(1985) 07 RAJ CK 0044

In the Rajasthan High Court

Case No : Civil Sales Tax Case No. 5 of 1980

Commercial Taxes Officer APPELLANT

Vs

Moolchand Jainarain RESPONDENT

Date of Decision : 27-07-1985

Acts Referred:
Central Sales Tax Act, 1956 — Section 8, 9

Citation : (1987) 64 STC 300 : (1985) 2 WLN 173

Hon'ble Judges : S.K. Mal Lodha, J;Farooq Hasan, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; Rajendra Mehta, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This application u/s 15(2)(b) of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) ("the Act" herein) read with Section 9 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act") was filed by the Commercial Taxes Officer, Nagour on 21st December, 1979, for directing the Board of Revenue for Rajasthan, Ajmer (hereinafter referred to as "the Board") to refer the following questions of law arising out of its order dated 29th November, 1978, passed in Special Appeal Nos. 69 and 83 of 1976, which the Board of Revenue refused to do by its order dated 11th October, 1979:

(1) Whether, under the facts and circumstances of the case, the Board of Revenue was justified in holding that the rate of tax on packing material sold along with cereals is 2 and 1 per cent and not at the rate of 10 per cent in absence of C forms ?

(2) Whether, under the facts and circumstances of the case, the Board of Revenue was justified in holding that the rate of tax on packing material will be the same which is applicable on the goods packed therein, whereas the packing material was taxable in the State at the rate of 3 per cent and in the absence of C forms the rate which is applicable u/s 8(2) of the CST Act is 10 per cent.

2. During the pendency of this application, the Rajasthan Sales Tax (Amendment) Act, 1984 (Act No. 20 of 1984) (for short "the Amendment Act"), has come into force from 1st May, 1985. Section 13(10) of the Amendment Act, lays down that every application under Clause (b) of Sub-section (2) of Section 15 of the Act pending before the High Court on the said date, shall be deemed to be an application for revision u/s 15 of the Act as substituted by the Amendment Act and disposed of accordingly.

3. Section 15 of the Act, as substituted by Section 6 of the Amendment Act, shows that the revision is to be disposed of on the question of law involved in the case.

4. M/s. Moolchand Jainarayan (dealer) was, at the relevant time, dealing in purchase and sale of cereals and pulses, etc. While assessing it, in respect of the period 30th October, 1970, to 18th October, 1971, the Commercial Taxes Officer (CTO) estimated that the dealer had sold "bardana" worth Rs. 26,224.00 in the course of inter-State trade and commerce and levied Central sales tax at the rate of 8 per cent and 9 per cent by his order dated 31st January, 1973. Aggrieved, the dealer assessee lodged an appeal. The Deputy Commissioner (Appeals), Jodhpur, dismissed the appeal by his order dated 22nd March, 1975. The dealer assessee filed a revision before the Board. The Board, vide its order dated 17th March, 1976, reduced the rate of tax on "bardana" from 8 per cent and 9 per cent to 3 per cent. The dealer assessee as well as the CTO challenged the order dated 17th March, 1976, passed by the Chairman of the Board, by filing special appeals. The Division Bench of the Board modified the order dated 17th March, 1976, of the Chairman to this extent that rate of tax applicable to sale of "bardana" would be 2 per cent and 1 per cent according to the rate imposable on the goods packed therein instead of 3 per cent. In view of this, the special appeal filed by the CTO (assessing authority) was rejected and the appeal filed by the dealer assessee was partly accepted. Reference application u/s 15(1) of the Act against the order by which the appeal filed by the dealer assessee was partly allowed was filed. The Board rejected that application by its order dated 11th October, 1979. Thereafter, the application u/s 15(2)(b) was filed, which, as stated above, is now being disposed of 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 (CTO) and Mr. Rajendra Mehta for the dealerassessee.

