
(1982) 02 AHC CK 0080
In the Allahabad High Court
Case No : Sales Tax Revision No. 129 of 1980

Commissioner, Sales Tax and Others

APPELLANT

Vs

Ganesh Flour Mills Co. Ltd.

RESPONDENT

Date of Decision : 01-02-1982

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4B(6)

Citation : (1983) 52 STC 24

Hon'ble Judges : Satish Chandra, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, C.J.—The question of law raised by the Commissioner of Sales Tax in this revision is whether the turnover of Rs. 22,69,015 was taxable without affording the concessional rate of tax on the purchases of raw materials proportionate to the production of oil to that extent.

2. It appears that the assessee which manufactures vegetable ghee obtained a recognition certificate for purchase of raw materials for producing the vegetable ghee. Vegetable ghee or vegetable oil was a notified product. Under the recognition certificate the assessee purchased oil-seeds worth Rs. 2,97,93,000. It is not disputed that the assessee also purchased oil-seeds worth Rs. 28,95,000 without form III-B. Such purchases appears to have been made from outside the State. The assessee produced vegetable oil worth Rs. 6,65,73,925. Out of these, the sales within the State of Uttar Pradesh or in the course of inter-State trade were worth Rs. 6,43,04,910, leaving a balance of Rs. 22,69,015 which admittedly were transferred to the assessee's depots at Patna and Jaipur and were sold from those depots. The assessing authority estimated that the vegetable oil worth Rs. 22,69,015 could be produced from raw materials, namely, oilseeds, which would be worth Rs. 19,30,000. They imposed purchase tax on oil-seeds to the extent of Rs. 57,900 without giving the benefit of concession based on the recognition certificate. This view of the assessing authority was upheld in

appeal but the tax was reduced to Rs. 35,640. The assessee went up in revision. The Judge (Revisions), relying upon a decision of this Court in *Chittarmal Ram Dayal v. Commissioner of Sales Tax, Uttar Pradesh 1980 UPTC 274*, held that the concessional rate of tax could not be withheld even on this part of the turnover as there was no violation of the provisions of Section 4-B(6) of the U. P. Sales Tax Act. Aggrieved, the department has come to this Court in revision. ,;

3. On facts, the position is clear that of the quantity of oil-seeds purchased by the assessee under form III-B the entire production was sold within the State of Uttar Pradesh or in the course of inter-State sales. The purchases of oil-seeds under form III-B were to the extent of Rs. 2,97,93,000. From this quantity of oil-seeds, not much more than Rs. 3,00,00,000 worth of oil could be produced keeping in mind that the assessing authorities had themselves estimated that oil worth Rs. 22,00,000 and odd could be produced from oil-seeds worth Rs. 19,00,000 and odd. The actual sales of oil by the assessee within the State of Uttar Pradesh or in the course of inter-State trade were more than Rs. 6,00,00,000. Thus, it could be said that the entire production of oil from oil-seeds purchased under form III-B was sold within the State of Uttar Pradesh or in the course of inter-State trade.

4. The assessee, however, did not maintain separate accounts of oil produced from the two different sources of oil-seeds. On this aspect, the previous decision of this Court in *Chittarmal Ram Dayal [1983] 52 STC 18; 1980 UPTC 274* becomes important. In that case, the learned Judge examined the provisions of Section 4-B of the Act and observed :

The requirement under Sub-section (2) (of Section 4-B) of the U. P. Act is that a dealer who requires any goods mentioned in Sub-section (1) for use as raw material for the purpose of manufacturing notified goods may apply for a recognition certificate. The goods manufactured out of the raw material should, however, be intended to be sold in the State or in the course of inter-State trade or commerce. The words "such notified goods" are important. The requirement of selling in the State or in the course of inter-State trade or commerce is confined to such notified goods as are manufactured out of raw material obtained against the recognition certificate, and not to notified goods manufactured otherwise. In Sub-section (6) the words "notified goods" have to be understood in the same sense as in Sub-section (2), that is, such notified goods as are manufactured out of raw material purchased against the recognition certificate. A reading of these two sub-sections together, therefore, hardly leaves any room for doubt that breach so as to disentitle an assessee from claiming the benefit of concessional rate of tax should be in respect of goods manufactured out of raw material purchased against the recognition certificate. The reason is obvious. If a particular goods has been notified it shall continue to be so whether it is manufactured as provided in Sub-section (2) or otherwise. Similarly, sale of goods notified whether manufactured out of raw material obtained against the recognition certificate or otherwise is a sale of notified goods, but the benefit of

concessional rate of tax on the purchase of raw material is available only if condition of Sub-section (2) has been complied. Sale of oil is sale of notified goods whether it is manufactured by an assessee out of oil-seed obtained against the recognition certificate or otherwise. The penalty under Sub-section (6) of loss of concessional rate of tax is to be considered in respect of only such oil as is manufactured out of oil- seed purchased under Sub-section (2) and not to oil produced out of oil-seed obtained from other source. So long as oil manufactured out of oil-seed obtained on concessional rate was sold in the State or in inter-State trade or commerce, the assessee was entitled to benefit under the law. The objective of Section 4-B is to encourage manufacture of notified goods and not to restrict it. It does not prohibit the assessee from manufacturing goods apart from raw material obtained against the recognition certificate. It would be contrary to the inherent purpose of encouraging manufacture of notified goods. In a case where production of oil or finished goods is more than what could have been out of raw material purchased against the recognition certificate, as is in this case, it should present no difficulty because the assessee having purchased raw material, manufactured goods out of it and sold it either in the State or inter-State, it complied with the recognition certificate and did not commit any breach of subsection (6). The department cannot be concerned with goods manufactured out of raw material purchased otherwise. The Act or the Rules do not restrict an assessee holding a recognition certificate from carrying on business otherwise. The anxiety should be to see that raw material obtained was not abused or utilised for a purpose other than that for which it was obtained. It is true that the assessee did not maintain separate account of extraction of oil from two sources but that does not make any difference as it having been established that oil extracted was more, the burden on the assessee stood discharged and it shall be taken that oil sold in the State or inter-State was out of oil extracted from oilseeds obtained against the recognition certificate and the remaining was manufactured out of oil purchased otherwise. In this view of the matter, the principle of determining liability on proportional extraction and sale does not arise.

5. The learned Judge dealt with the decision of the Bombay High Court in Commissioner of Sales Tax Vs. Berar Oil Industries, and held that in that case a pro rata formula was applied because the sales of notified goods were less than what it should have been. That decision is of no application to a case where the sale of notified goods is more than what could have been. Here out of a total production of 6? crores worth vegetable oil sales worth only Rs. 22,69,015 were outside the State. The rest of the entire production was admittedly sold within the State or in the course of inter-State trade. Hence the sale of notified goods was in accordance with the provisions and not in violation of it, looked at from any point of view. Consequently the decision of this Court in Chittarmal Ram Dayal Vs. Commissioner of Sales Tax, is fully applicable on facts. The Bombay decision is distinguishable on facts. The Tribunal took a correct view of the law.

6. The revision has no merits and is accordingly dismissed with costs which are

assessed at Rs. 200.