(2010) 01 P&H CK 0239

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 9019 of 2005 with 12917, 12918, 12919, 16892, 16893, 16894, 16895, 16896, 16897, 16898, 16899 and 16900 of 2001, 1578, 3193, 4190, 4191, 4192, 4194, 4195, 4196, 4197, 4198, 15324 of 2003, 11683 of 2004, 8019, 8526, 9024, 11100, 11107, 11134, 20

Indian Sucrose Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 265
Essential Commodities Act, 1955 — Section 7
Punjab General Sales Tax Act, 1948 — Section 4(1), 4B, 6
Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 — Section 17, 17(1)
Punjab Value Added Tax Act, 2005 — Section 19

Citation : (2011) 37 VST 85

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar J.—This is a bunch of 52 petitions filed under Article 226 of the Constitution raising a common question of law. The prayer made in all the petitions is for quashing the notification dated May 27, 1988 imposing a tax at 50P. for 100 kgs. on the purchase of sugarcane by or on behalf of the sugarcane mill like the Petitioners. The Petitioners have also prayed for issuance of declaration to the effect that no purchase tax on purchase of sugarcane could be levied and collected from the Petitioner under the provisions of the Punjab General Sales Tax Act, 1948 (for brevity, "the PGST Act, 1948") in the face of levy and collection of such like tax u/s 17 of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 (for brevity "the 1953 Act") which is claimed to be a special Act governing all aspects of purchase, supply and levy of purchase tax on the sugarcane. In that regard primary reliance of the Petitioner has been on the judgment of the honourable Supreme Court in the case of Gobind Sugar

Mills Ltd. Vs. State of Bihar and Others, . Likewise, on the same analogy a prayer has also been made for declaring Section 19, item 4 of Schedule H of the Punjab Value Added Tax Act, 2005 (for brevity "the 2005 Act") as unconstitutional as the same would not be applicable in respect of sugarcane and purchase tax thus not leviable under the said Act.

2. The Petitioners are engaged in the manufacture of sugar, molasses, press muds and bagassee. They purchase sugarcane, which is the main raw material, from the farmers to produce sugar or molasses. Both the aforesaid products are sold under the Government control orders. The rate of raw material purchased, i.e., sugarcane being agricultural produce to be paid to farmers (producing and selling sugarcane) is also fixed by the Government of India from time to time. It can also be modified and increased by the State Government under the 1953 Act. The purchase tax is collected by the State of Punjab under the provisions of the PGST Act, 1948. The claim of the Petitioners is that in pursuance of power under entry 54 of List II of the Seventh Schedule to the Constitution, the State Of Punjab has also enacted a special Act which is referred as 1953 Act. It has been claimed that the 1953 Act deals with all aspects of purchase, supply and levy of purchase tax on the sugarcane supplied to sugar factory by cane growers. A specific reference has been made to Section 17 of the 1953 Act which contemplates imposition of purchase tax. The case of the Petitioners is that the PGST Act 1948 imposes tax on sale or purchase of all goods including sugarcane generally although that Act has also been enacted in pursuance of exercise of power under entry 54 of List II of the Seventh Schedule to the Constitution. According to the provisions of the PGST Act, 1948, a tax is imposed with reference to taxable return of registered dealer and it contemplates its own machinery for taxation and collection of tax. The case of the Petitioners, as projected in the petition and during the course of arguments, is that while considering similar legislation with pari materia provisions governing the sale and purchase of sugarcane in the State of Bihar, the honourable Supreme Court has held that levy under the special Act alone would survive and reliance has been placed on the judgment of the honourable Supreme Court in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, .

3. According to the averments made in the petition, the Petitioner-mill has been treated as a reserved area under Clause 6 of the Sugarcane Control Order, 1966 which has been issued by the Central Government under the Essential Commodities Act, 1955 (for brevity, "the 1955 Act"). As a consequence of the notification, the sugarcane grower in a particular area, as a reserved area, are directed to supply 75 per cent of the sugarcane produced by them to the Petitioner-mill. The Petitioner-mill is also bound to take delivery of the same. A prohibition is engrafted on the sugarcane growers from exporting their produce outside the reserved area and like wise the Petitioner-mill is also prohibited from purchasing sugarcane outside the reserved area. Any violation of the Control Order and the notifications issued thereunder would attract criminal prosecution u/s 7 of the Essential Commodities Act, 1955. The case of the Petitioners is that

neither the farmers are allowed to sell their produce outside the reserved area nor the mill is permitted to purchase sugarcane from outside the reserved area. Therefore the prohibition between the cane growers and the mill part-takes the character of acquisition of property because there is no element of free consent which is an essential ingredient of a valid agreement. It is also asserted that there is no scope for principle of demand and supply to operate and the sugar mills, like the Petitioner, are bound to pay the statutory minimum price to the cane growers as fixed by the Central Government.

