
(1982) 07 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 333 (Tax) , 337, 338, 339, 340, 341 and 342 of 1977

Deep Chand Goyal and Another

APPELLANT

Vs

The Sales Tax Officer and Another

RESPONDENT

Date of Decision : 30-07-1982

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
General Clauses Act, 1897 — Section 24

Citation : (1983) 52 STC 110

Hon'ble Judges : R.R. Rastogi, J;K.N. Seth, J

Bench : Division Bench

Advocate : Bharatji Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

R.R. Rastogi, J.—This bunch of writ petitions can be conveniently taken up and disposed of together. These petitions seek to challenge the notice dated 21st July, 1977, issued by the Sales Tax Officer, Sector II, Budaun, in respect of the assessment years 1973-74 to 1977-78 for initiating penalty proceedings u/s 15-A(1)(a) of the U. P. Sales Tax Act, hereafter "the Act".

2. The facts set out in the petitions are almost similar. We would set out the facts contained in Writ Petition No. 333 of 1977. Petitioner No. 1, M/s. Deep Chand Goyal, Babrala, Budaun, is a registered firm of which petitioner No. 2, Deep Chand Goyal, is one of the partners. This firm is engaged in carrying on business in purchase and sale of binaula, which is a cotton seed. The turnover in respect of sales of cotton seed had been exempted u/s 4 of the Act. But, by means of Notification No. ST II-2526/X--6(8)-73 dated 1st May, 1973, issued u/s 3-D of the Act, oil-seeds had been made liable to tax at the point of first purchase. For the assessment year 1973-74 the Sales Tax Officer, Sector II, Budaun, respondent No. 1, exempted the turnover of cotton seed sold by the petitioner.

However, on 21st July, 1977, he issued a notice u/s 15-A (1)(a) of the Act requiring the petitioners to show cause as to why penalty should not be imposed for not depositing the tax on the turnover of cotton seed in view of the notification aforesaid. This notice has been issued for the assessment years 1973-74 to 1977-78. The petitioners challenged this notice, inter alia, on the grounds that since the turnover in respect of binaula stood exempted u/s 4 of the Act, the petitioners were not required to deposit any tax in respect thereof and respondent No. 1 had no jurisdiction to initiate penalty proceedings u/s 15-A(1) (a) of the Act. Another ground, on which the notice has been challenged, is that a single notice for the assessment years 1973-74 to 1977-78 is illegal and bad.

3. A counter-affidavit has been filed on behalf of the respondents in which by reference to the various notifications it has been sought to make out that the turnover in respect of sales of cotton seed was exempt up to 30th April, 1973. Thereafter from 1st May, 1973, to 4th April, 1975, the sales were exempt but first purchases were taxable at 3 per cent u/s 3-D of the Act. The same position continued up to 1st October, 1975, and thereafter from 2nd October, 1975, to 31st January, 1978, the turnover of sales of cotton seeds was made taxable at 4 per cent and thereafter up till now again purchase tax is payable at 4 per cent. It is thus claimed that the impugned notice was legal and valid.

4. The Uttar Pradesh Sales Tax Act, as originally enacted, provided for the levy of tax on the sale of goods in Uttar Pradesh. Section 3 of the Act provided for liability of tax under the Act while Section 4 provided for exemption from tax. This section, as it stood before its substitution by the Uttar Pradesh Sales Tax (Amendment) Act, 1974, with retrospective effect from 31st March, 1956, stood as under:

4. (1) No tax under this Act shall be payable on--(a) the sale of water, milk, salt, newspapers and motor spirits as defined in the U. P. Sales of Motor Spirit and Diesel Oil Taxation Act, 1939, and any other goods which the State Government may, by notification in the official Gazette exempt;

(b) 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 four thousand rupees annually, as may be specified by notification in the official Gazette.

(2) The provisions of Sub-section (1) shall not apply to transactions of forward contracts referred to in Section 3-B.

5. Section 3-D was inserted in the Act by the Amendment Act 19 of 1958 and it provided for levy of purchase tax. With effect from 1st October, 1964, this section was substituted providing levy of purchase or sales tax on certain goods, and in the preamble to the Act as well an amendment was made whereby the words "sale of goods" were substituted by "sale or purchase of goods". In other words with effect from 1st October, 1964, the Uttar Pradesh Sales Tax Act, 1948,

has provided for the levy of tax on the sale or purchase of goods in Uttar Pradesh. The amendment in Section 4 was, however, made by the Uttar Pradesh Sales Tax (Amendment) Act, 1974, whereby this section was substituted. In the substituted section, the class of goods the sales of which were exempted from tax was mentioned and in Clause (b) the sale or purchase of any goods by certain class of persons was exempted. Both sections 3-D and 4 have undergone further changes but it is not necessary to refer to them. Suffice it to say that the Act as originally enacted provided for levy of tax on the sale of goods in Uttar Pradesh. From 1964 it also provided for levy of tax on purchase of goods. u/s 4 certain class of goods and class of persons were exempted from tax. By subsequent amendment exemption from tax on purchase of goods also was extended to certain class of persons.

