

(1992) 08 GUJ CK 0013
In the Gujarat High Court
Case No : Sales Tax Reference No. 12 of 1988

Ingersoll Rand (India) Ltd.	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 11-08-1992

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 12, 13, 2, 2(32), 42(1)

Citation : (1992) 08 GUJ CK 0013

Hon'ble Judges : S.D. Dave, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; K. M. Mehta, Assistant Government Pleader and H.V. Chhatrapati, for the Respondent

Judgement

G.T. Nanavati, J.—At the instance of the assessee, the Gujarat Sales Tax Tribunal has referred to us u/s 69 of the Gujarat Sales Tax Act, 1969, the following question for our opinion :

"Whether, in the facts and circumstances of the case, the Tribunal was justified in holding that the phrase "the amount of sales tax or of general sales tax or, as the case may be, of both recovered separately under the Act," appearing in rule 42(B)(i)(a) of the Gujarat Sales Tax Rules, 1970, can only be interpreted to mean the amount of such tax legally recovered or recoverable under the Act and not the amount actually recovered by way of tax ?"

2. The assessee is a dealer registered under the Act. It manufactures various types of air-compressors, rock-drills and parts thereof. On those products, it used to pay purchase tax at the rate of 8 per cent under the residuary entry 13 of Schedule III to the Act. The selling dealers were also assessed on that basis in respect of the sales made to the assessee. The assessee had filed its returns for the years 1973 to 1977, but they were not taken up for consideration for the purpose of assessing the correct amount of tax payable by the assessee till February 22, 1977, in view of the extensions granted u/s 42(1)(b) of the Act. In all its returns, the assessee had claimed set-off under rule 42 of the Gujarat

Sales Tax Rules at the rate of 8 per cent as it had paid tax, on the purchases made by it at the rate of 8 per cent. Meanwhile, the application made by the assessee u/s 62 of the Act in respect of the sales of aircompressors and other articles sold by it came to be decided on February 22, 1977, and it was decided therein that the said goods were covered by entry 16(1) of Schedule II, Part A to the Act and thus they were exigible to tax at the rate of 3 per cent up to July 31, 1975 and 4 per cent thereafter. In view of this determination order, the Sales Tax Officer, while passing assessment orders, allowed set-off only at the rate of 3 per cent for the purchases made up to July 31, 1975, and at the rate of 4 per cent for the subsequent purchases on the ground that the tax on those purchases were really payable at those rates and, therefore, set-off cannot be granted at the rate of 8 per cent, even though the assessee had paid the tax at that rate.

3. The appeals filed against the said orders of assessment were dismissed so far as claim for set-off was concerned, though they were partly allowed in respect of some other reliefs.

4. The assessee then filed five second appeals in the Tribunal. The Tribunal also dismissed the same agreeing with the view taken by the Sales Tax Officer and the Assistant Commissioner.

5. Thereupon the assessee moved the Tribunal by filing five applications u/s 69 of the Act for referring the above quoted question to this Court. The Tribunal agreed that the said question of law did arise for consideration and, therefore, it has been referred to this Court.

6. What is contended on behalf of the assessee is that the Tribunal has not correctly interpreted rule 42(B)(i)(a), which provides for the extent of drawback, set-off, or refund, as the case may be, in respect of purchases of goods from a registered dealer without giving any certificate under sections 12 and 13 of the Act, and where the amounts of sales tax and general sales tax have been recovered separately. He submitted that by interpreting the words, "amount of sales tax or general sales tax recovered under the Act", in the light of the statutory definition of the word "tax" as contained in section 2(32) of the Act, the Tribunal has really frustrated the very object of granting set-off. He submitted that the words, "amount of sales tax" or "amount of general sales tax" as appearing in the said provision should have been interpreted to mean the amount by way of sales tax or amount by way of general sales tax, and the word "recovered" should have been interpreted to mean "actually recovered" and not "recoverable" under the Act.

7. On the other hand, the learned Assistant Government Pleader appearing for the Revenue supported the view taken by the Tribunal on the same grounds which have been given by the Tribunal in support of its view.

8. The reasons given by the Tribunal are that the word "tax" has been defined by the Act and, therefore, the word "tax" appearing in rule 42(B)(i)(a) should be given the same meaning; that if a different meaning is given to the word "tax",

then it will lead to anomalous position as one meaning will have to be given to that word while interpreting rule 42(B)(i)(a) and different meaning to the same word while dealing with a case falling under rule 42(B)(i)(b); that if set-off is granted in respect of the amount actually levied and paid, then the set-off will be not only in respect of the tax but also the excess amount which may be the subject-matter of penalty, and that such interpretation would lead to a situation where assessment of the manufacturing dealer will have to be dragged on till the assessment of his vendors are finalised.

