
(1985) 12 RAJ CK 0005
In the Rajasthan High Court
Case No : .S.T. Reference No. 8 of 1979

Commercial Taxes Officer

APPELLANT

Vs

Shiv Narain Ram Narain

RESPONDENT

Date of Decision : 20-12-1985

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 16(1)(k), 2(s), 5A

Citation : (1987) 66 STC 373

Hon'ble Judges : S.K. Mal Lodha, J;Pana Chand Jain, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; N.P. Gupta, for the Respondent

Judgement

S.K. Mal Lodha, J.—At the instance of the Commercial Taxes Officer, Chittorgarh, the Board of Revenue for Rajasthan, Ajmer ("the Board" herein) has referred the following questions for the opinion of this Court, which are said to arise out of its order dated June 21, 1977 :

(i) Whether, in the facts and circumstances of the case and in view of the explanation to Rule 15 of the Rajasthan Sales Tax rules, the second proviso to Section 2(s) of the Rajasthan Sales Tax Act is attracted in respect of the turnover of gum not resold within the State as per the declarations given in form S.T. 17 ?

(ii) Whether the only remedy open to the department following the use of form S.T. 17 for a purpose other than that declared was to proceed u/s 16(1)(k) ?

(iii) Whether the Board of Revenue was justified in holding that no tax was payable by the dealer because of the provisions of Section 5A of the Rajasthan Sales Tax Act ?

2. The regular assessments of the dealer-assessee (respondents) in respect of the assessment years 1969-70 and 1970-71 u/s 10 of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act") were completed on January 31, 1974. Subsequently, the assessing authority discovered that the dealer-assessee

had bought gum of the value of Rs. 1,68,953 in 1969-70 and Rs. 7,21,000 in 1970-71, on the basis of form S.T. 17. In that form, the purpose shown was resale within the State. The gum was, however, not sold within the State, but it was sold in the course of inter-State trade. The assessing authority took action u/s 12 of the Act and included the value of such sales in the taxable turnover according to the second proviso to Section 2(s) of the Act. The dealer-assessee lodged an appeal and the Deputy Commissioner (Appeals), Commercial Taxes, Ajmer ("Deputy Commissioner" herein) by his order dated September 30, 1975, accepted the appeal and ordered for the refund of the amount deposited by the dealer-assessee. He observed as under:

Levy of purchase tax on the taxable turnover is governed by Section 5A. This section lays down the circumstances when purchase tax is to be levied. This section provides that every dealer who in the course of his business purchases any goods, other than exempted goods, in circumstances in which no tax under Sections 5 and 5E is payable on the sale price of such goods and despatches them to a place outside the State as a direct result of sale in the course of inter-State trade or commerce shall not be liable to pay tax on the purchase price of such goods. The goods in question were not taxable under Sections 5 and 5E and were sold in the course of inter-State trade or commerce and this inter-State sale has already been subjected to due tax under the provisions of the Central Sales Tax Act by the assessing authority vide his order dated January 31, 1974, passed u/s 9 of the Act. Therefore, the goods in question are not liable to be taxed u/s 5 of the Rajasthan Sales Tax Act and the purchase tax assessed is clearly unwarranted and is accordingly set aside.

3. The Commercial Taxes Officer, Chittorgarh (the assessing authority), filed two revisions in respect of the assessment years 1969-70 and 1970-71, before the Board. By its order dated June 21, 1977, the revisions were dismissed holding that the case of the dealer clearly fell within the exception provided in Section 5A of the Act and, therefore, the question of levy of tax did not arise. The reference application u/s 15(1) was submitted by the Commercial Taxes Officer and the Board has referred the aforesaid questions for our opinion.

4. This reference was pending on May 1, 1985, when the Rajasthan Sales Tax (Amendment) Act, 1984 ("the Amendment Act" herein) had come into force and according to Section 13(11) of the Amendment Act, it is deemed to be a revision u/s 15 of the Act as substituted by the Amendment Act and it has to be disposed of as such.