6. By Notification No. ST--911/X dated 31st March, 1956, with effect from 1st April, 1956, the goods specified in List II appended thereto were exempted from payment of tax. Entry No. 3 of List II provided for "cattle fodder including green fodder". Subsequently by Notification No. ST--3471/X dated 16th July, 1956, also issued u/s 4 of the Act the words "cattle fodder including green fodder" occurring in entry No. 3 aforesaid were substituted by the words "cattle fodder including green fodder, chuni, bhusi, chhilka, chokar, cotton seed, gowar, and oilcake" with effect from 1st April, 1956. In other words "cotton seed" was treated as cattle fodder and the sale thereof was exempted from tax under the Act.

7. By Act No. 61 of 1972 the Central Sales Tax Act was amended and in Section 14(vi) thereof the definition of "oil-seed" was substituted with effect from 1st April, 1973. The amended definition reads ;

Oil-seeds, that is to say,--

(i)...

(ii)...

(iii) cotton seed.

8. Thus, by this definition cotton seed was to be treated as oil-seed. Anyhow exemption granted to cotton seed under the aforesaid notification of 1956 was not withdrawn. By Notification No. ST-II-2526/X--6(8)-1973 dated 1st May, 1973, in exercise of the powers under Sub-section (1) of Section 3-D of the Act read with Section 21 of the U. P. General Clauses Act, 1904, the first purchases in respect of the goods mentioned in column 2 of the List attached were made liable to tax under Clause (b) of Section 3-D of the Act. Entry 2 of the List read as under :

2. Oil-seeds, as defined in Clause (vi) of Section 14 of the Central Sales Tax Act, 1956.

9. The rate of tax was 3 per cent. By this notification, therefore, from 1st April, 1973, tax was levied on purchases of oil-seeds as defined in Section 14(vi) of

the Central Sales Tax Act. In other words, cotton seeds were also brought in the net of purchase tax but, as noted above, the exemption granted by the earlier notifications was not withdrawn. This Notification No. 2526 dated 1st May, 1973, was rescinded with effect from 2nd October, 1975, by means of Notification No. ST-8447 dated 1st October, 1975, and simultaneously by means of another Notification No. ST-II-8448 of even date "oil-seeds" as defined in Section 14 of the Central Sales Tax Act, 1956, were made taxable at the rate of 4 per cent at the point of sale to the consumers. Subsequently, by means of Notification No. ST-II-8715 dated 31st January, 1978, the entry relating to oil-seeds in the notification aforesaid was deleted and simultaneously by Notification No. ST-II-4089 dated 31st January, 1978, oil-seeds as defined u/s 14 of the Central Sales Tax Act were again made taxable at the point of first purchase u/s 3-D(i) of the Act at the rate of 4 per cent with effect from 1st February, 1978. Entry No. 3 of List II of Notification No. ST-911 dated 31st March, 1956, was substituted by Notification No. 2994/X-6(7)-73 dated 3rd April, 1975, and this entry now reads : "Cattle fodder including green fodder, chuni, bhusi, chhilka, chokar, and gowar, but not including khali (oilcake), rice polish, rice bran or rice husk."

10. What thus comes out is that u/s 4 of the Act, originally exemption was granted from 1st April, 1956, to cattle fodder including green fodder. By means of a subsequent amendment cattle fodder was stated to mean green fodder, chuni, bhusi, chhilka, chokar, cotton seed, gowar, and oilcake. This amendment was to take effect from 1st April, 1956, itself and now with effect from 5th April, 1975, this entry has been amended so that cotton seed does not find place within the definition of cattle fodder. It is an inclusive definition. Some of the goods have been specifically mentioned for inclusion in the definition of cattle fodder and some have been specifically excluded from it. Thus, till 5th April, 1975, exemption granted in respect of cotton seed had not been withdrawn and the question is as to whether from 5th April, 1975, it can be said that the exemption granted to cotton seed has been withdrawn. There is a distinction between the provision relating to exemption and non-liability to tax. An exemption can be granted only in respect of goods which are liable to tax. The sales and purchases of such goods would have to be included in the gross turnover and because of the exemption, deduction would be allowed in order to arrive at the net turnover while in regard to non-liability to tax such turnover will not be included in the gross or the net turnover. The distinction has been lucidly spelt out by the Supreme Court in *A. V. Fernandez v. State of Kerala* [1957] 8 STC 561 (SC). It has been observed on page 574 :

There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are *Prima facie* liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in

order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed.

11. It is thus settled that transactions or sales which enjoy exemption have to be included in the gross turnover but they are exempted when the net turnover is calculated and as for non-liability to tax, the turnover in respect of such transactions or sales is not included in the gross or the net turnover. An exemption can be granted only in respect of goods which are liable to tax: see *Commissioner of Sales Tax v. Rita Ice Cream Co.* 1981 UPTC 1239. In that case the question was regarding the taxability of turnover of ice-cream and lassi. Such turnover stood exempted u/s 4 of the Act. It was made taxable u/s 3-A. The view taken was that the turnover of these items could not be included in the net taxable turnover because of the exemption granted under notification issued u/s 4 in respect of milk products and ice-cream and lassi were items of milk products.

