

(1986) 11 SC CK 0012

In the Supreme Court Of India

Case No : Writ Petitions No"s. 4320-21 of 1978

Industrial Cables (I) Ltd. and Another

APPELLANT

Vs

Assessing Authority and Others

RESPONDENT

Date of Decision : 11-11-1986

Acts Referred:

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

Punjab General Sales Tax Act, 1948 — Section 5(2)

Citation : AIR 1987 SC 7 : (1986) 1 JT 793 : (1986) 2 SCALE 741 : (1986) SCC 695 Supp : (1986) 1 SCC 695 Supp : (1987) 64 STC 349 : (1987) 1 UJ 245

Hon'ble Judges : O. Chinnappa Reddy, J;G. L. Oza, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Chinnappa Reddy, J.—These two writ petitions are by the same petitioners and raise the same question. The question is whether they are entitled to claim exemption from the levy of Sales-tax u/s 8(2-A) of the Central Sales-Tax Act as it stood in 1978. This provision was, at that time, as follows:

(2-A) Notwithstanding anything contained in Sub-section (1-A) of Section 6 or in 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 nill, 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 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.

Section 5(2) of the Punjab General Sales Tax Act to the extent relevant was as follows:

Section 5 Rate of Tax

(1)...

(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 the period on:

(i)...

(iii)...

(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:

(v)...

(vi)...

(vii)...

(viii)...

(ix) ...

The petitioners manufacture and sell power cables and aluminium conductors. The sales fall within the language of Section 5(2)(a)(iv) of the Punjab Sales Tax Act and the question is whether, thereby, they attract Section 8(2A) of Central Sales Tax Act and are exempt from the levy of Sales-tax under the Central Sales Tax Act. The question turns on whether the present sales are sales of any goods by a dealer exempt from tax generally under the Sales-tax law of the appropriate State. The explanation to Section 8(2A) of the Central Sales Tax Act expressly provides that a sale of goods shall not be exempt from tax generally of the appropriate State, if under that law it is exempt only in specified circumstances or under specified conditions etc. The exemption granted by the State law in the present case is to "sales to any undertaking supplying electrical energy to the public...of goods for use by it for generation or distribution of such energy". The exemption, it is seen, is only to sales of goods which satisfy two conditions, first, the sales should be to an undertaking supplying electrical energy to the public under a license and second, the sale should be for use by the undertaking in the generation or distribution of electrical energy. By no stretch of imagination can it be said that there was any exemption from tax generally. This may be so said

even without recourse to the explanation. The explanation only puts the matter beyond all controversy. The identical question came up for consideration in Indian Aluminium Cables Ltd. Vs. State of Haryana, , and the question was decided against the assessee therein. The learned Counsel for the appellants made brave attempt to distinguish that case on the ground that Section 8(2A) of the Central Act which was considered in that case was the amended provision and that case could not, therefore, be relied upon. That, in the parlance of lawyers, is a distinction without difference, since we find no pertinent difference between Section 8(2A) amended and unamended in so far as it relates to the present controversy. The learned Counsel however invited our attention to the decision of the Allahabad High Court in Hindustan Safety Glass Works (P.) Ltd. Vs. The State of Uttar Pradesh and Another, and submitted that this decision supported him and that it was not disapproved by this Court in Indian Aluminium Cables Pvt. Ltd. v State of Haryana (supra). All that we can say is that this Court in Indian Aluminium Cables (P) Ltd. v State of Haryana (supra) expressed no opinion on the correctness or otherwise of the Safety Glass Works case. The decision of this Court in Indian Aluminium Cables Ltd. v State of Haryana (supra) is directly on point and we see no reason to depart from the view taken there. The Petitions are dismissed.