
(1985) 12 RAJ CK 0028

In the Rajasthan High Court

Case No : Sales Tax Case No's. 138, 139, 140, 141, 144, 146 and 147 of 1980

Gotilal Bhonrilal

APPELLANT

Vs

C.T.O.

RESPONDENT

Date of Decision : 18-12-1985

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Constitution of India, 1950 — Article 286

Citation : (1987) 63 STC 78

Hon'ble Judges : S.K. Mal Lodha, J; P.C. Jain, J

Bench : Division Bench

Advocate : N.P. Gupta, for the Appellant; K.C. Bhandari, for the Respondent

Judgement

Mal Lodha, J.—These 7 applications before us have been filed by the dealer-assessee u/s 15 of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954), for short ("the Act" herein), for a direction to the Board of Revenue for Rajasthan, Ajmer ("the Board"), to state the case and refer the questions of law arising out of its common order dated 2nd March, 1979, passed in 7 revisions. These applications were pending on 1st May, 1985, when the Rajasthan Sales Tax (Amendment) Act, 1984 (No. 20 of 1984) ("the Amendment Act"), had come into force. According to Section 13(10) of the Amendment Act, these applications are deemed to be applications for revision u/s 15 of the principal Act as substituted by the Amendment Act. We have heard them as revisions and propose to dispose them as such.

2. The accounting years involved in these cases are 1963-64, 1964-65, 1965-66, 1966-67, 1967-68, 1969-70 and 1970-71. The assessing authority levied purchase tax on ajwayan, sua, methi and poppy seeds. He also levied sales tax on urad, gram and bardana. Penalties were imposed u/s 7AA and Section 16(1) (c) of the Act. The dealer-assessee went in appeal and the Deputy Commissioner (Appeals), Commercial Taxes, Ajmer, by a common order dated 13th April, 1976, accepted the appeals in part. Six revisions were filed against the order of the

Deputy Commissioner (Appeals), Commercial Taxes, Ajmer. These were against the appellate order dated 13th April, 1976, and revision No. 971 of 1976 was against the order dated 22nd April, 1976. The Board of Revenue by its common order dated 2nd March, 1979, partly accepted the seven revisions. The Board found as under:

- (1) that the penalties were rightly imposed upon the dealer-assessee u/s 16(1) (c) of the Act;
- (2) that the assessing authority should determine the tax to be levied on the sales of sua, methi and ajwayan deeming these commodities to be oil-seeds and, therefore, declared commodities u/s 14 of the Central Sales Tax Act, 1956 (No. 74 of 1956) ("the C.S.T. Act" herein);
- (3) that urad and gram cannot be treated as cattle feed;
- (4) that proceedings were commenced well within 8 years and as such were not barred by limitation as contended on behalf of the dealer-assessee; and
- (5) that the dealer-assessee is liable to pay purchase tax u/s 5A of the Act.

These cases were remanded to the assessing authority to redetermine the quantum of purchase tax to be levied on the petitioner, basing the tax on the purchase price determined from the books of accounts of the dealer-assessee or if this is not feasible by allowing an appropriate deduction on account of handling, transportation and incidental expenses, as well as a reasonable margin of profits while computing the purchase price of the commodities with reference to the sale price;

- (6) that the sales tax was leviable on the sale of bardana;
- (7) that the penalties could not be imposed u/s 7AA of the Act and so amount of penalties involved in revisions Nos. in 976 and 977 of 1976 were set aside; and
- (8) that the levy of interest by the assessing authorities is valid.

3. The dealer-assessee has submitted these applications to this Court for directing the Board to refer the following questions for the opinion of this Court:

- (1) Whether an assessment could be made u/s 10(1)(b) of the Act where no returns have been filed u/s 7 of the Act and where no returns have been filed, nor the assessment has been made even after the closure of the accounting year ?
- (2) Whether in such a case the only remedy open to the revenue is to have resort to Section 12(1) of the Act ?
- (3) Whether the assessing authority could not pass the assessment order on the basis of the notice dated 14th December, 1972, issued by the assessing authority as it was not a notice under Rule 55A of the Rajasthan Sales Tax Rules, 1955 ("the Rules" hereinafter) ?

(4) Whether the dealer-assessee is liable to pay purchase tax on the goods purchased by him from unregistered dealers and farmers in the State and sold through commission agents outside the State u/s 5A of the Act ?

(5) Whether the dealer-assessee is liable to pay purchase tax on the goods purchased by him from unregistered dealers and farmers and sold by him in the course of inter-State trade and commerce and paid tax under the Central Sales Tax Act ?

