
(2004) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh

G. Poly Flex

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 5, 9
Constitution of India, 1950 — Article 286

Citation : (2008) 11 VST 161

Hon'ble Judges : Virender Singh, J;G.S. Singhvi, J

Bench : Division Bench

Judgement

1. On an application made by the petitioner u/s 42 of the Haryana General Sales Tax Act, 1973 (for short, "the State Act"), Sales Tax Tribunal,

Haryana (for short, "the Tribunal") referred the following questions of law to this Court for its opinion:

1. Whether in the facts and the circumstances of the case the sales made by the applicant can be termed a sale made inside the State or not?

2. Whether the same sale can be termed both, i.e., a sale inside the State as well as a sale in the course of export?

3. Whether on the facts and in the circumstances of the case the Tribunal was right in upholding the levy of purchase tax and penalty u/s 47 of the

Haryana General Sales Tax Act?

2. The petitioner is a manufacturer of polythene bags. It is registered as dealer under the State Act as well as the Central Sales Tax Act, 1956 (for

short, "the Central Act"). The goods manufactured by the petitioner are " sold to the exporters having their business outside the State of Haryana,

who in turn export the same out of the country. During the assessment year 1982-83, the petitioner purchased raw material worth Rs. 6,58,094

which was used in the manufacture of polythene bags. It filed four quarterly returns in accordance with the provisions of Section 25 of the State

Act showing the gross turnover of Rs. 13,58,662.72. After claiming various reductions, it paid Rs. 1,163.96 as tax. By an order dated October

10, 1985, Assessing Authority, Faridabad, created additional tax liability of Rs. 17,921.40 against the petitioner, levied interest amounting to Rs.

9,576 and also imposed penalty of Rs. 10,000 u/s 47 of the State Act. The Assessing Authority held that on the strength of registration certificate

issued to it, the petitioner was not entitled to purchase raw material from within the State of Haryana for use in the manufacture of goods sold in the

course of export out of the territory of India within the meaning of Section 5(3) of the Central Act.

3. The appeal filed by the petitioner was dismissed by the Joint Excise and Taxation Commissioner (Appeals), Rohtak/Faridabad vide its order

dated February 7, 1986 by placing reliance on the judgment of this Court in *Murli Manohar and Company and Another Vs. The State of Haryana*

and *Another*, . The operative part of that order reads as under:

I have heard the two parties and also gone through the entire facts of the case. I find no force in the arguments advanced by the counsel since the

decision of the honourable Punjab and Haryana High Court relied upon by DRs. above do cover the present case. I, therefore, hold that Assessing

Authority was justified to levy tax and also to impose penalty u/s 47. There is no force in the appeal and the same is rejected.

4. Further appeal filed by the petitioner was dismissed by the Tribunal by observing that the matter is fully covered by the judgments of this Court

in *Murli Manohar*'s1 [1981] STI 112 and *Saraswati Udyog* [1987] 65 STC 148 SC.

5. Shri Rajesh Garg argued that the questions referred by the Tribunal should be answered in favour of the petitioner because the judgment of this

Court *Murli Manohar and Company and Another Vs. The State of Haryana and Another*, constitutes the formulation of the orders of the

Assessing Authority, Joint Excise and Taxation Commissioner (Appeals), Rohtak/Faridabad and the Tribunal was reversed by the Supreme Court

in *Murli Manohar and Co. and Another Vs. State of Haryana and Another*, . Shri Garg submitted that in view of the law laid down by the Supreme

Court, the petitioner was not required to pay purchase tax on the raw material

used for manufacturing the polythene bags and the Assessing

Authority committed serious illegality by creating additional tax liability along with interest and penalty. Learned Counsel pointed out that the view

taken by the Supreme Court in *Murli Manohar and Co. and Another Vs. State of Haryana and Another*, has been reiterated in *Satnam Overseas*

(Export) through its Partner Vs. State of Haryana and Another etc. etc., and, therefore, the sales made by the petitioner are liable to be treated as

sales made within the State notwithstanding the fact that the purchaser was from outside the State of Haryana. He further argued that even if the

sales made by the petitioner are not treated as sales made within the state, it cannot be subjected to penalty u/s 47 of the State Act because by

virtue of Section 9(1)(b) of the Central Act, such sales are exempt from tax.