12. It was submitted by Sri Bharatji Agarwal, the learned counsel for the petitioners, that once a notification is issued in exercise of powers conferred u/s 4 of the Act, then irrespective of changes made in Section 4, that exemption would continue. In our opinion, this submission is only partially correct. If once an exemption is granted u/s 4 of the Act in respect of any class of goods or class of persons, then unless such exemption is withdrawn it shall remain in force. In regard to cattle fodder we have seen that exemption was granted with effect from 1st April, 1956. Cattle fodder originally included green fodder only. Subsequently, by Notification No. 3471 dated 16th July, 1956, the definition of cattle fodder was extended to include not only green fodder but cotton seed as well along with chuni, bhusi, etc. This amended definition "was given effect from 1st, April, 1956. In other words, cotton seed was exempted from levy of sales tax from that date. By means of an amendment in the Central Sales Tax Act in the definition of "oil-seed" as contained in Section 14(vi) "cotton seed" was to be treated as an oil-seed. This came into effect from 1st April, 1973, and by Notification No. ST-2526 dated 1st May, 1973, purchase tax was levied on oil-seeds u/s 3-D of the Act. Anyhow, the exemption granted to cotton seed under the notifications of 1956 was not withdrawn. As noted above entry 3 of List II of that Notification No. ST-911 dated 31st March, 1956, was substituted by Notification No. 2994 dated 3rd April, 1975, and now cotton seed has been excluded from the definition of cattle fodder. The position which thus emerges is that after the enforcement of this notification from 5th April, 1975, cotton seed cannot be treated as cattle fodder and it is no longer exempt from levy of tax under the Act.

13. It is correct that the word "included" is a word of extension and generally it is used in that sense ; but, as laid down by the Supreme Court in *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, , this is so when it is said to include things that would not properly fall within its ordinary connotation. Apart from this there is no inflexible rule that the word "include" should be read always as a word of extension without reference to the context.

14. It would be seen that in the definition of "cattle fodder" as contained in Notification No. 2994 dated 3rd April, 1975, the things which cattle fodder is said to include more properly fall within its ordinary connotation. Green fodder, chuni, bhusi, chhilka, chohar and gowar as understood in ordinary common parlance are items of cattle fodder. As regards cotton seed the same cannot hold true. In the petitions, as well, no averment has been made that in ordinary common parlance cotton seed is treated as a cattle fodder.

15. The learned counsel relying on Section 24 of the General Clauses Act urged that the earlier notification granting exemption shall continue in force because it is not inconsistent with the subsequent notification amending the definition of cattle fodder and since there is no express withdrawal of exemption in respect of cotton seed, that exemption shall continue to remain in force. In support of this legal proposition reliance was placed on *Poona Electric Supply Co. Ltd. and Another Vs. State*, , para 13, *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, , and *Neel v. State of West Bengal* AIR 1977 SC 2066, para 9. There can be no dispute in so far as the legal proposition is concerned that any notification, rule, etc., made under the repealed Act shall continue in force provided it is not inconsistent with the re-enacted provision and unless there is an express provision in the re-enacted provision to the effect that it shall not so continue in force. This principle, however, does not apply to the present case. We have indicated above that earlier the definition of cattle fodder included cotton seed but with effect from 5th April, 1975, the amended definition of cattle fodder does not include it. The exemption granted to cotton seed, therefore, stands withdrawn. In the legislative context which we have mentioned in detail above, it would become clear that the exemption has been expressly withdrawn. We are, therefore, of the opinion that with effect from 5th April, 1975, cotton seed does not enjoy exemption from the levy of tax under the U. P. Sales Tax Act. In other words, the initiation of proceedings u/s 15-A(1)(a) of the Act, in so far as the assessment years 1975-76, 1976-77 and 1977-78 are concerned, is valid in law. Of course, for the assessment years 1973-74 and 1974-75 the petitioners are entitled to succeed.

16. It was next contended that even though proceedings for each assessment year are separate only one notice was given in respect of the assessment years 1973-74 to 1977-78, and hence the notice is bad. We do not find any merit in this contention. It could not be shown as to which provision of the Act has been flouted by the action of respondent No. 1 in giving only one notice for several

years. The facts and circumstances relating to these years being common, we do not think that the giving of one notice in respect thereof for initiating penalty proceedings suffered from any legal infirmity.

17. In the result, therefore, these petitions are allowed in part, inasmuch as the impugned notices issued u/s 15-A(1)(a) of the U. P. Sales Tax Act for the assessment years 1973-74 and 1974-75 only are quashed and as for the assessment years 1975-76, 1976-77 and 1977-78 the initiation of proceedings being valid the petitions are dismissed. In view of the divided success parties are directed to bear their own costs.