

(1976) 04 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No"s. 68 of 1974 and 936 of 1975

Indian Aluminium Cables Ltd.

APPELLANT

Vs

State of Haryana
R.N. Ghanekar and Co. Vs State of
Haryana

RESPONDENT

Date of Decision : 02-04-1976

Acts Referred:

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

Citation : AIR 1976 SC 1711 : (1976) 4 SCC 27 : (1976) 3 SCR 992 : (1976) 38
STC 108 : (1976) 8 UJ 455

Hon'ble Judges : A. N. Ray, C.J.;M. Hameedullah Beg, J;Jaswant Singh, J

Bench : Full Bench

Advocate : R.S. Desai, P.C. Bhartari, R.Narain, K. J. John and O.C. Mathur, for
the Appellant; B. Sen and R.N. Sachthey, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Beg, J.—This appeal by special leave is on the question whether the appellant is exempt from inter-State tax on the sales of poles and cables to Delhi Electric Supply Undertaking by reason of the provisions contained in Section 5(2)(a)(iv) of the Punjab Salts Tax Act hereinafter referred to as the State Act.

2. Section 5(2)(a)(iv) of the State Act is as follows:

5(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom.

(a) his turnover during that period on -

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy.

3. u/s 8 of the Central Sales Tax Act hereinafter referred to as the Central Act,

every dealer, who in the course of inter-State trade or commerce sells to the Government any goods; or sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3) shall be liable to pay tax under this Act, which shall be three per cent of his turnover.

4. The provisions in Section 2(a) of the Central Act are as follows:

Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover insofar 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 three 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.

5. The contention on behalf of the appellant is that by reason of the Explanation to Section 8(2A) of the Central Act read with Section 5(2)(a)(iv) of the State Act the appellant is exempt from payment of Inter-State Sales tax. The words "goods for use by it in the generation or distribution of such energy" occurring in Section 5(2)(a)(iv) of the State Act are said by counsel for the appellant to be descriptive of the goods. In short, the appellant's contention is that goods for use by the undertaking supplying electrical energy are generally exempt from taxation, and, therefore, they should not be included in the turnover.

6. The contention on behalf of the State is that the exemption granted u/s 5(2)(a)(iv) of the State Act is exemption in specified circumstances and under specified conditions. The specified circumstances are said to be sales to an undertaking supplying electrical energy to the public under the Indian Electricity Act, 1910. The specified conditions are that the goods are for use by the undertaking in the generation or distribution of such energy.

7. The appellant referred to Schedule B read with Section 6 of the State Act and in particular Items 33 and 46 to illustrate what would be exemption under specified circumstances or specified conditions. In Schedule B there are two columns. The first column describes the goods. The second column describes the conditions which make the goods tax free. In Item 33 in Schedule B "Photographs including X-rays photographs" mentioned in the first column are tax free "when sold by photographers and radiologists preparing them" as mentioned in the second column. In Item 46 "hand spun yarn" mentioned in the first column becomes tax free "when sold by one by one who deals in hand spun

yarn exclusively" as mentioned in the second column.

8. Section 5(2) of the State Act deals with taxable turnover. There is no dispute that electricity poles and cables sold to the undertaking supplying electric energy are exempt under the State Act from being included within the taxable turnover. The question is whether such sales made in the course of inter-State trade are also exempt from the levy of Central Sales Tax.

9. The appellant contends that the exemption in the State Act is general because exemption applies in respect of goods without any enumeration or classification of goods. Further, it is said that exemption is general because the sales are for use in generation & distribution of electrical energy. According to the appellant sales of all goods to the undertaking supplying electrical energy are exempt from being included in the taxable turnover as long as the goods answer the description that they are for use in the generation or distribution, of electrical energy.

10. The appellant relied on the decision of the Madhya Pradesh High Court in Commissioner of Sales Tax Vs. Kapoor Dori Niwar and Co., in support of the meaning of the expression 'exempt from tax generally'. In the Madhya Pradesh (1) case (supra) the State Government issued a notification in the year 1959 exempting from the payment of sales tax for a period of one year sales of niwar by a dealer registered under the 1958 relevant State Act. The exemption was later on extended up to 31 March, 1963. The assessee a registered dealer claimed exemption on inter-State sales of niwar. The Madhya Pradesh High Court held that during the period of the exemption the sales of niwar by a registered dealer were exempt from tax generally within the meaning of Section 8(2A) of the Central Act, and, therefore, the assessee's inter-State sales of niwar were exempt from tax under the Central Act. The expression "exempt only a specified circumstances or under specified conditions" occurring in the Explanation to Section 8(2A) of the Central Act was held to mean such circumstances or conditions the non existence or nonperformance of which precludes the grant of exemption. In other words, if those circumstances do not exist or those conditions are not performed then the sales of goods cannot be exempted from tax even if they are effected by a class of dealers to whom exemption is granted and during the period for which, exemption is granted.