4. In the written statement filed by the Respondents the broad facts have not been disputed. It has however been pointed out that the Petitioner-mills have been paying tax on purchase of sugarcane under the PGST Act, 1948 at 1.1 per cent. They are also liable to pay the tax in accordance with the provisions of the 2005 Act. The Respondent-State has asserted that the 1953 Act was enforced in order to control the supply of sugarcane and tax on the basis of the rate of the sugarcane was levied. As per the notification dated May 27, 1998 issued u/s 17(1) of the 1953 Act, 50 paisa for 100 kgs. of sugarcane becomes payable on the acquisition of sugarcane from the farmers. It has been clarified that under the 1953 Act tax is payable on the basis of weight when the sugarcane is purchased from the farmers whereas under the 2005 Act the tax is payable on the basis of rate. The argument seems to be that there is no connection between the tax paid under the 1953 Act or under the 2005 Act as the incidence of tax in both the cases is different. It has thus been asserted that two taxes under two different enactments do not tantamount to double taxation. It is also claimed that in any case there is no bar under the Constitution to impose two taxes under two different enactments on the same goods which might be based on the same entry like entry 54 of List II of the Seventh Schedule. Therefore, the Petitioner is under a legal obligation to pay purchase tax u/s 19 of the 2005 Act or under the PGST Act, 1948 even if a nominal tax is claimed under the 1953 Act. The primary reliance by the State of Punjab in their reply has been on the judgment of the honourable Supreme Court in the case of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, where the levy of tax under the PGST Act, 1948 has been upheld. It is claimed that the aforesaid judgment has not been considered in the later judgment in the case of Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, . In Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, it has been held that tax is payable to the State Government if not u/s 4B then u/s 4(1) of the PGST Act, 1948. The sugar mills in the State of Punjab have been assessed to tax after the decision of the Full Bench in the case of Morinda Cooperative Sugar Mills ltd. v. Assessing Authority [1995] 99 STC 468 (P&H) .

5. When the matter came up for consideration before this Court for motion hearing an interim order was passed restraining the Respondents from resorting to coercive steps for recovery of the tax demanded.

6. Mr. Ashok Aggarwal, Mr. K.L. Goyal, Mr. G.R. Sethi and Mr. Vivek Bhandari, learned Counsel have addressed arguments on behalf of the Petitioners. Their

submission is inspired by the judgment of the honourable Supreme Court in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, . They have argued that the 1953 Act being a special enactment for levy of purchase tax exclusively on sugarcane also deals with regulation of production, supply and distribution of sugarcane. According to the learned Counsel it would override the provisions of the PGST Act, 1948 or even the 2005 Act. It has been submitted that both the PGST Act, 1948 and 2005 Act are general Acts which provides for collection of commercial taxes on sale and purchase of all goods whereas the 1953 Act deals only with the purchase of sugarcane. Placing reliance on various paras of the judgment rendered in the case of Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, it has been submitted that both the Acts have been framed in exercise of legislative powers derived from entry 54 of List II of the Seventh Schedule and therefore the 1953 Act would govern the levy of purchase tax as it is a special Act. They have also referred to the statement of objects and reasons which deals specifically with the purchase of sugarcane to protect the interest of the cane growers. Referring to the reasoning adopted by a Division Bench of the Patna High Court in New India Sugar Mills Ltd. v. State of Bihar [1998] 109 STC 394 which has been reversed in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, , learned Counsel have pointed out that no double taxation could be justified on the same commodity or person by levying the same under different enactments without repealing the other. The Division Bench of the Patna High Court in New India Sugar Mills'' case [1998] 109 STC 394 has taken the view that two taxation on the same commodity or person could be imposed by different enactments, which has been reversed. According to the learned Counsel it cannot be justified by keeping in view the different objects of both the statutes.

7. It has been further submitted that the judgment of the honourable Supreme Court in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, although has been rendered by a three-Judge Bench and the judgment in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, has been rendered by a two-Judge Bench yet the judgment which appears to lay down the law more elaborately and accurately and therefore it has to be followed. Canvassing for the view taken by the honourable Supreme Court in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, , Mr. Sethi has submitted that earlier judgment rendered in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, has failed to take into account the provisions of the special enactment promulgated as the 1953 Act. In support of his submission, learned Counsel has placed reliance on two Full Bench judgments of this Court rendered in the cases of Indo Swiss Time Ltd. v. Umrao [1981] PLR 335 and Kulbhushan Kumar and Co. v. State of Punjab 1983 PLR 768.