6. Shri Jaswant Singh, learned Senior Deputy Advocate-General relied on the judgment of the Supreme Court in *Monga Rice Mill v. State of*

Haryana [2004] 135 STC 549(P&H) : [2004] 23 PHT 418 (SC) and argued that the Assessing Authority did not commit any illegality by

imposing penalty because the petitioner failed to pay the tax due.

7. We have thoughtfully considered the respective submissions. In *Murli Manohar and Co. and Another Vs. State of Haryana and Another*, , the

Supreme Court considered the scope of sections 6, 9(1)(a), 9(1)(b) and 24 of the State Act and 5 of the Central Act and laid down the following

propositions:

The language of Section 9(1)(a)(ii)--later Section 9(1)(b)--using the words "within the meaning of Sub-section (1) of Section 5 of the Central

Sales Tax Act, 1956" has to be given full meaning and the exemption u/s 9(1) has to be restricted only to export sales falling within the scope of

Section 5(1). Section 5(3) covers a category of cases which would not otherwise have come within the purview of Section 5(1). In the

circumstances of the various provisions of the Haryana Sales Tax Act along with their amendments, it must be held that the assessee was not

entitled to the exemption u/s 9 because the sales made by him were not sales in the course of export outside the territory of India within the

meaning of Section 5(1) of the Central Sales Tax Act.

However, though the exact terms of despatch of the goods were not clear, the sales made by the assessee can only fall within one of three

categories. They are either local sales or inter-State sales or export sales. Each of the assessee had sold its goods to another dealer. The goods

which had been sold by the assessee must have been delivered to the dealer in pursuance of the sale either within the State or outside the State in

India. If that dealer was also a resident of Haryana and had taken delivery of the goods in Haryana and exported them thereafter, the assessee's

sales would be local sales. If the purchaser-dealer of the manufactured goods was in some other State and the goods had been moved out of

Haryana in pursuance of that sale, they would be inter-State sales. The goods might have been directly moved by the assessee to a port for

shipment abroad in pursuance of an export contract entered into by the dealer who purchased from the assessee. Even in such a case if the

transport of goods from the assessee's place of business to the port was in pursuance of the terms of sale, the movement of the goods would be

occasioned by the sale made by the assessee and would be an inter-State sale. If, on the other hand, the goods were sent to the port by the

assessee subsequent to and independent of the sale made by him, then, for the purpose of that transport, the assessee would only be an agent of

the purchaser and the movement of the goods in pursuance of the contract of sale entered into by the purchaser and would be one in the course of

export within the meaning of Section 5(1) of the C.S.T. Act. Since the sales effected by the assessee fall within one of the three exempted

categories set out in Section 9(1)(b), there can be no levy of purchase tax u/s 9(1) of the Act.

8. The Supreme Court repelled the argument that the assessee was not entitled to avail the benefit of Section 9(1)(b) of the State Act because the

same had been declared unconstitutional in *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of*

India and Another Vs. State of Haryana and Another, by making the following observations:

The contention that Section 9(1)(b) of the Haryana General Sales Tax Act had been declared unconstitutional by the Supreme Court in *Goodyear*

India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another,

and therefore, that decision being non-est could not be availed of by the assessee proceeds on a misconception of the issue and the ratio of that

decision. What was declared unconstitutional in that case was only the levy of a tax where raw materials are purchased and used inside the State

for the manufacture of finished goods which are then simply--and without any sale--despatched--rather, consigned--outside the State. There is,

however, nothing unconstitutional about the two other consequences that flow on the language of the Clause: one express and the other implied :

one in favour of the Revenue and the other in favour of the assessee, viz,-

(1) that there will be a tax on the purchase of the raw materials if the manufactured goods are disposed of in the State itself otherwise than by way

of sale; and

(2) that there will be no tax on the purchase of the raw materials if the manufactured goods are despatched from the State consequent on a

(i) local sale;

(ii) inter-State sale; or

(iii) a sale in the course of export.

