(1970) 10 AHC CK 0012

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 141 and 142 of 1970

Commissioner, Sales Tax — APPELLANT

Vs

Ram Saran Jagannath — RESPONDENT

Date of Decision : 20-10-1970

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3

Citation : (1973) 30 STC 272

Hon'ble Judges : R.S. Pathak, J;R.L. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The Additional Judge (Revisions), Sales Tax, has referred the following question :

Whether on the facts and circumstances of the case, the assessee was entitled to exemption from the payment of sales tax under Notification No. ST-4485/X dated 14th December, 1957, on his sales of imported mill-made cloth for the period from 14th December, 1957, to 31st March, 1958, when he failed to furnish proof to the satisfaction of the assessing authority that the additional excise duty had been paid on the said cloth ?

2. The respondent, M/s. Ram Saran Jagannath, deals in mill-made cloth. He was assessed to tax under the U.P. Sales Tax Act for the year 1957-58. An appeal by the respondent was dismissed. He applied in revision. His principal submission during the hearing of the revision application was that the turnover of mill-made cloth was exempt from tax for the period 14th December, 1957, to 31st March, 1958, by reason of Notification No. 4485/X dated 14th December, 1957. The Additional Judge (Revisions) accepted the plea, and granted relief. At the instance of the Commissioner of Sales Tax, the Additional Judge (Revisions) has made the present reference.

3. The connected reference (S.T.R. No. 142 of 1970) has been made on similar

facts, and it relates to the period 1st April, 1958, to 30th June, 1958, which falls within the assessment year 1958-59. It raises an identical question.

4. On 24th December, 1957, Parliament enacted the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The object of the legislation was to impose an additional duty of excise on certain goods of special importance in lieu of sales tax levied by the Union and the States on those goods. The reason for the legislation was explained by the Supreme Court in Chhotabhai Jethabhai Patel and Co. Vs. State of Uttar Pradesh, as follows :

Because of the difficulties experienced in inter-State sales on a large scale of certain articles the Central Government with the concurrence of the State Governments imposed an enhanced Central excise duty on the sale of those articles which was to be equivalent to and substitute for the sales tax levied upon them, and the sum so collected by the imposition of the enhanced Central excise duty on those articles was to be distributed by the Central Government to the State Governments concerned and they (the. State Governments) agreed to exempt those articles from sales tax. As a, result of this arrangement the Additional Duties of Excise (Goods of Special Importance) Act (Act 58 of 1957) was passed by Parliament.

5. Section 3 of the Act provided for the levy of an additional excise duty in respect of, inter alia, cotton fabrics, rayon or artificial silk fabrics and woollen fabrics, produced or manufactured in India and on all such goods lying in stock within the precincts of a factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto. ''

6. Section 3 of the U.P. Sales Tax Act charges tax for each assessment year at a specified rate on the turnover of that year. Section 4(1) exempts the turnover of certain commodities from the tax. Clause (a) enumerates the commodities respecting which there is absolute exemption, and Clause (b) provides for the exemption of:

The sale of any goods by the All-India Spinners'' Association or Gandhi Ashram, Meerut, and their branches or such other persons or class of persons, as the State Government may from time to time exempt on such conditions and on payment of such fees, if any, not exceeding eight thousand rupees annually, as may be specified by notification in the Official Gazette.

7. In order to give effect to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Government of Uttar Pradesh issued Notification No. ST-4485/X dated 14th December, 1957. It was issued u/s 4(1)(b) of the U.P. Sales Tax Act. It provided that no tax would be payable under the U.P. Sales Tax Act with effect from 14th December, 1957, by dealers in respect of mill-made textiles described therein provided that the additional excise duty leviable thereon from the closing of business on 13th December, 1957, was paid on such goods and that the dealers thereof furnished proof to the satisfaction of the

assessing authority that such duty had been paid.

8. It is clear that having regard to the context in which the notification was issued and to the terms of the notification the State Government proposed to exempt the turnover of only those goods respecting which additional excise duty had been levied, The history of the legislation, to effectuate which the notification was issued, has already been set out. It was intended to substitute the levy of sales tax by an additional excise duty. Only those goods were intended to be exempt from sales tax in respect of which the additional excise duty had been imposed. The notification did not grant an unconditional exemption. It was issued u/s 4(1)(b) and exemption in respect of the turnover of such goods only regarding which the dealer had -paid the additional Central excise duty and had satisfied the assessing authority of such payment. No exemption was contemplated in respect of goods which did not attract that levy.