8. Per contra Mr. P.K. Jain and Mr. Amol Rattan, learned Additional Advocates-General, Punjab have argued that the matter is no longer res integra as the question had fallen for consideration of the honourable Supreme Court in the case of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, . According to the learned Counsel the sugarcane sold by the cane growers themselves to the Petitioner-mill or the sugar manufactures may not be exigible

to purchase tax u/s 4B but would be so exigible u/s 4(1) read with Section 6. The aforesaid view has been considered by a five-Judge Bench of this Court in the case of Morinda Cooperative Sugar Mills Ltd. v. Assessing Authority [1995] 99 STC 468. Following the view taken by the honourable Supreme Court in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, , the Full Bench held that the purchaser of sugarcane is liable to pay purchase tax. The learned State counsel have also argued that even at the time when the judgment in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, and Morinda Co-operative Sugar Mills'' case [1995] 99 STC 468 (P&H) was delivered the sugar mills have been paying purchase tax on the purchase of sugarcane from the cane growers under the 1953 Act. Thus the argument is that merely because after considering the Bihar Finance Act, Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 has come would not necessarily lead to re-opening the question which has already been settled. Another submission made by the learned State counsel is that there is nothing in Article 265 of the Constitution which may indicate that there could be no double taxation. In that regard reliance has been placed on the judgment of the honourable Supreme Court in the case of Avinder Singh and Others Vs. State of Punjab and Others, . It has been argued that even if on the same subject-matter the Legislature chooses to levy tax twice there is no inherent invalidity in the fiscal adventure save where other prohibitions exist. The aforesaid view has also been followed by the honourable Supreme Court in the case of Radhakisan Rathi Vs. Additional Collector, Durg and others, .

9. Replying to the other arguments the learned State counsel have pointed out that the judgment in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, was rendered by a three-Judge Bench whereas judgment in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, has been rendered by a two-Judge Bench. It has been submitted that Full Bench judgments of this Court in the cases of Kulbhushan Kumar and Co. v. State of Punjab 1983 PLR 768 and Indo Swiss Time Ltd. [1981] PLR 335 do not advance the case of the Petitioner inasmuch as both the Full Benches specifically refer to conflict of co-equal Benches of superior court. According to the learned Counsel the judgments of the Full Bench would apply if the co-equal Benches of the superior court have delivered the conflicting judgments whereas in the present case the judgment covering the issue has been delivered by a three-Judge Bench and therefore it is not open to this Court to conclude that purchase tax u/s 4(1) of the PGST Act 1948 or 2005 Act are not payable.

10. The first question which would arise for determination is whether three-Judge Bench judgment of the honourable Supreme Court rendered in the case of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, is binding on the parties. In the aforesaid case the question of law was posed in para 4 of the judgment, namely, whether the sugar mill was liable to pay purchase tax on the sugarcane purchased by it from the growers of the sugarcane. In a categorical answer to the aforesaid question it has been held that Section 4(1) of the PGST

Act, 1948 contemplates levy of purchase tax on all sales and purchases. Once the aforesaid judgment in the categorical terms lays down that purchase tax is leviable u/s 4(1) then it is well nigh impossible for us to say that such a tax cannot be levied on the ground that the PGST Act, 1948 is a statute of general character which deals with sale or purchase tax in respect of all goods whereas the 1953 Act is a special Act which deals with all aspects including levy of purchase tax on sugarcane. The Petitioner has canvassed for the contrary view on the basis of the judgment rendered by a two-Judge Bench of the honourable Supreme Court in the case of Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, . The aforesaid judgment has been rendered by interpreting the Bihar Finance Act, 1981 and Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 by holding that both the Acts would operate in the same field. The underlying principle followed by the honourable Supreme Court is that the Sugarcane Act being a special Act pertaining to all aspects of control of the sugarcane as well as levy of purchase tax has to be preferred over the Finance Act which empower the State to levy all commercial taxes generally whereas the sugarcane Act empowered the levy of purchase tax only on sugarcane. Such a course would not be available to us as the specific Act which is applicable to the Petitioner, namely, PGST Act, 1948 has been interpreted by a three-Judge Bench in the case of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, . Furthermore we would prefer the interpretation adopted by the honourable Supreme Court for the PGST Act, 1948 which is in question before us. The judgment of Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, has emerged out of different statute. It is needless to emphasise that the judgment by the honourable Supreme Court is a law declared in respect of the field occupied by it which is binding on all courts within the territory of India including the High Courts. In that regard reliance may be placed on the observations made by a Constitution Bench of the honourable Supreme Court in the case of Behram Khurshed Pesikaka Vs. The State of Bombay, . Even otherwise the decision of three-Judge Bench in Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, has to be followed because that decision is by a larger Bench than the one deciding the Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, . The three-Judge Bench judgment decision is also under the PGST Act, 1948 which is applicable to the Petitioner. Therefore, in our view there is no possibility whatsoever to reopen the question by opining that the provisions of Section 4(1) of the PGST Act, 1948 would not apply and those of the 1953 Act alone would apply. On the basis of the aforesaid premise, the writ petitions are liable to be dismissed.

11. On account of the binding precedent available in the form of judgment of Jagatjit Sugar Mills and Others Vs. State of Punjab and Another, we are not dealing with any of the contentions raised by the Petitioners which could have been otherwise examined in the light of the observations made in Gobind Sugar Mills Ltd. Vs. State of Bihar and Others, .

12. As a sequel to the above discussion, all the writ petitions fail and the same

are dismissed.

13. A copy of this order be placed on the file of connected cases.

