
(2009) 03 P&H CK 0063
In the Punjab And Haryana At Chandigarh

Excise and Taxation Commissioner

APPELLANT

Vs

Print-O-Pack

RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 42(2)(b)

Citation : (2009) 26 VST 667

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—At the instance of the petitioner, an application u/s 42(2)(b) of the Haryana General Sales Tax Act, 1973 (for brevity, "the Act") read with Section 9(2) of the Central Sales Tax Act, 1956 ("the CST Act") was filed before this Court being S.T.C. No. 1 of 2003 claiming reference of various questions of law for the opinion of this court. A Division Bench of this Court after considering the submissions made has referred vide order dated July 17, 2003 the following question of law for the opinion of this court:

Whether, in the facts and circumstances of the case, "aluminium foil" is covered under the expression "sheets" and whether the "aluminium foil" purchased and used as a raw material by the respondent and the manufactured products, i.e., wrapping and packing material for medicines are two different commercial commodities in the common parlance and whether the wrapping and packing material for medicines sold by respondent No. 1 is covered by notification dated November 25, 1994?

2. In pursuance of the directions issued by this Court along with record a statement of the facts has been drawn and the relevant record has been sent to facilitate adjudication of the aforesaid question.

3. Brief facts necessary for disposal of the aforesaid issue may first be noticed. The dealer-respondent deals with wrapping and packing material for medicines.

The Excise and Taxation Commissioner, Faridabad, framed his assessment in respect of assessment year 1996-97 vide its order dated May 22, 1998 by treating the "aluminium foil" as "aluminium sheet" which is a non-ferrous metal. Accordingly, tax in respect of sale of "aluminium foil" was calculated at the rate of two per cent on the basis of entry No. 13 of the Notification bearing No. SO46/HA20/73/S15/96 issued u/s 15 of the Act and Notification No. 108 CA/74/56/S8/94 dated November 25, 1994 issued under the CST Act. However, the revisional authority-cum-Deputy Excise and Taxation Commissioner, Faridabad, on its own motion revised the assessment and concluded that the "aluminium foil" is not covered by entry No. 13 of the notification dated March 29, 1996 issued u/s 15 of the Act and therefore, it was liable to tax at the rate of nine per cent up to July 4, 1996 and thereafter at the rate of 10 per cent being a different marketable commodity which is general goods. Accordingly, the additional demand of Rs. 16,42,127 was created by revising the assessment order dated May 22, 1998 in exercise of power u/s 40 of the Act.

4. The order of the revisional authority dated August 14, 2000 was challenged before the Sales Tax Tribunal, Haryana, and the Tribunal reached the conclusion that the expression "aluminium foil" is covered by entry No. 13 of the notification dated March 29, 1996 issued u/s 15 of the Act. The Tribunal has held that "aluminium foil" is nothing but an "aluminium sheet". The Tribunal has placed reliance on various judgments and also opined that the assessing authority has been consistently treating the "aluminium foil" as "aluminium sheet" covered by entry No. 13 on the basis of notification dated March 29, 1996 issued u/s 15 of the Act. Those orders have attained finality and therefore, different view taken by the revisional authority would not be permissible. It is in the aforesaid facts and circumstances that the question of law has emerged and is referred for the opinion of this court.

5. Ms. Ritu Bahri, learned Counsel for the Revenue has argued that the order of the revisional authority is absolutely correct and that of the Tribunal is unsustainable. She has referred to the clarification issued by the Prohibition, Excise and Taxation Commissioner, Haryana. She has further placed reliance on entry No. 13 of the notification dated March 29, 1996 and argued that in common parlance "aluminium foil" and "aluminium sheet" are two different marketable commodities and therefore those two items cannot be considered identical. She has emphasized that end-use of "aluminium foil" is entirely different from "aluminium sheet". She has also placed reliance on a Judgment of the Supreme Court in the case of Collector of Customs, Bombay Vs. K. Mohan and Co. Exports, and submitted that foils, sheets and films are totally different from each other. Therefore, they are liable to be treated differently and taxable at the rate of nine per cent or 10 per cent, the rates which were applicable during the relevant period. According to the learned State counsel in entry No. 13 of the notification dated March 29, 1996 the State Legislature has specified non-ferrous industrial metal products like ingots, bars, slabs, sheets, circles, strips, etc., for levy of tax at the rate of two per cent.

6. Mr. Sunil Panwar, learned Counsel for the dealer-respondent, however, argued that the Tribunal has taken the correct view. The "aluminium foil" in common parlance can easily be treated as "aluminium sheets" which is a thin non-ferrous sheet of aluminium. In that regard he has placed reliance on the Random House Unabridged Dictionary which defines the word "foil" to mean metal in the form of very thin sheet; "aluminium foil". According to the learned Counsel the expression "sheet" used in entry 13 with regard to non-ferrous metal would necessarily mean that aluminium is a non-ferrous metal and foil of such a non-ferrous metal is nothing else but a "thin sheet" as defined in the Random House Unabridged Dictionary. He has also argued that once the fact-finding authority like the Assessing Authority in the present case has come to a conclusion within the judicial parameters then the appellate authority or revisional authority cannot take a view different from the one taken by the fact-finding authority merely because another view is possible. In that regard, he has placed reliance on the observations made in para 9 of the judgment of the Supreme Court in the case of Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others, . The aforesaid view has also been affirmed by the subsequent judgment rendered in the case of Collector of Central Excise, Coimbatore Vs. Protein Products of India Ltd., . He has also controverted the argument of the learned State Counsel based on the judgment of the Supreme Court in Collector of Customs, Bombay Vs. K. Mohan and Co. Exports, by urging that in the aforesaid case the question before the Supreme Court was entirely different. It was considering whether metalised polyester films imported by the assessee were films. It was in that context that the observation of the Supreme Court has come that any person going to the market can ask for these films by describing them either as foils or sheets. Therefore, he has submitted that the aforesaid judgment has no application to the facts of the present case.

