on behalf of the principal and in the absence of any such provision, the commission agent cannot be saddled with the tax liability of the principal in respect of goods purchased by the commission agent on behalf of the principal. The learned counsel for the respondent has also urged that the respondent had produced adequate evidence before the Deputy Commissioner to show that the transactions have been included in the turnover of the Bharatpur principals and that the Bharatpur principals have been assessed to tax in respect of those transactions and in these circumstances the Deputy Commissioner was not justified in remanding the matter for further inquiry to the assessing authority and further that the Board of Revenue has rightly set aside the said order of remand passed by the Deputy Commissioner. The learned counsel for the respondent has also urged that in *Bhawani Cotton Mills Ltd. v. State of Punjab* [1967] 20 STC 290 the Supreme Court has laid down that in case of commodities which come under the category of declared goods, tax can be levied only at a single point as is made clear by Section 15(a) of the Central Sales Tax Act, 1956 and there can be no legal liability for payment of tax accruing until and unless the State Sales Tax Act or the Rules framed thereunder prescribe the single point for taxation. The learned counsel has urged that neither in the Act nor in the Rules framed thereunder is the single point of taxation prescribed and, therefore, no liability could be fastened in respect of the transactions in question relating to purchase of taramera which is oil-seeds and falls in the category of declared goods.

8. I will first deal with the submission urged by the learned counsel for the respondent based on the decision of the Supreme Court in *Bhawani Cotton Mills Ltd. v. State of Punjab* [1967] 20 STC 290. In this regard it may be mentioned that in Clause (ii) of Sub-section (1) of Section 6 of the Act it is laid down that in the case of goods declared by Section 14 of the Central Sales Tax Act to be of special importance in inter-State trade or commerce, tax shall not be leviable in the State at more than one stage. Rule 15 of the Rajasthan Sales Tax Rules, 1955 fixes the point of taxation and provides that unless otherwise directed by the State Government, by a notification in the Official Gazette, the tax payable u/s 5 of the Act shall be at the first point in the series of sales by successive dealers. By notification dated 11th April, 1958, issued by the Government of Rajasthan in exercise of the powers conferred by the second proviso to Section 5 of the Act, it has been provided that the tax in respect of sales of goods mentioned in the list appended to the said notification have been made payable on last point in the series of sales by successive dealers. Oil-seeds have been included in the said list. This would show that under the Rajasthan Sales Tax Rules the stage at which tax liability accrues in respect of declared goods, has been prescribed and it cannot, therefore, be said that the Act or the Rules made thereunder have not prescribed the single point for taxation. The requirement of law, as laid down by the Supreme Court in *Bhawani Cotton Mills Ltd. v. State of Punjab* [1967] 20 STC 290, is thus fulfilled and it cannot be said that tax liability

does not arise in respect of transactions for the sale of oil-seeds which are declared goods under the Central Sales Tax Act, 1956.

9. I may now deal with the submission of the learned counsel for the respondent based on the provisions of Section 9B of the Act. It cannot be disputed that there is no provision similar to Section 9B of the Act whereby tax liability has been imposed on the commission agent in respect of a purchase made by him on behalf of the principal. In the present case we are concerned with the purchase made by the respondent on the basis of declaration given in form S.T. 17 wherein the respondent declared that the goods were being purchased for the purpose of resale in the State of Rajasthan. Admittedly the respondent did not use the goods for the purpose mentioned in the said declaration because they were not resold in the State of Rajasthan. Such a case falls within the ambit of second proviso to Clause (iv) of Sub-section (s) of Section 2 of the Act. Sub-section (s) of Section 2 of the Act contains the definition of the expression "taxable turnover" and in Clause (iv) sales which are taxable at a point of sale within the State subsequent to the sale by the dealer have been excluded if such sale is covered by a declaration as may be required under any provisions of the Act or the Rules made thereunder. The second proviso to Clause (iv) reads as under :

Provided further that when any dealer has purchased any goods without paying any tax on the strength of any declaration furnished by him and the said goods are used by him for any purpose other than the one mentioned in the declaration, the purchase price of such goods shall be included in his taxable turnover.

10. In the present case tax was not paid at the time when the taramera was purchased by the respondent in view of the declaration given by the respondent in form S.T. 17. The respondent is being held liable for the tax under the second proviso to Clause (iv) on the ground that he had purchased the goods without paying any tax on the strength of the declaration furnished by him in form S.T. 17 and after purchasing the said goods, he did not use the goods for the same purpose as mentioned in the said declaration because the said goods were not resold in the State of Rajasthan and were delivered to the Bharatpur dealer. It is true that the respondent has entered into the said transactions as commission agent on behalf of the Bharatpur principals, but he gave a declaration in form S.T. 17 in his own name. The respondent can avoid this liability for tax which arises on the basis of the second proviso to Clause (iv) of Sub-section (s) of Section 2 of the Act by showing that the sale of said goods has already been subjected to tax under the Act in the hands of Bharatpur principals. It was, therefore, necessary for the respondent to show that the transactions in question have been included in the taxable turnover of the Bharatpur principals and they have been assessed to tax on the same. In my opinion, therefore, it cannot be said that liability for tax in respect of the transaction in question cannot be imposed on the respondent because there is no provision similar to Section 9B in the Act in respect of purchases by a commission agent on behalf of the principal.

11. As regards the submission of the learned counsel for the respondent that adequate evidence had been produced before the Deputy Commissioner to show that the transactions in question had been included in the taxable turnover of the Bharatpur principals and they have been assessed on the same, I find that the Deputy Commissioner has observed that there was no conclusive evidence to show that the due tax on the transactions in question had been paid by the Bharatpur principals. The Deputy Commissioner also felt that the principals may claim their non-liability to tax on the ground that they had not issued any declaration in form S.T. 17 or otherwise. The Commissioner was, therefore, of the opinion that further inquiry was needed in this behalf and he, therefore, remanded the matter to the assessing authority with the direction that he would make necessary inquiries from the Commercial Taxes Officer, Bharatpur to find out whether the turnover of taramera in question included in the turnover of the Bharatpur principals and is subjected to tax by them in their hands. There is nothing in the order passed by the learned single Member of the Board of Revenue and the order passed by the Division Bench of the Board of Revenue wherein they have disagreed with the said view of the Deputy Commissioner and have held that evidence, produced by the respondent before the Deputy Commissioner was adequate and conclusive to show that the Bharatpur principals had paid tax on the turnover of taramera oil-seeds in question. In these circumstances I am of the opinion that the Board of Revenue was not justified in setting aside the order passed by the Deputy Commissioner remanding the matter to the assessing authority for further inquiry.

12. While concluding the matter, it may be observed that the effect of the order of remand by the Deputy Commissioner is that the assessment in so far as it relates to the liability of the respondent on the turnover of taramera has been set aside and the respondent would be held liable for payment of tax on the same only if, on remand, it is found that the Bharatpur principals have not paid tax on the same turnover.

13. In the result, the revision is allowed. The order dated 9th February, 1981 passed by the learned single Member of the Board of Revenue in Revision No. 54/ 1980/RST/Jaipur and the order dated 16th April, 1984 passed by the Division Bench of the Board of Revenue in D.B. Special Appeal No. 42/81/ST/Jaipur are set aside and the order dated 15th March, 1980 passed by the Deputy Commissioner (Appeals), Commercial Taxes, Jaipur, remanding the matter to the assessing authority for further inquiry is restored. No order as to costs.