5. We have heard Mr. K.C. Bhandari, for the Commercial Taxes Officer and Mr. N.P. Gupta, for the dealer-assessee.

6. Question No. (1).

7. In order to answer this question, we have to take into consideration the relevant provisions of the Rajasthan Sales Tax Rules, 1955 (hereinafter referred to as "the rules") and also the Act, bearing on the question. Section 2(s) defines

"taxable turnover". Section 2(s) is as under :

(s) "taxable turnover" means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods-

(i) on which no tax is leviable under this Act,

(ii) which have already been subjected to tax under this Act,

(iii) which have been sold to persons outside the State for consumption outside the State and

(iv) which are taxable at a point of sale within the State subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provision of this Act or the rules made thereunder:

Provided that where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him, the taxable turnover in respect of such sales shall, at the option of such dealer to be exercised in the prescribed manner, be one per cent of the aggregate amount of the sale prices received or receivable by him in respect of the sale or supply of such goods and of such bardana, container or material:

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.

8. Section 3 of the Act is the charging Section. According to it, the dealer is liable to pay tax under the Act, on his taxable turnover, in accordance with the limits mentioned therein. Section 5 is with respect to the rate of tax, according to which the sales tax is payable by a dealer under the Act. The proviso appended to Section 5(1) of the Act, inter alia, lays down that the tax in respect of the sale of any goods, which are not included in the Schedule, shall not be leviable if such sale takes place in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956. Section 5A of the Act provides for levy of purchase tax. It is a separate charging Section and it is not subject to Section 5. A perusal of Section 5A of the Act shows that it envisages liability to tax on purchase in cases where the person from whom the assessee purchases the goods is one by whom no tax is payable under Sections 5 and 5E; as the case may be, irrespective of the fact that the goods had suffered tax previously. It may be stated that Section 5E relates to payment of tax on all points. Now, we may refer Rule 15 of the rules. It occurs under the head "point at which tax is payable". It will be useful to reproduce Rule 15 in its entirety:

15. Point of taxation.-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 sale by successive dealers.

Explanation.-For the purposes of this rule, the first point in the series of sale shall mean the first sale in such series by a registered dealer and the second and subsequent points shall be determined accordingly while the last point in the series of such sale shall be the last sale in such series to an unregistered dealer or to a consumer or to a registered dealer for purposes other than resale within the State or in case of goods specified by the State Government, the last point in such series shall also be the last sale to a registered dealer in whose registration certificate such goods are recorded for resale by him to an unregistered dealer or a consumer.

9. The Board of Revenue, in its order dated June 21, 1977, while agreeing with the dealer-assessee, held that the goods, which were dealt by the dealer-assessee were not specified goods and that they are not taxable either u/s 5 or Section 5A of the Act. This finding was based on the ground that these goods have been sold out in the course of inter-State trade. The Board has specifically not dealt with the explanation to Rule 15 of the rules and proviso to Section 2(s) of the Act while considering the turnover of gum, which was not resold within the State, as stated in the declaration form S.T. 17.

