
(1985) 09 KL CK 0008

In the High Court Of Kerala

Case No : T.R.C. No"s. 29, 30 and 31 of 1985

Hindustan Paper Corporation Ltd.

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 09-09-1985

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2A)

Citation : (1986) 61 STC 93

Hon'ble Judges : K. Bhaskaran, C.J;K.T. Thomas, J

Bench : Division Bench

Advocate : M. Ramachandran, U.K. Ramakrishnan, T.K. Jayaram, E.K. Madhavan, P.V. Lohitakshan and Anil Narayan, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—The short question to be decided in these revisions relates to the interpretation of Section 8(2A) of the Central Sales Tax Act of 1956 (for short "the Central Act").

2. The facts which gave rise to these revisions can be stated briefly in the following lines :

3. M/s. Hindustan Paper Corporation Ltd., the petitioner herein, manufactures newsprint in their factory and they also sell the newsprint so manufactured by them inside and outside Kerala State. In 1971, the Government of Kerala had by notification granted an exemption in respect of the tax payable under the Kerala General Sales Tax Act, 1963 (which will be referred to hereinafter as the State Act), in regard to the turnover of the sale of newsprint by newsprint plants in the State for a period of two years from the date of starting of the production of the newsprint by such newsprint plants. Subsequently in the year 1974 the petitioner-company had entered into an agreement with the Government of Kerala, as per which agreement the petitioner-company's turnover on the sale of

newsprint was exempted from the sales tax under the State Act. The relevant portion of the agreement is quoted hereunder :

The Government of Kerala, with a view to help the project to tide over the difficulties in the initial stages and to establish itself, agree to exempt the turnover relating to the sale, of the products by the corporation from the payment of sales tax for a period of two years from the date of starting the production of the newsprint.

For the assessment year 1982-83 the petitioner-company had filed returns declaring their turnover for the inter-State sales running into crores of rupees. The petitioner-company claimed that they are not liable to pay the sales tax for such inter-State sales under the Central Act in view of Section 8(2A) of the Central Act. The Sales Tax Officer has rejected this claim. In the appeals filed by the petitioner before the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, and in the further appeals filed before the Sales Tax Appellate Tribunal the aforesaid claim made by the petitioner-company has been found against. Thus the petitioner has come up here with these revisions u/s 41 of the State Act.

4. There is no dispute that the Government of Kerala has granted the exemption "in respect of the tax payable under the State Act in regard to the turnover of the sale of newsprint by the newsprint plants in the State for a period of two years from the date of starting production of the newsprint by the said plants". (Vide notification dated 20th October, 1971, in Kerala Gazette No. 42 dated 2nd November, 1971-S.R.O. No. 415/71). There is also no dispute that as per the terms of agreement between the petitioner and the Government of Kerala the latter had agreed to exempt "the turnover relating to the sale of the products by the corporation from the payment of sales tax for a period of two years from the date of starting of production of the newsprint". It is on the strength of this exemption that the petitioner claims a corresponding exemption from the tax liability under the Central Act.

5. In order to understand the true scope of Section 8(2A) of the Central Act, a reference to Section 6(1A) of the Act would be useful. The section reads thus :

A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

The material provision, Section 8(2A), reads thus :

Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of

which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

The sub-section was not in that form before an amendment brought to it as per Act 61 of 1972. Since both sides have argued much on the implications of the said amendment, and since the Appellate Tribunal has also sought to place significance on this amendment, we would reproduce here that sub-section as it stood before the said amendment.

Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Sub-section (2) of this section, if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

6. It is contended on behalf of the petitioner that there is no significant change brought to the said provision by the amendment and that the position before and after the amendment was that when there is a tax exemption as per the State Act, then there would be a corresponding exemption from the tax liability under the Central Act as well. On the contrary, the learned Government Pleader has contended that though the amendment has not brought about a change in the core of the sub-section, the essential emphasis before and after the amendment is to reflect the advantage of the exemption granted under the State Act in respect of sale of goods to the inter-State sale of such goods under the Central Act as well. In other words, his contention is that, if the exemption granted is only in respect of a dealer or class of dealers, whether in regard to any particular goods or otherwise, then, such an exemption would not secure a corresponding exemption from the tax liability under the Central Act. He has further contended

that what was already provided in this said sub-section before the amendment has only been made more clear after the amendment. It was next contended that unless the exemption granted under the State Act is "general", in the sense that it is total exemption from tax, then there is no corresponding advantage under the Central Act. We shall deal with these contentions after the other.