These two aspects of Section 9(1)(b) survive even after the judgment of the Supreme Court in the Goodyear Goodyear India Ltd., Gedore (India)

Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, .

9. In Satnam Overseas (Export) v. State of Haryana [2003] 130 STC 107 (P&H), the Supreme Court referred to the earlier judgments in Murli

Manohar and Co. v. State of Haryana [1991] 80 STC 79, Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., and K.B.

Handicrafts Emporium v. State of Haryana [1993] 90 STC 477(P&H) : [1993] Supp 4 SCC 589 and observed as under:

In these cases, in the light of the above discussion, we conclude that specific charging provision of Section 9(1)(b) will be attracted as the assessee

purchased paddy (which is not one of the goods specified in Schedule B), procured rice (manufactured goods) from the said paddy and exported

rice outside the territory of India, on which no purchase tax was payable under the general charging provision of Section 6 which is, inter alia,

subject to the provisions of Section 9. We have already held above that the assessee will not be liable to pay tax on the purchase of such paddy in

view of the provisions of Clause (b) of Sub-section (1) of Section 9 in the assessment years in question, or, for that matter, any assessment year

ending before April 1, 1991. To the same effect is the view expressed by this Court in the cases of *Murli Manohar and Co. and Another Vs. State*

of Haryana and Another, , Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., and K.B. Handicrafts Emporium [1993] 90

STC 477 : [1993] Supp 4 SCC 589. The High Court was, therefore, clearly in error in not following the ratio of these judgments on untenable grounds.

(Here italicised)

The ratio of the above mentioned judgments is that till March 31, 1991, the assessee will not be liable to pay tax on the purchase of raw material

used in the manufacture of finished products which may be sold within the State or outside the State.

10. In view of the above, we hold that the Assessing Authority committed a jurisdictional error when it held that the petitioner was liable to pay tax

on the entire quantity of raw material used by it in the manufacture of polythene bags. We further hold that the decisions of the Assessing Authority

to levy interest and impose penalty on the premise that the petitioner had failed to pay tax as per the requirement of Section 25(3) of the State Act

is legally unsustainable and is liable to be nullified.

11. The decision of the Supreme Court in *Monga Rice Mill v. State of Haryana [2004] 135 STC 549 (P&H)* has no bearing on the issue under

consideration. In that case, the Supreme Court interpreted sections 5(1)(3) and 15(ca) of the Central Act and Section 17 read with Schedule D of

the State Act. After making reference to the earlier judgment of the Supreme Court in *Hotel Balaji and others, Vs. State of Andhra Pradesh and*

others, etc. etc., and the Full Bench of this Court in United Riceland Limited v. State of Haryana [1992] 104 STC 362 SC, the Supreme Court

observed as under:

At the outset, we state that none of the judgments cited by the learned Counsel for the parties deal with the points which arise for determination in

these civil appeals. As stated above, there are two ends in every transaction, namely, the sale end and the purchase end. Section 5 of the 1956 Act

lays down principles for determining when a sale or purchase occasions export. It, inter alia, defines the constitutional inhibition of Article 286(1)