11. In the Madhya Pradesh (1) (supra) there was no dispute that the sales effected by the assessee fell u/s 8(1) of the Central Act, The State Act granted exemption from sales tax on sales of niwar effected by a registered, dealer. The exemption granted to a lies by a registered dealer under the notification was without any restriction or limitation 10 far as sales by a registered dealer were concerned. Though the period of exemption was fixed, it was not regarded as a condition imposed in relation to the exemption. It was also contended there that because the exemption was granted to the registered dealers, the exemption was granted to a class of dealers, and, therefore, it should be construed to be an exemption in specified circumstances or under specified conditions. The Court

repelled the contention by stating that the exemption was to all registered dealers without any restriction or condition.

12. The other decision on which the appellant relied is of the Allahabad High Court in *Hindustan Safety Glass Works (P.) Ltd. Vs. The State of Uttar Pradesh and Another*, . In the *Safety Glass Works (2)* case (supra) the company manufactured toughened glasses and mirrors in its factories. Under a notification issued by the State Government under the State Act sales of mirrors and safety glasses were liable to sales tax either at the point of sale by the importer of such goods or at the point of sale by the manufacturer thereof. Subsequently, a notification was issued by the State Government exempting toughened glasses and mirrors manufactured by the company at Allahabad from payment of sale B tax for a period of three years. The company claimed that the turnover of sales of toughened glasses and mirrors manufactured by it, being generally exempt from tax under the State Act, was also not liable to Central Sales Tax because of the provisions contained in Section 8(2A) of the Central Act. It was held that for purposes of Section 8(2A) of the Central Act, sale of mirrors and toughened glasses manufactured by the company was under no condition and in no circumstances liable to be taxed in the hands of company. The reasons given were that normally it will be taken that the sale of mirrors and toughened glasses by the company was exempt from tax generally unless it could be shown that such goods belonged to the class specified in the Explanation to Section 8(2A) of the Central Act. As the toughened glasses and mirrors manufactured by the company did not fall in such a category the turnover of the sales of those goods is in the hands of the company was not liable to tax under the Central Act.

13. The stipulation in the notification in the *Safety Glass Works (2)* case (supra) that the turnover of such sales would for a period of three years be exempt from payment of sales tax did not amount to exempting the turnover of such goods from tax under specified circumstances or specified conditions.

14. Section 6 of the State Act does not speak of exemption, but deals with tax free goods. In other words, Section 6 deals with specified goods on which no tax is payable. Section 5 of the State Act deals with what has to be excluded from the taxable turnover of the dealer. Both the sections deal with goods which do not suffer from sales tax. Section 8(2A) of the Central Act exempts goods from inter-State sales tax where a tax law of the State has exempted them from sale tax. The Explanation to Section 8(2A) of the Central Act takes away the exemption where it is not general and has been granted in specified circumstances or under specified conditions. The provisions contained in Section 5(2)(a)(iv) of the State Act exclude sales which are made under specified circumstances or specified conditions. The Specified circumstances are that the sale must be to an undertaking engaged in supplying electrical energy to the public under a licence or sanction granted under the Indian Electricity Act, 1910. The specified condition is that the goods purchased by the undertaking must be used for the generation or distribution of electrical energy. If the circumstances

do not exist or if the conditions are not performed then the sales of goods cannot be exempted from tax. 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 the exemption from taxation conferred by conditions or in certain circumstances there is no exemption from tax generally.

15. The contention of the appellant that the words "in the generation or distribution of such energy" in Section 5(2)(a)(iv) of the State act are descriptive of goods is unacceptable. The expression "generation or distribution of such energy" specifies the condition under which exemption is granted.

16. For these reasons we are of opinion that the High Court was correct in holding that the sales by the undertaking supplying electrical energy were not exempt from tax generally within the meaning of Section 8(2A) of the Central Act read with Section 5(2)(a)(iv) of the State Act. The appeal is dismissed. In view of the fact that the High Court directed the parties to pay and bear their own costs, similar order is made here.