7. In order to appreciate the rival contentions, it would be advantageous to have a reference to some of the provisions of the State Act. u/s 5 of that Act, every dealer is to pay his tax on his taxable turnover in regard to specified goods mentioned in the First or Second Schedule at the rate specified against such goods in the said Schedule, and in the case of other goods at the rate of 4 per cent. Thus, the tax is on goods, though of course the liability to pay tax is on the dealer. Section 9 of the State Act provides that:

Subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule shall not be liable to pay any tax under this Act in respect of the sale or purchase of such goods.

Section 10 provides that "the Government may make an exemption in respect of any tax payable if the Government consider it in the public interest" by notification in the Gazette. Such exemption can either be (1) on the sale or purchase of any specified goods or class of goods, or (2) of any specified class of persons in regard to the whole or any part of their turnover. Thus, u/s 9, the exemption to be granted is with reference to specified goods and such exemption is granted by the statute itself, while u/s 10(1), the Government is empowered to grant exemptions either in respect of goods or in respect of "specified class of persons" in regard to their turnover wholly or in part.

8. At this stage, a turning back to the Central Act will be beneficial. Section 8(5) of that Act empowers the State Government to exempt a dealer from tax liability and it also empowers the State Government to exempt sale of certain goods from the tax liability and in either of such cases the Government must be satisfied that it is necessary in the public interest. The Central Act thus gives an option to a State Government to grant such exemptions either in respect of specified goods or in respect of specified dealers from payment of tax under the Central Act. However, Section 9 and Section 10 of the State Act provide for exemption either in respect of specified goods or in respect of class of dealers. Section 8(2A) of the Central Act must be read in this context. When so read and when a closer scrutiny is made on that sub-section, even as it stood before the amendment, we find that it has only envisaged that where tax is exempted generally under the State Act in regard to sale or purchase of goods, the benefit of such exemption should correspondingly come under the Central Act also, whereas when such a benefit is granted to a class or classes of dealers, then there is no corresponding benefit under the Central Act.

9. Though the said provision may appear to have undergone changes after its amendment, we do not find any material alteration in the content or core of that

provision after its amendment in 1972. What appears to us is that the reframing of the provision is only meant to make it more clearly understandable that what is emphasised in it is only that the exemption granted under the State Act should be in regard to the sale or purchase of goods (as distinguished from exemption granted to a class or classes of dealers). Only in that eventuality, a corresponding benefit is advanced in respect of the tax under the Central Act.

10. A slightly different approach seems to have been made by a Division Bench of the Bombay High Court in the decision reported in *Rapidur (India) Private Ltd. v. Union of India* [1985] 69 STC 165. That court was dealing with an exemption granted under the Goa Sales Tax Act to the small-scale industry in respect of "any goods manufactured, processed or assembled in this territory at the point of sale made by such industry for a period of five years from the date of first sale of the goods manufactured, processed or assembled, effected by the said small-scale industry". The claim therein was that the said exemption would attract a corresponding benefit u/s 8(2A) of the Central Act. The court considered the effect of the amendment to Section 8(2A) of the Central Act in paragraph 23 of the judgment onwards. Their Lordships repelled the contention that the change of the expression "sale of any goods by a dealer" before its amendment to "sale of which is under the sales tax law of the appropriate State exempt from tax generally" as now appearing in the amended provision would constitute a total change in the concept of general exemption. At the same time, it has been observed in the judgment that the absence of the word "dealer" in the amended Section 8(2A) in connection with the general exemption from sales tax would not make any difference in the purport or effect of the said sub-section before and after the amendment. The argument that the words "sale of any goods by a dealer" in Section 8(2A) before its amendment meant a sale by a specified dealer while the absence of the said words after the amendment meant the sale of goods being exempted generally irrespective of the sale being made by a dealer, has not been found favour with their Lordships. In other words, the Bombay High Court in that decision has held that the exemption generally granted to sale of goods by a dealer under the State Act would attract the exemption benefit envisaged u/s 8(2A) of the Central Act. We agree that the difference in the language of the State Act before and after the amendment has not made any difference to the concept of the general exemption"; but we do not agree to the latter view that the exemption generally granted to any dealer or class of dealers in regard to the sale or purchase of goods made by them would be sufficient to confer the exemption benefit contemplated under the Central Act to such of those dealers. According to us, the emphasis both before and after the amendment, is to "the sale of goods", the sale or purchase of which is generally exempted from the sales tax under the State Act. Even apart from the reasoning adverted to by us above, a reading of the explanation to Section 8(2A) would make the position further clear that the exemption contemplated in the said sub-section is only with reference to sale or purchase of particular goods as distinguished from the turnover of any class of dealers. The explanation in