(b), namely, that no law of a State shall impose tax on sale or purchase which

occasions export. To constitute a purchase, exempt from State purchase tax, the purchase must occasion export. The question which we have to decide in these civil appeals is: whether purchase of paddy by the appellant (miller), who procures rice from it and sells the rice to the exporter is a purchase which occasions export or is it a purchase for export? Section 5(1) of the 1956 Act exempts export sales. There are three categories of sales, namely, local sale, inter-State sale and export sale. Section 5(1), therefore, covers direct export whereas Section 5(3) covers last sale or purchase preceding direct export which is deemed to be in the course of export. The last sale or purchase preceding the direct export is deemed to be in the course of export as the two are so closely connected that breach of one may result in breach of the composite contract. It is for this reason that Section 5(3), inter alia, requires such sale or purchase transaction being entered into after and in compliance with the export order being placed by the foreign buyer. The underlying rationale of Section 5(3) is that such penultimate sale or purchase must occasion export in order to constitute sale or purchase in the course of export. Section 5(3) does not cover the penultimate transaction which occasions sale in the local market, nor does it cover sale for export. In the present case, appellant is a miller within the State; it buys paddy and procures rice therefrom within the State and sells it to the exporter within the State and as such it is a local sale which does not fall u/s 5(3). It is a sale for export and not a sale which occasions export. There is one more way of looking at the question in hand. u/s 15(a) of the 1956 Act, as it stood at the material time, the State could levy tax either at the sale end or purchase end of the transaction in case of declared goods. Consequently, under sections 6 and 17 read with Schedule D of 1973 Act, we have single point levy of tax and not tax at multiple points. It is the last purchase of paddy which is made taxable under the 1973 Act. The single point levy envisages tax at either ends of the same transaction provided that the identity of the goods remains unchanged. It is a tax on one single commodity. Section 15(a), inter alia, states that the tax payable under the State law shall not be levied at more than one stage. The word "stage" in Section 15(a) refers to stages of successive sales and purchases and not to stages, which raw material undergoes, resulting in the manufacture of a different commercial

commodity. The reason is not far to see. Under the 1973 Act, rice and paddy are two different commodities. They are taxable at different rates.

u/s 15(c) of the 1956 Act as also under sections 15 [proviso (iii)], 15A and 27 of the 1973 Act, the tax paid on the rice stands reduced to the

extent of tax paid on paddy. It is for this reason that Clause (ca) in Section 15 of the 1956 Act equates paddy and rice for the purposes of Section

5(3), otherwise it would not be possible to harmonise that set-off provisions, stated above, with Clause (ca) of Section 15 of the 1956 Act.

Moreover, Clause (ca) applies only in cases of export of rice procured from paddy. In all other situations, paddy and rice remain two different

taxable items. If Clause (ca) is read in the manner suggested by the appellant, sections 15(a) and 15(c) would be rendered nugatory. Similarly,

proviso (iii) to Section 15, Section 15A and Section 27 of the 1973 Act, which provides for set-off/adjustment of tax paid on paddy against tax

paid on rice, would be rendered otiose. The High Court was, therefore, right in holding that Clause (ca) of Section 15 of the 1956 Act provides

for a limited deeming fiction attached to purchased commodity, namely, paddy purchased by the miller-cum-exporter. In the present matter, we

are concerned with levy of purchase tax u/s 17 read with Schedule D of the 1973 Act. Schedule D was introduced by notification dated August

1,1988 in the line with the provisions of Section 5(3) of the 1956 Act, which as stated above, defines last sale or purchase preceding export sale,

as sale or purchase in the course of export. Schedule D refers to levy of tax on "last purchase", an expression which is borrowed from Section

5(3) of the 1956 Act. Schedule D of 1973 Act is, therefore, in conformity with the provisions of Section 5 of 1956 Act. So read, it is clear that the

words "last purchase" in Schedule D connotes purchase which occasions export and not purchase of paddy for export. In the case of Hotel Balaji

and others, Vs. State of Andhra Pradesh and others, etc. etc., this Court has observed that it is difficult to define the words "last purchase" except

with reference to the mode of the use of the purchased goods subsequent to that purchase and in that sense levy can be crystallised only at the

point of time when the goods have been utilised in a particular way. Applying the test propounded by this Court in Hotel Balaji and others, Vs.

State of Andhra Pradesh and others, etc. etc., we hold that Clause (ca) of Section 15 contains a limited deeming fiction by which tax exemption is

given only to the sale of rice by the exporter and not to the sale by the appellant-miller to the exporter.

12. From the above extracted portion of the judgment in *Monga Rice Mill etc. Vs. State of Haryana and Another*, , it is clear that the issue relating

to interpretation of Section 9(1)(b) of the Haryana Act, as it was obtaining in the year 1982-1983 was not even considered by the Supreme Court.

Therefore, that judgment cannot be made basis for sustaining the orders passed by the Assessing Authority, Joint Excise and Taxation

Commissioner (Appeals), Rohtak/Faridabad and the Tribunal.

13. In the result, the questions referred by the Tribunal are answered in favour of the petitioner and against the department.