6. Section 5 of the Act deals with rate of tax. Material proviso, for our present purpose, to Section 5, is as follows :

Provided also that when any goods are sold, packed in any materials, the tax shall be leviable on the sale of such packing materials (when not separately charged for) at the same rate (if any) as is applicable to the sale of the goods themselves.

7. The contention before the Board as well as before this Court raised on behalf

of the assessing authority is that this proviso is not applicable to the case of the dealer assessee. The object of this proviso is for assessment of tax on the sale of packing material when such materials are not separately charged for and as the ''''bardana" has not been charged for separately, therefore, the question of charging of sales tax directly on it, does not arise. Now, at this stage, we may notice Section 8 of the CST Act, which deals with rates of tax on sales in the course of inter-State trade or commerce. The relevant portion of Section 8 is as follows:

(1) Every dealer, who in the course of inter-State trade or commerce-

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)-

(a) in the case of the declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(2A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or in Sub-section (1) or Clause (b) of Sub-section (2) of this 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 nil or, as the case may be, shall be calculated at the lower rate.

8. Sub-section (1) of Section 8 provides for concessional rate of tax. For the applicability of Sub-section (2) of Section 8 of the CST Act, the following are the essential elements :

(1) Treat the inter-State transaction as an intra-State transaction ; (2) it is to be taxed as it shall be taxed under the State Act. In other words, if there is tax

under the State Act, impose it and if there is none, desist from doing so; Clause (b) of Sub-section (2) of Section 8 of the CST Act lays down the rate of 10 per cent or the rate which is applicable to the sale or purchase of such goods in the State, whichever is higher. Section 8(2A) is in the nature of proviso. According to it, despite the provisions made in Sub-section (1A) of Section 6 or in Sub-section (1) or Clause (b) of Sub-section (2); this has to be read as proviso with regard to the rate of tax, which is prescribed u/s 8(1) of the CST Act. The word "turnover" used in Sub-section (2A) of Section 8 of the CST Act shows that if the turnover is exempt from the payment of sales tax under the State Act, it shall also be exempt from the payment of the tax under the CST Act. The goods, on the sale of which, the tax is sought to be assessed, is the packing material and by virtue of the aforesaid proviso to Section 5 of the Act, it will be taxable at the rate of 2 per cent and 1 per cent according to the rate which is applicable to the sale of the goods contained therein. The aforesaid concessional rate on the sale of "bardana" will be applicable to the assessment under the CST Act. A perusal of Section 8(2A) of the CST Act shows that if the goods in question are exempt from tax generally, then the rate of Central sales tax which would apply in the case of such goods would be nil. The provisions of Sub-section (2A) are however controlled by the explanation appended thereto. According to this explanation, a sale or purchase of goods shall not be deemed to be exempt from tax under the tax law of the appropriate State if under that law ; (1) the sale or purchase of goods is exempt only in specified circumstances; or (2) it is exempt under specified conditions ; or (8) the tax is levied on the sale or purchase of such goods at specified stages; or (4) the tax is levied otherwise than with reference to the turnover of the goods. If any of the aforesaid conditions exist, then, the exemption from the Central sales tax which is contemplated by Sub-section (2A) of Section 8 of the CST Act would not be available to the dealer-assessee. The exemption under the CST Act depends upon the exemption under the State Act. The benefit, which can be claimed by the dealer u/s 8(2A) can be only in respect of the goods, which is exempt from tax generally or is subject to tax generally at the rate which is lower than 4 per cent. The conclusion of the Division Bench of the Board that the aforesaid proviso of Section 5 of the Act is applicable, is correct and when this is the case, the concessional rate on the sale of "bardana" will be applicable to the assessment under the CST Act. In this view of the matter, the Board in special appeal was right in holding that the rate of tax applicable to the sale of "bardana" would be 2 per cent and 1 per cent according to rate of tax imposable on the goods packed therein instead of 3 per cent and no illegality has been committed by it.

9. The application u/s 15(2)(b) of the Act, which has been heard as a revision u/s 15 of the Act as substituted by the Amendment Act, is dismissed without any order as to costs.