Section 8(2A) only refers to "sale or purchase of any goods" and not sale or purchase made by any class of dealers. It must be borne in mind that even before and after the amendment of Section 8(2A), this explanation remained undisturbed.

11. It would, in this context, be appropriate to read the statement of objects and reasons for the amendment of that sub-section :

Clause 5.-Sub-clause (a) of this clause seeks to substitute a new sub-section for the existing Sub-section (2A) of Section 8 of the principal Act. The (sic) sub-section seeks to bring out more clearly that an exemption or lower rate of levy under the local sales tax law of the appropriate State would be available in respect of an inter-State sale of goods only if such exemption or lower levy is available generally with reference to such goods or such class of goods under the local sales tax law." [Such a reference to the statement of objects or reasons of a legislation is being permitted as one in accord with the recent trend in juristic thought in Western countries but also in India that the interpretation of a statute being in exercise in the ascertainment of its meaning, everything which is logically relevant should be admissible-*vide* the observations of P. N. Bhagwati, J. (as he then was), in *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*,].

12. For the aforesaid reasons, we hold that the exemption benefit under the relevant provision in the Central Act cannot be claimed if the exemption granted under the State Act is to dealers or to class of dealers only, even if such an exemption is general in character.

13. The next contention is that the exemption granted in these cases pertains to the goods manufactured by the petitioner and hence the exemption is as a matter of fact not for the class of dealers but for the specified goods. Assume it is so (but not conceding), exemption granted under the sales tax law if it should be of any advantage under the Central Act, must be an exemption "generally" made under the State Act. It is contended that an exemption to be within the ken of the expression "generally", it is sufficient if it is outside the three areas mentioned in the explanation to Section 8(2A) of the Central Act. In other words, the contention is that, if the exemption is not brought within specified circumstances or under specified conditions or at specified stages, then the exemption would be general in character. Support was sought to be drawn for this contention also from the same decision of the Bombay High Court cited earlier. The learned counsel for the petitioner has given accentuation to the following observation of their Lordships contained in paragraph 24 of the judgment:

In our view therefore the provisions of Section 8(2A) were to be read along with the explanation to determine what exemption could be general and what not. If the exemption was conferred with the qualification mentioned in the explanation it would cease to be general but not otherwise.

On the strength of that view, an exemption granted in respect of the sales effected by the small-scale industry at the point of sale made by such industry was held to be unaffected by the explanation and is hence within the reach of general exemption. A close reading of the sub-section along with its explanation does not persuade us to take this narrower interpretation. While we also agree that an exemption made merely within specified circumstances or under specified conditions or at specified stages as mentioned in the explanation would not make the exemption to be "generally", we do not think that the mere absence of said conditions would automatically lead to a general exemption. What is sought to be explained with the help of a clause of explanation should not be construed as one limiting or restricting the ambit of the main section. Had the intention been otherwise the legislature would have employed other appropriate additions. Explanatory clauses are employed by the legislature usually as a means to expand the sphere of the main body of the section concerned. For all these reasons, we are of the view that the word "exemption" when qualified with the word "generally" must be understood to mean total exemption without any restriction or limitation whatsoever.

14. As early as in 1961, the Madras High Court has adopted an interpretation consistent with the view expressed above. In *Abbas & Co. v. State of Madras* [1962] 13 STC 433 dealing with the expression "exempt from tax generally", a Division Bench of the Madras High Court has observed thus :

To our minds, the correct interpretation of this expression is that the goods should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available; but where the exemption from taxation is conferred on conditions such as that the turnover of a dealer under the local sales tax law is below the minimum prescribed, or that the tax will attach to a transaction only in certain circumstances, there is no exemption from tax "generally".