(6) Whether Section 5A of the Act is ultra vires the Constitution being violative of Article 286 ?

(7) Whether Section 5A is an enactment which provides for charging sales tax on the goods sold outside the State and goods sold inter-State under the guise of purchase tax and is, therefore, ultra vires ?

(8) Whether urad (black gram) and gram are cattle feed and exempt from tax under item No. 9 of the Schedule ?

(9) Whether the penalty u/s 16(1)(c) of the Act can be imposed on the assessee even where the department has failed to prove that the assessee had no reasonable cause for not filing the return ?

(10) Whether interest u/s 11B can be charged for not depositing the tax u/s 7(2A) for monthly advance payment ?

4. When these cases were partly heard on 11th December, 1985, Mr. K.C. Bhandari, learned counsel for the C.T.O., submitted that notice u/s 10(1) of the Act was issued to the dealer-assessee in respect of the assessment years under consideration and not u/s 12 of the aforesaid Act. On that day for the proper appreciation of the arguments that were raised by the learned counsel for the parties, we considered proper to direct Mr. K.C. Bhandari, learned counsel for the C.T.O., to obtain the record of the assessments of the dealer-assessee in respect of the assessment years under consideration. In compliance of that, the record of the C.T.O. relating to the aforesaid accounting years was obtained by the learned counsel for the C.T.O. and that was perused by the learned counsel for the dealer-assessee as well as by us.

5. During the course of arguments Mr. N.P. Gupta, learned counsel for the dealer-assessee, while assailing the order dated 2nd March, 1979, has raised the following contentions:

(1) that the penalties could not be imposed on the dealer-assessee u/s 16(1)(c) of the Act as it was for the assessing authority to prove that he had no reasonable cause for not furnishing the prescribed returns before it levied the penalties,

(2) that urad and gram are cattle feed and, therefore, they are exempt from payment of tax under item No. 9 of the Schedule appended to the Act,

(3) that no assessment could be made by the assessing authority in respect of the assessment years under consideration as they had become barred by time. In this connection reference was made by him to Sections 7(1), 7AA, 10(1)(a), 10(1)(b) and 10B of the Act,

(4) that the dealer-assessee is not liable to pay purchase tax u/s 5A of the Act,

(5) that the tax has been illegally levied on the sale of bardana, and

(6) that no interest was leviable u/s 11B of the Act.

6. In view of the conclusion to which we have arrived at after hearing the learned counsel for the parties at some length, it is not necessary for us to examine all the contentions raised by the learned counsel for the dealer-assessee ad seriatim.

7. Re: Contention No. (2): As regards the contention urad and gram they are cattle feed; suffice it to state that these commodities are not covered by item 9 of the Schedule appended to the Act. The relevant portion of the Schedule is as follows:

No tax shall be payable on the sale or purchase price of the following goods:

S. No. Description of goods Conditions and exceptions subject to which exemption is allowed 9. Cattle feed excluding gowar, cotton-seeds and oil-cakes.

8. It is under this item that the learned counsel for the dealer-assessee submitted that urad and gram being cattle feeds, they are exempt from payment of sales tax u/s 4 of the Act. According to item 9 of the Schedule, the cattle feeds which do not include gowar, cotton-seeds and oil-cakes, no sales or purchase tax is payable. In *Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others*, a question arose whether the word "fabric" includes tyre cord fabric for deciding the question of exemption from tax. His Lordship R.S. Pathak, J., speaking for the court held as under:

In determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well-settled, it is that the words of expressions must be construed in the sense in which they are understood in the trade, by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of time legislative intention when the statute was enacted.

9. According to this decision the words and expressions are to be construed in the sense in which they are understood by the person dealing with them. Entry 39 of the First Schedule to the U.P. Sales Tax Act, 1948, was considered in *Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh*, wherein V.D. Tulzapurkar, J., expressed himself in the following words:

It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose

they classify diverse products, resort should be had not to the scientific and technical meaning of the terms or expressions used, but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.

10. In an earlier decision, Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, , it was held as under:

Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

11. From the aforesaid authorities the proposition seems to be well-established that if the term has not been defined under the Sales Tax Act, its common parlance or commercial parlance meaning should be given to it. The Board has clearly stated that urad and gram are primarily used for human consumption and that it is only incidental that these commodities are also used as constituents of cattle feed. The tests laid down in the aforesaid authorities were duly taken note of by the Board and, therefore, the Board was right in holding that these commodities are not cattle feed so as to entitle the dealer-assessee to claim exemption from payment of sales tax or purchase tax under item 9 of the Schedule.

