
(2008) 03 SHI CK 0002
In the High Court Of Himachal Pradesh

Excise of Taxation Commissioner

APPELLANT

Vs

Dhani Ram and Sons

RESPONDENT

Date of Decision : 17-03-2008

Acts Referred:

Himachal Pradesh General Sales Tax Act, 1968 — Section 15, 15(1), 5(A)

Citation : (2009) 1 ShimLC 515

Hon'ble Judges : Surjit Singh, J; R.B. Misra, J

Bench : Division Bench

Judgement

R.B. Misra and Surjit Singh, JJ.—Present reference, u/s 33 of the Himachal Pradesh General Sales Tax Act, 1968, as amended from time to time, has been made by Financial Commissioner (Appeals), to the Government of Himachal Pradesh. The issues referred for our judgment are as follows:

(i) Whether an assessment can be reopened by the Assessing Authority u/s 15 of HPGST Act in the absence of any new or hitherto un-disclosed information coming to the notice of such authority ? Can the comments or observations of another authority (such as audit) or the subsequent coming into knowledge of prior notification/orders of the Government be considered to be new definite information warranting reopening of an assessment?

(ii) Is maize exempt from purchase tax under the provision of Section 5(A) of HPGST Act read with Schedule "B" of the Act?

2. Reference has been made on the request of M/s Dhani Ram & Sons, hereinafter referred to as "Applicant", who is represented before us by Sh. Man Mohan Khanna, Senior Advocate, assisted by Ms. Pushpa Attri, Advocate. The background in which the reference has been made and the aforesaid issues have been framed for judgment by this Court, may be noticed. Applicant, Dhani Ram and Sons is a registered dealer for Sales Tax purposes and it has its place of business in Bilaspur District of Himachal Pradesh. Applicant submitted returns for the years 1990-91 and 1991-92 which were finalized and accepted by the

concerned authorities. However, after some time, notices were issued u/s 15 for re-assessment of tax liability, to the applicant and ultimately purchase tax u/s 5-A of the Himachal Pradesh General Sales Tax was levied on the applicant in respect of certain quantity of maize purchased by him within the State of Himachal Pradesh, admittedly from the growers, and sent outside the State for sale. Applicant appealed against the order, but without success. He filed further appeal before the Financial Commissioner (Appeals). That too was dismissed. Then he filed an application for making reference. Reference has been made, vide order dated 20.11.2007.

4. We have heard learned Counsel for the parties and perused the record. As regards issue (i) referred for our judgment, the Financial Commissioner (Appeals) has stated that there was no new information available to the Assessing Authority for re-assessing the tax liability and that the only basis for re-assessing the liability on the applicant was that there was one notification of 10th March, 1988 which has not been taken into account while making the original assessment. A notification issued under the provisions of the Act or the Rules framed thereunder, becomes part of the Act or the Rules, as the case may be and, therefore, ignorance of the Assessing Authority, about such notification at the time of original assessment, cannot be equated with non-availability of entire information. If such a notification comes to the notice of the Assessing Authority subsequently, it cannot be equated with a case of new information coming to the notice of Assessing Authority. The reason is that ignorance of law is no excuse even for a layman and in the case of a person applying such law, the presumption should apply with manifold vigour. In view of the above stated position, we are of the considered view that the action of Assessing Authority in re-opening the original assessment was not in consonance with the provisions of Section 15(1) of the Himachal Pradesh General Sales Tax Act and hence not lawful. Issue is determined accordingly.

5. Coming to issue (ii), a bare reading of Section 5-A of Himachal Pradesh General Sales Tax Act shows that purchase tax under the provision is leviable only on purchase of such goods which are not specified in Schedule-B. In other words goods mentioned in Schedule B are exempt for such tax. The provision is reproduced for ready reference:

5-A. Levy of purchase tax on certain goods.-Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule-B from any source, and:

(i) uses them within the State in the manufacture of goods specified in Schedule "B", or

(ii) uses them within the State in the manufacture of goods, other than those specified in Schedule-B, and sends the goods so manufactured outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export, out of the territory of India, or

(iv) sends them outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods equal to the rate as notified, under Sub-section (1) of Section 6, by the State Government.

6. Admittedly, maize purchased by the applicant is included in Schedule-B to the Act, per item No. 26 of Group-D. Item No. 26, exempts agriculture and horticulture produce sold by a person or a member of his family and grown by himself or grown on any land in which he has interest. As already noticed, applicant had purchased the maize, in question, from agriculturists and so it was an item included in Schedule-B to the Act. If that is so, it was not subject to tax u/s 5-A of the Act, because Section 5-A applies to goods other than those specified in Schedule-B as already stated above. Issue (ii) is answered accordingly. Reference stands finally disposed of.