

(1985) 07 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Sales Tax Case No. 7 of 1980

Commercial Taxes Officer

APPELLANT

Vs

Mohanlal Chiranji Lal

RESPONDENT

Date of Decision : 29-07-1985

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 16(1)(k)

Citation : (1985) 60 STC 356

Hon'ble Judges : S.N. Bhargava, J;S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; R. Metha, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This is an application u/s 15(2)(b) of the Rajasthan Sales Tax Act (No. XXIX of 1954) (for short "the Act") for directing the Board of Revenue for Rajasthan, Ajmer ("the Board" herein) to state the case and refer the following question of law to this Court, which is said to arise out of its order dated 21st December, 1978 ; which the Board refused to do vide its order dated 25th September, 1979 :

Whether under the facts and circumstances of the case the Board of Revenue was justified in setting aside the penalty of Rs. 25,000 imposed u/s 16(1)(k) of the Rajasthan Sales Tax Act, 1954 ?

2. In view of Section 13(10) of the Rajasthan Sales Tax (Amendment) Act, 1984 (No. XX of 1984) (hereinafter referred to as "the Amendment Act") which has come into force from 1st May, 1986 this application has been treated as a revision and heard as such u/s 15 of the Act as substituted by the Amendment Act.

3. Non-petitioner No. 1 M/s. Mohanlal Chiranji Lal, Srikanpur, District Sriganganagar is a dealer registered under the Act. It purchased cotton in Rajasthan. It, however, did not pay the sales tax on the sale of cotton because

the cotton was taxable at the last point and it purchased the cotton for resale within the State of Rajasthan by giving declaration in form S.T. 17 that it purchases cotton for resale in Rajasthan. It ginned the cotton by process of manufacture separating the cotton from the cotton seeds. The ginned cotton was resold within Rajasthan, on which it paid sales tax but cotton seeds extracted from cotton by ginning were exported out of Rajasthan and as such no sales tax was paid by the dealer on the cotton seeds of the value of Rs. 6,87,563.13. The assessing authority by its order dated 10th October, 1973 imposed a penalty of Rs. 25,000 u/s 16(1)(k) of the Act. The dealer-assessee lodged an appeal and the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner accepted the appeal on 3rd January, 1975 and set aside the penalty imposed u/s 16(1)(k) of the Act. The assessing authority filed a revision before the Board. The Division Bench of the Board dismissed the revision by its order dated 21st December, 1978. The relevant portion of the order of the Board, may usefully be excerpted:

In the instant case cotton was purchased by the non-petitioner but cotton ginned or unginned being the same commodity in view of the above-mentioned judgment and the non-petitioner purchased cotton only for resale within the State, it would mean that full compliance was made by the non-petitioner of the declarations under (form) S.T. 17 as no cotton seeds were purchased by him for resale within State. When the question of levy of purchase tax on the sale of such cotton seeds outside the State could not arise, then it is not fair to hold that the non-petitioner misused the declaration by selling cotton seeds outside the State.

4. A reference application was filed u/s 15(1) of the Act for referring the aforesaid question, but it was rejected vide order dated 25th September, 1979. Here the application u/s 15(2)(b) was filed on 2nd January, 1980 which, as stated above, has been treated as a revision, u/s 15 of the Act as substituted by the Amendment Act.

5. We have heard Mr. K. C. Bhandari, learned Counsel for the assessing authority and Mr. Rajendra Mehta, learned Counsel for the assessee-non-petitioner.

6. Section 16(1)(k) of the Act reads as under :

after purchasing any goods in respect of which he has made a declaration under the provisions of this Act or Rules made thereunder, fails without reasonable cause to make use of the goods for the declared purposes.

7. The first question that arises is whether there was any violation of the declaration in form S.T. 17 given by the dealer, and answer to this question will depend upon the answer to a further question whether the ginned cotton (by a process of manufacture separating the cotton from the cotton seeds) and cotton seeds are one and the same commodity or the ginned cotton and the cotton seeds are two separate commodities, for, the declaration was for sale of cotton within Rajasthan. This need not detain us long, for we have an authoritative pronouncement of the apex court of the country reported in *State of Punjab v.*

Chandu Lal Kishori Lal [1970] 25 STC 52 impliedly overruling the decision in Patel Cotton Company P. Ltd. v. State of Punjab [1964] 15 STC 865. It was ruled by their Lordships that though cotton in its unginned state contained cotton seeds, the cotton and the seeds were separated by the manufacturing process of ginning and the seeds so separated could not be said to be cotton itself or part of the cotton and that the dealer was, therefore, not entitled to deduct the sale price of cotton seeds from the purchase turnover u/s 5(2)(a)(vi) of the Punjab Sales Tax Act, 1948. It was further held that the sale of cotton seeds cannot be treated as sale of declared goods for the purpose of Section 15(a) or (b) of the Central Sales Tax Act, 1956. In this connection, it was observed as under :

But so far as cotton seeds are concerned, it is difficult to accept the contention that the sale of cotton seeds must be treated as a sale of declared goods for the purpose of Section 15(a) or (b) of the Central Sales Tax Act, 1966. It is true that cotton in its unginned state contains cotton seeds. But it is by a manufacturing process that the cotton and the seed are separated and it is not correct to say that the seeds so separated in cotton itself or part of the cotton. They are two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. There is hence no warrant for the contention that cotton seed is not different from cotton.

8. In Nanu Ram Bhani Ram v. Commercial Taxes Officer (D. B. Civil Writ Petition No. 2033 of 1970, decided on February 8, 1972) a somewhat similar question, with which we are concerned in the case on hand, arose. Jagat Narayan, C. J., speaking for the Division Bench, relying on State of Punjab's case [1970] 25 STC 62 , held that the cotton seeds are merely bye-product in the course of ginning of unginned cotton and that the seed is a commodity quite different from cotton. The dealer-non-petitioner purchased the cotton for the sale within the State and the declaration was given that it would be sold within the State. According to the declaration no cotton seeds were purchased by him for resale within the State Government. The cotton seeds, which are separated by process of manufacture by ginning the cotton and the cotton, in view of the law laid down in State of Punjab's case [1970] 25 STC 52 , are two different commodities and as such when the dealer-non-petitioner has sold the ginned cotton within Rajasthan regarding which the declaration in form S.T. 17 was given, it cannot be said that he has acted in breach of the declaration or has misused it. No cotton seeds can be said to have been purchased by him for resale within State and so when he sold the ginned cotton within the State, which was purchased on the basis of form S.T. 17, there was full compliance of it, and the Board was, therefore, justified in holding that the declaration has not been misused by the dealer-non-petitioner when the cotton seeds were sold outside the State. The assessing authority had imposed the penalty on the ground that the dealer-non-petitioner has misused the declaration made in form S.T. 17. We have already held that the ginned cotton and the cotton seeds are two different commodities. In this view of the matter, no valid exception can be taken to the order of the Division Bench of the Board dated 21st December, 1978, passed in revision.

9. For the aforesaid reasons, we maintain the order dated 21st December, 1978 of the Board, set aside the penalty levied u/s 16(1)(k) of the Act by the CTO and this application, which has been treated as revision u/s 15 of the Act as substituted by the Amendment Act, is dismissed without any order as to costs.