10. This has necessitated to examine the terms of form S.T. 17, which was given by the dealer-assessee.

11. Form S.T. 17 was obtained by stating that the gum will be resold within the State of Rajasthan. The dealer-assessee sold the gum in inter-State trade. The gum being taxable at last point under Rule 15 of the rules, it could not have been repurchased against the declaration form S.T. 17 if it was to be sold in the inter-State trade. In other words, the dealer-assessee ought to have purchased it without giving form S.T. 17, in which eventuality, the dealer-assessee would have collected sales tax from M/s. Shiv Narain Ram Narain, Chhoti Sadri. Thereafter, at the time of sale by the dealer-assessee in inter-State trade, the Central sales tax would have been levied in his hands. If the dealer-assessee had not given the declaration in form S.T. 17 to the registered selling-dealer for purchasing goods for the sale within the State, the tax should have been levied on the sales effected by the latter. A transaction of sale is also a purchase transaction for the purchasing dealer. As the sales of selling registered dealer, which were also purchases of non-applicant-dealer, were not taxed on account of furnishing form S.T. 17, it follows that the purchase price of the dealer, i.e., the sales of registered selling-dealer are being taxed by including the same in taxable turnover. It is, therefore, wrong to suggest that it is a purchase tax u/s 5A of the Act. As stated earlier, the gum is the commodity taxed at the last point. The explanation to Rule 16 of the rules clarifies this, as the words used are "last point in the series of such sale shall be the last sale in such series to an unregistered dealer or to a registered dealer for purposes other than resale within the State" If the dealer-assessee had not submitted wrong declaration in form S.T. 17 to the effect that the commodity was being bought for sale within the State, the

suppliers would have treated this as last point sales and collected the Rajasthan sales tax. Second proviso to Section 2(s) provides for a situation where a wrong declaration has been made. The charging section is Section 3(1). Section 2(s), which is not a charging section, has to be read with Section 3 of the Act. Section 2(s) defines "taxable turnover" and Section 3(1) indicates the liability to tax on such turnover. In our opinion the Board went wrong when it failed to appreciate that the purchase price of such goods was included in the taxable turnover of the dealer-assessee. The levy of tax could not be quashed merely on the ground that Section 2(s)(iv) was not a charging section. Charging section, as mentioned hereinabove, is Section 3, by which the dealer has been made liable to pay tax on the taxable turnover and the taxable turnover is to have meaning given in Section 2(s)(iv) of the Act. Section 5A of the Act could not have been invoked. Having considered Section 3 and Section 2(s)(iv) of the Act, Section 6 A of the Act and the fact that the sales of the selling registered dealer, which were also the purchases for the dealer-assessee, were not taxed on account of furnishing wrong declaration in form S.T. 17, the purchase price of the dealer-assessee, i.e., the sales of registered selling-dealer are being taxed by including the same in the taxable turnover. We are, therefore, of the opinion that in view of the explanation to Rule 16 of the rules and the second proviso to Section 2(s) of the Act, the turnover of gum was not resold within the State as per the declaration given in form S.T. 17. Question No. (1) referred by the Board, is answered in the affirmative, i.e., in favour of the department and against the assessee.

12. Question No. (2).

13. Section 16(1)(k) of the Act is as under:

16. Offences, penalties and prosecutions, etc.-(1) If any person-

(k) 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;

14. According to Section 16(1)(k), penalty can be imposed if without reasonable cause, the dealer has failed to make use of the goods for the declared purposes. Besides including the turnover of gum not resold within the State as per the declaration given in form S.T. 17, the penalty could be imposed if without reasonable cause, the dealer-assessee has failed to make use of the goods for which he gave the declaration in form S.T. 17. This is, however, wrong to suggest that in the circumstances of the case the only course of the department was to proceed u/s 16(1)(k) in regard to the wrong declaration made in form S.T. 17. Neither the Deputy Commissioner, nor the Division Bench of the Board had gone into the question of imposition of penalty u/s 16(1)(k) of the Act. We are of the opinion that the department could add to the taxable turnover and it is not the only remedy to impose penalty u/s 16(1)(k) of the Act.

15. Question No. (3).

16. We have already held while considering the question No. (1), that the Board was not right in holding that no tax was payable by the dealer on account of the provisions of Section 5A of the Act.

17. Question No. (1) is, therefore, answered in the affirmative, i.e., in favour of the department and against the dealer-assessee. Question No. (2) is answered in the negative, i.e., against the dealer-assessee and in favour of the department. Question No. (3) is answered in the negative, i.e., in favour of the department and against the dealer-assessee.

18. The reference, which has been treated as a revision u/s 15 of the Act, as substituted by the Amendment Act, is accordingly disposed of.

19. The parties are left to bear their own costs of this reference.