12. Re: Contention No. (5): Learned Counsel for the dealer-assessee urged that the Board went wrong when it sustained the levy of sales tax on bardana. The Board has stated that the reasons given by the Deputy Commissioner in this respect in his order dated 17th May, 1976 are good reasons. It has been found by the Deputy Commissioner as a fact that the sale was of old gunny bags. As the old gunny bags were separately sold, the sales tax was leviable on such sales. *Here italicised.

13. The learned Counsel appearing for the dealer-assessee did not show us any provision in the Sales Tax Act or in any other relevant law under which the sale of old gunny bags was exempt from payment of sales tax. The burden was on the dealer-assessee which he has failed to discharge.

14. The other contentions Nos. (1), (3), (4) and (6) referred to hereinabove raised by the learned Counsel for the dealer-assessee are with respect to the assessments made by the assessing authority of the taxable turnover of each accounting year. On the basis of the provisions contained in Sections 7(1), 7A, 10(1)(a) and (b), 10(2) and 10B of the Act then in force it was submitted that

the assessments made are illegal and void. He also urged that Section 12 of the Act could not be attracted as admittedly no notice was given and the conditions laid down therein are not satisfied. Reference was made to *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, in which it was held that:

In the case of a registered dealer the proceedings before the Commissioner starts factually when a return is made or when a notice is issued to him either u/s 10(3) or u/s 11(2). The statutory obligation of the registered dealer to make a return within the prescribed time does not proprio vigore initiate the assessment proceedings before the Commissioner; but the proceedings will commence after the return is submitted and will continue till a final order of assessment is made in regard to the said return.

The question of "escape of assessment" has to be considered on the basis that each quarter is a separate period for the assessment. As the unit of assessment is a quarter, that period cannot be further split up into months, weeks and days.

15. Reference was also made to form S.T. 5 which is a pro forma of return and Rule 25 of the Rules. It was submitted that the return so filed in pursuance of the notice issued by the assessing authority should be considered as no return in the eye of law. After referring to Section 10(2) it was submitted that notice under it can only be issued after return has been filed and if no return has been filed, i.e., in case of non-filing of the return or filing of incorrect or incomplete return, a notice is required to be served and if after holding inquiry the assessing authority considers it necessary to assess the tax to the best of his judgment. The argument raised was that if no return has been filed, then notice u/s 10(2) can be issued but in this case as returns were filed, the provisions of Section 10(1)(b) cannot be attracted. On the basis of the record that was shown to the learned Counsel for the dealer-assessee, he submitted that the first notice was issued on 30th June, 1966, in respect of the assessment years 1963-64 and 1964-65. Thereafter notice in respect of the assessment years 1965-66 to 1971-72 was issued. It was one consolidated notice that was issued on 14th December, 1972. There also reference was made to the proviso to Section 10(1)(a) which was inserted with effect from 24th July, 1967. Here, we may state that the learned Counsel for the C.T.O. stated that at no point of time it was the case of the assessing authority that proceedings were initiated against the dealer-assessee u/s 12 for which issue of the notice even after a period of 8 years from the date of closure of the assessment is a sine qua non. Mr. Bhandari, learned Counsel for the C.T.O., argued that the proviso to Section 10(1)(b) of the Act as in vogue at the relevant time is not relevant for the purpose. In this connection he invited our attention to the definition of "previous year" contained in Section 2(m) of the Act. According to him reference of the previous year is in respect of the "previous year" as defined in Section 2(m) of the Act. Section 10(2) will also not apply, for, according to him returns were filed by the dealer-assessee, may they be in pursuance of the notice. It was submitted that prior to 7th April, 1979, i.e., before insertion of Section 10B of the Act, there was no bar of limitation

whatsoever and further that once the return has been filed then it is open to make assessment at any time, as for making the assessment there is no period of limitation. In other words, it was urged that in spite of Sections 7(1), 7A and 10(1)(b) returns when filed assessments can be made at any time and bar of limitation, which was pressed for consideration by the learned Counsel for the dealer-assessee, mentioned in Section 10(1)(b) and the proviso to Section 7(1) will not be attracted. The following tabular statement will show that the dealer-assessee had filed returns:

S. No.	Assessment Period for which returns were filed	Remarks
1.	1964-65	Return filed for 4th quarter --
2.	1965-66	Return filed for 1st quarter --
3.	1966-67	Return filed for all the four quarters of the assessment year --
4.	1967-68	-- No return filed.
5.	1968-69	-- do.
6.	1970-71	All returns filed --
7.	1971-72	-- No return filed.