9. The assessee contended before the Additional Judge (Revisions) that the mill-made cloth sold by him was exempt, from sales tax by virtue of the notification. It was urged that the cloth was imported by him and was lying in his stock ; and therefore he was not liable to pay the additional excise duty and no question arose of his proving such payment. The contention found favour with the Additional Judge (Revisions). He relied upon the decision of the Supreme Court in Innamuri Gopalan and Others Vs. State of Andhra Pradesh and Another, . In our opinion, the statutory provisions considered by the Supreme Court in that case are distinguishable. A notification granting exemption from sales tax was issued by the Andhra Pradesh General Sales Tax Act, 1957, in the following terms:

...the Governor of Andhra Pradesh hereby exempts from the tax payable under the said Act, with effect on and from the 14th December, 1957, the sale or purchase of any of the goods appended hereto :

Provided that in the case of any class of such goods in respect of which additional duties of excise are leviable by the Central Government under clause 3 of the Additional Duties of Excise (Levy and Distribution) Bill, 1957...the exemption shall be subject to the following conditions :

(1) The dealer shall prove to the satisfaction of the assessing authority that additional duties of excise have been so levied and collected on such goods by the Central Government, in default of which the dealer shall be liable to pay the tax under the said Act in respect such goods.

10. The assessees in that case were dealers in textile goods. They claimed exemption from sales tax in respect of goods in stock with them on 14th December, 1957. It was admitted that the goods in the possession of the assessees were not subject to excise duty or additional excise duty. The Supreme Court observed :

The 1st paragraph of the notification grants an exemption which, if it stood alone, provides that no sales tax would be leviable on and from December 14, 1957, on the sale or purchase of every variety of textiles. This, however, is subject to a proviso which undoubtedly cuts into and restricts the operation of the exemption clause and we have to determine the extent of the restriction of the area carved out. A plain and prima facie reading...would appear to show that an exception is made in cases where additional duties of excise are ''leviable'' by the Central Government under clause 3 of the Bill. In such cases the conditions which follow the proviso have to be satisfied, viz., that the additional duties of excise have to be proved to have been paid by the dealer in order to claim the benefit of the exemption. It is now common ground that no additional duty of excise was leviable in respect of the goods in the possession of the appellants and consequently there is no question of the appellants having to prove to the satisfaction of the assessing authorities that such duties had been levied and collected from them. This would be the plain reading of the section.

11. The Supreme Court held that the goods in stock of the assessees were exempt from sales tax by reason of the first paragraph of the notification. The decision appears to have proceeded essentially on the basis that the first paragraph of the notification exempted a number of commodities from sales tax, and then the proviso which followed picked out those commodities in respect of which additional excise duty had been levied and declared that they would be exempt only if the duty had been paid. As the operation of the proviso left unaffected those goods which did not attract additional excise duty, they continued to enjoy unconditional exemption. This is borne out by the following observations of the Supreme Court:

In the case before us the operative words of the notification are to be found in the 1st paragraph granting the exemption and it was not disputed that the appellants were within that provision. The next question would be as to whether the exemption to which the appellants were manifestly entitled under the 1st paragraph of the notification they have been deprived of by the operation of the proviso. If the proviso on its proper construction, as we have endeavoured to point out earlier, cannot apply to cases where an additional duty of excise is not leviable under clause 3 of the Bill, it would follow that the operation of the exemption is unaffected by the proviso. The appellants were, therefore, entitled to the relief from sales tax granted by the notification dated December 13, 1957.

12. In the case before us, the notification dated 14th December, 1957, does not contain any provision granting unconditional exemption. We have already pointed that it was a notification u/s 4(1)(b) granting conditional exemption, the condition being that additional excise duty had been paid and the assessing authority was satisfied of such payment. The exemption was confined to goods concerning which those conditions came into play. Evidently, they could be those goods only which attracted additional excise duty.

13. The distinction between the notification considered in Innamuri Gopalan and Others Vs. State of Andhra Pradesh and Another, and the notification before us was also examined by us in Anwar Khan Mehboob Co. v. Commissioner of Sales

Tax [1969] 24 S.T.C. 20, where the question arose whether the turnover of biris was exempt from sales tax under that notification. Upon similar reasons, we held in that case that the turnover of biris was not exempt because the bins in question were not subject to additional excise duty at all.

14. Upon the view that the mill-made cloth sold by the assessee did not fall within the scope of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, we hold that the notification of 14th December, 1957, could not be invoked at all, and the assessee was, therefore, not entitled to the exemption claimed by him. No question arose of the exemption being denied on the ground that he had failed to prove payment of the additional excise duty. He was not entitled to the exemption because it did not extend at all to the turnover of the mill-made cloth sold by him. We answer the question referred in each reference accordingly.

15. As the assessee has not appeared before us, we make no order as to costs. The fee of learned counsel for the Commissioner is assessed at Rs. 50 in each case.