The above observation was quoted with approval by a Division Bench of this High Court in the decision reported in *Deputy Commissioner of Agricultural Income Tax and Sales Tax v. N.S. Moos* [1975] 36 STC 169. In that case the exemption granted under the State Act was "in respect of the tax payable under the said Act on the sale of medicines dispensed by a medical practitioner owning a dispensary and dispensing medicines to his patients from his own dispensary". It was held that the exemption is not general but is only for a specified purpose and under specified circumstances. The assessee in that case was found not entitled to exemptions under the Central Act. In 1971, the Mysore High Court has adopted a similar interpretation in *Basappa v. Deputy Commissioner* [1971] 27 STC 241. The relevant passage can be found at page 257, which reads thus :

In Our opinion, the object of Sub-section (2A) of Section 8 is to exempt transactions of sale of any goods if they are wholly exempt from tax under the sales tax law of the appropriate State and to make the said sales chargeable at lower rates, where under the sales tax law of the State, the sale transactions are

chargeable to tax at lower rates. Where goods are taxable at the point of purchase under the sales tax law of the appropriate State the sale is not exempt from tax generally or where the goods are taxable at the point of sale the transaction of purchase is not exempt from tax generally. The plain meaning of the said sub-section is that if under the sales tax law of the appropriate State no tax is levied either at the point of sale or at the point of purchase at any stage, the tax under the Act shall be nil.

15. The ratio in the aforesaid Mysore decision has been approved by the Supreme Court in the decision reported in *International Cotton Corporation (P.) Ltd. v. Commercial Tax Officer* [1975] 35 STC 1. A Bench of four Judges headed by A.N. Ray, C. J., was considering the scope of the exemption envisaged in the identical provision as it stood before the amendment. Their Lordships at page 11 have observed thus :

We agree with the view of the Mysore High Court that the object of Sub-section (2A) of Section 8 is to exempt transaction of sale of any goods if they are wholly exempt from the tax under the sales tax law of the appropriate State and make the said sale chargeable at lower rates where under the Sales Tax Act of the State the sale transactions are chargeable to tax at a lower rate and it is not correct to say that where goods are taxable at the point of purchase or sale the transaction is exempt from tax generally.... Reading Section 6(1A) and Section 8(2A) together along with the explanation the conclusion deducible would be this : Where the intra-State sales of certain goods are liable to tax, even though only at one point, whether of purchase or of sale, a subsequent inter-State sale of the same commodity is liable to tax, but where that commodity is not liable to tax at all if it were an intra-State sale the inter-State sale of that commodity is also exempt from tax.

16. In a subsequent decision by the Supreme Court reported in *Indian Aluminium Cables Ltd. v. State of Haryana* [1976] 38 SIC 108 (SC), there was an occasion to deal with the identical provision as it stood before the amendment (by an inadvertent error the sub-section quoted in the said decision is in the form as it stands now after the amendment, but while reading the full judgment one can easily understand that what their Lordships were considering in that decision was only the sub-section as it stood before the amendment). A. N. Ray, C. J., was one of the 3 Judges who decided the case. Even though the earlier Supreme Court decision in *International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others*, was not referred to in this subsequent judgment, still the Supreme Court has reiterated the same principle. The following observations are worthy of note in this context : "General exemption means that the goods should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available. Where exemption from taxation is conferred by conditions or in certain circumstances, there is no exemption from tax generally."

17. Therefore the weight of authorities is clearly in favour of interpretation which we have adopted now. In the light of the clear pronouncement on the subject by

the Supreme Court, it admits of no doubt that this alone is the correct interpretation of Section 8(2A) of the Central Act.

In view of the aforesaid interpretation we find no scope for interference with the impugned, orders. These revisions are accordingly dismissed. No costs.

Immediately after the judgment was pronounced, the counsel for the assessee-petitioners made an oral request for leave to appeal to the Supreme Court. In view of the apparent conflict of decisions on the question as to whether exemption would be available pursuant to the notification, we think, there is justification for granting leave to appeal to the Supreme Court. Accordingly, we grant leave to appeal to the Supreme Court to the petitioners.

Issue carbon copy of this judgment to counsel on both sides, on usual terms. Leave granted.