16. According to Mr. Bhandari the aforesaid returns were in accordance with form S.T. 5. The matter does not rest at that. Consolidated statement showing the turnover, tax payable, etc., in respect of each of the aforesaid seven assessment years were also filed which according to Mr. N.P. Gupta being not in accordance with form S.T. 5 and Section 7(1) of the Act are no returns in the eye of law. In that connection he invited our attention to the cases under the Income Tax Act, 1961, and the Indian Income Tax Act, 1922.

17. In BEHARI LAL CHATTERJI Vs. COMMISSIONER OF Income Tax, U.P., it was held that a return not signed and verified is no valid return at all. So far as (1952) 22 ITR 339 it was observed that an application purporting to be u/s 22(3) seeking permission to revise the return as originally filed cannot be treated as a revised return. In Commissioner of Income Tax v. M.K. Gupta [1978] 113 ITR 473 it was held that return filed in wrong form cannot be acted upon. In Maya Debi Bansal Vs. Commissioner of Income Tax, return filed in wrong form was held to be an invalid return and best judgment assessment made thereon is void ab initio. The propositions that were propounded in this regard by Mr. K.C. Bhandari, learned Counsel for the C.T.O., were:

(1) that the consolidated statement filed by the dealer-assessee in respect of each of the assessment years under consideration substantially complied with the pro forma prescribed for return in form S.T. 5 and so they will be considered valid returns in the eye of law. According to him, these consolidated statements can easily be construed as sufficient compliance with form S.T. 5 particularly when the information required in column 11 thereof has been given.

(2) that, even if, the assessee has filed return for one quarter that will ensure for whole of the assessment year for the purpose of making the assessment.

(3) that, even if, no return has been filed as envisaged by Section 7(1) of the Act, the consolidated statement filed by the assessee can be availed of by the assessing authority for making the assessment.

18. Undoubtedly in view of the rival submissions, various questions of law arise which require probe on the basis of the record of the assessment years under consideration. Before the Board as appears from the order dated 2nd March, 1979, the contention raised on behalf of the dealer-assessee was that although the period of limitation for purposes of Section 12 of the Act was 8 years but this limitation by implication would also apply to assessment made u/s 10 of the Act. The contention with respect to Sections 7(1), 7A, 10(1)(a), 10(1)(b) and (2) and (3) were not specifically raised either by the assessing authority or by the dealer-assessee. It appears that emphasis before the Board was on Section 12, inasmuch as the Board has stated in the order as under:

In this connection it may be observed that consequent to the amendment in Section 12 of the Act with effect from 5th September, 1969, the period of limitation of eight years was to be reckoned from the dates of the issue of notices and not from the dates of the assessment orders. Notices for the assessment undertaken for the years 1963-64 and 1964-65 were issued in 1965 and, therefore, the proceedings were commenced well within 8 years, and were not barred by limitation.

19. What the Board, in fact, was required to determine was whether the assessments made by the assessing authority in respect of the 7 assessment years under consideration were validly made in accordance with Section 10 of the Act. The Board was called upon to determine in respect of each assessment year whether the assessment made by the assessing authority was sustainable under the provisions which we have already adverted herein above while mentioning the contentions of the learned Counsel for the dealer-assessee.

20. The questions relating to the imposition of penalty u/s 16(1)(c) of the Act, levy of purchase tax u/s 5A of the Act and charging of interest u/s 11B of the Act are matters relating to the assessment of the taxable turnover in respect of each assessment year under consideration. The decision on the aforesaid questions will only be necessary when a finding is recorded that the assessing authority could make assessment in respect of the assessment years of the taxable turnover of the dealer-assessee. As stated above, the Board has, while dealing with the validity of the assessments rest, contented by saying that they were not barred by limitation and on that ground sustained the assessment.

21. We maintain the findings of the Board that urad and gram are not cattle feeds and as such there is no exemption from payment of sales tax; that sales tax is payable on the sale of gunny bags. The direction in respect of ajwain, sua and methi and setting aside of penalties u/s 7AA of the Act recorded in favour of the dealer-assessee having not been assailed by the learned Counsel for the C.T.O. are also maintained.

22. As no finding has been given by the Board in respect of each of the assessment years in the light of the provisions adverted above they are, accordingly, set aside and the Sales Tax Tribunal constituted u/s 2A of the Act

(inserted by the Amendment Act) is directed to redecide the seven revisions which were filed by the dealer-assessee against the orders of the Deputy Commissioner only to the extent indicated herein above. The applications u/s 15 of the Act which have been considered as revisions u/s 13(10) of the Amendment Act are disposed of accordingly.

23. In the circumstances of the case the parties are left to bear their own costs of these cases.