7. Having heard learned Counsel for the parties at a considerable length, perusing the record with their able assistance and the statute, we find that it would be appropriate to read entry No. 13 of the notification dated March 29, 1996 which is as under:

Non-ferrous industrial product, i.e. ingots, bars, slabs, sheets, circles, strips, rods, wires (not including electric wires and super enamelled copper wire), tubes, angles and scrap.

8. The aforesaid entry has been incorporated in the notification dated March 29, 1996 issued u/s 15 of the Act. The non-ferrous industrial products have been defined to include bars, slabs and sheets. It is undisputed that aluminium is a non-ferrous metal and foils made of aluminium is nothing else but thin aluminium sheet. The Tribunal has rightly relied on the Random House Unabridged Dictionary (Second Edition) for definition of the word "foil" which has been defined as a metal in the form of very thin sheet; aluminium foil. We are also in agreement with the view taken by the Bombay High Court in the case of Commissioner of Sales Tax Vs. Voltas Ltd., . A Division Bench of the Bombay High

Court has held that until and unless "aluminium foil" was coated on to the cheese cubes it had no definite form or shape except for thin flat sheet. It was only when it was coated on to the cheese cube that it took shape of the cheese cube. The mere fact that the dealer-respondent has subjected the foil to printing and lacquering would not result into a conclusion that it loses its character as "aluminium foil". Moreover, the Assessing Authority has taken a particular view on facts. Merely because another view is possible, it cannot constitute a basis for exercise of revisional jurisdiction u/s 40 of the Act. In that regard, the reliance of the learned Counsel for the petitioner or para No. 9 of the judgment of the Supreme Court in the case of Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others, is meritorious and reads thus : (at page 206 of STC)

The expression "wool wastes" is not defined in the relevant Act or in the notification. This expression is not an expression of Article It may be understood as in most of financial measures where the expressions are not defined in a technical or preconceived basis but on the basis of trade understanding of those who deal with these goods as mentioned hereinbefore. The Tribunal proceeded on that basis. The Tribunal has not ignored the Technical Committee's observations. We have noted in brief the Tribunal's handling of that report. The Tribunal has neither ignored the observations of C.C.C.N. nor the Board's Tariff Advice. These observations have been examined in the light of the facts and circumstances of the case. One of the basic factual dispute was long length of silver tops. Having regard to the long length, we find that the Tribunal was not in error. Whether a particular item and the particular goods in this case are wool wastes, should be so considered or not is primarily and essentially a question of fact. The decision on such a question of fact must be arrived at without ignoring the material and relevant facts and bearing in mind the correct legal principles. Judged by these yardsticks the finding of the Tribunal in this case is unassailable. We are, however, of the view that if a fact-finding authority comes to a conclusion within the above parameters honestly and bona fide, the fact that another authority, be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion, is no ground to interfere with that finding in an appeal from such a finding. In the new scheme of things, the Tribunals have been entrusted with the authority and the jurisdiction to decide the questions involving determination of the rate of duty of excise or to the value of goods for purposes of assessment. An appeal has been provided to this Court to oversee that the subordinate Tribunals act within the law. Merely because another view might be possible by a competent court of law is no ground for interference u/s 130E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation imposed in such appeals. The Tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the Tribunal has acted bona fide with the natural justice by a speaking order, in our opinion, even if superior court feels that another view is possible, that is no ground for

substitution of that view in exercise of power under Clause (b) of Section 130E of the Act.

(emphasis here italicised in original)

9. The aforesaid para fully enunciates the principle that merely because another view is possible, the revisional or appellate authority would not be competent to reverse the orders of the Assessing Authority.

10. We are further of the view that the Assessing Authority consistently has taken the "aluminium foil" to mean "aluminium sheet". The aforesaid orders of the Assessing Authority have been accepted by the Revenue without being challenged either before the Appellate Authority or the Tribunal. Those orders have also attained finality. Therefore, it is not possible to permit re-opening of that issue. The aforesaid principles have been laid down by the Supreme Court in the case of M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax, . The aforesaid judgment has also been affirmed in the case of Municipal Corporation of City of Thane Vs. Vidyut Metallica Ltd. and Another, Therefore, the Tribunal has taken the correct view and the question of law referred to this Court is liable to be answered against the Revenue and in favour of the Assessee dealer-respondent.

11. For the reasons afore-mentioned, the question of law is answered against the Revenue and in favour of the dealer-respondent.