9. Sub-section (32) of section 2 defines "tax" to mean a sales tax, general sales tax, or purchase tax, payable under the Act, but does not include additional tax. Rule 42 provides for drawback, set-off, or refund of tax for the goods purchased by a Manufacturer. It provides that in assessing the tax payable by a manufacturer, the Commissioner shall, subject to the prescribed conditions, grant him a drawback, set-off, or as the case may be, refund, of the whole or any part of the tax in respect of the purchase of goods used by him in manufacture. Since we are not concerned with the conditions, we need not refer to the same. It further provides that the extent of drawback, set-off, etc., shall be the amount calculated in accordance with clauses (A) and (B). Relevant portion of clause (B) is set out below :

"(B) For the purchases of goods on or after the appointed day (i) in respect of the purchases made on or after the appointed day from a registered dealer without giving any certificate under sections 12 and 13 of the Act.

(a) the amount of sales tax, or of general sales tax, or as the case may be, of both, recovered separately, under the Act.

(b) the amount calculated in accordance with the formula hereunder where the amount of sales tax, or of general sales tax, or, as the case may be, of both, has not been so recovered separately;"

10. What was submitted on behalf of the assessee was that though the word "tax" is defined to mean sales tax, general sales tax or purchase tax payable under the Act, different meaning can be given to that word, if the context otherwise requires and the opening part of section 2 makes that very clear. He submitted that granting of drawback, set-off, or refund, is an integral part of the scheme of the Act, and the provisions relating thereto make its object clear. Therefore, rule 42 deserves to be interpreted in the manner, which would be consistent with that object. He drew our attention to the decisions of this Court in Prabhat Solvent Extraction Industries Pvt. Ltd. v. State of Gujarat [1982] 49 STC 322, and Commissioner of Sales Tax v. Ajay Printer (Pvt.) Ltd., Sales Tax Reference No. 9 of 1962 decided on November 20, 1963, wherein the object and purpose intended to be served by the grant of recognition to a registered dealer is pointed out. He also drew our attention to the decision in Morvi Vegetable Products Ltd. v. M. C. Padia, Sales Tax Officer, Morvi, Special Civil Application No. 916 of 1973 decided on July 9/10, 1974, to show the object of the scheme for

deductions contemplated by the Act. Those observations clearly indicate the policy of the legislation that there is only a single point levy of the sales tax on the goods purchased or sold in the State and deductions, drawback, set-off, etc., are granted to give effect to that policy. In other words, the main object of granting such deductions, drawback, or set-off is to lighten the incidence of tax and the consequential economic burden upon the ultimate consumer.

11. It was submitted that if interpretation of the word "tax" by the Tribunal is accepted, then that would instead of achieving the object of the provision, defeat the same. The learned counsel cited *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, *State of Tamil Nadu v. Kodaikanal Motor Union (P.) Ltd.* [1986] 62 STC 272, *Ashok Singh Vs. Assistant Controller of Estate Duty, Calcutta and others*, and *Kirtikumar Dhanjibhai Mohaya v. V. K. Trivedi*, Sales Tax Officer [1985] 58 STC 125 (Guj) in support of his contention that in order to avoid the effect or consequence not intended by the Legislature, or to see that the object of the provision is not frustrated, or that the interpretation does not lead to unjust results, the court can depart from the statutory definition or meaning. The learned Assistant Government Pleader did not dispute the proposition that, if the context so requires, the courts can give an appropriate meaning to the word used in a statute if it has various meanings. There can be no doubt that departure from the legislative dictionary, or statutory meaning of the word is not only permitted but justified, if literal interpretation, or interpretation according to the legislative dictionary is likely to lead to unjust result, or is not likely to achieve the object of the provision wherein the said word occurs.

12. In *Prabhat Solvent Extraction Industries Pvt. Ltd.* [1982] 49 STC 322 this Court has observed that "set-off" means adjustment or deduction from the tax payable by a purchasing dealer to the Government of the amount to be returned to such purchasing dealer in respect of the purchase tax paid by him or as representing the amount of sales tax or general sales tax collected from him by his vendor. Thus, set-off is in the nature of a statutory deduction. As pointed out earlier, the policy of the Legislature is to levy sales tax at a single point and deduction, drawback or set-off are an integral part of the scheme. In this context, the word "tax" in rule 42(B)(i)(a) should be interpreted. If it is given the same meaning as we find in the legislative dictionary, then the result would be that the assessee would be entitled to set-off at the rate of 3 per cent only up to July 31, 1975 and 4 per cent thereafter, even though he had paid tax at the rate of 8 per cent. He will have to bear the burden of tax to the extent of the difference between the tax paid by him and the amount granted by way of set-off. This would be contrary to the policy of the Act.

13. Such an interpretation is also likely to lead to an unjust result as the amount which was not payable under the Act will be retained by the Revenue and the assessee may not be able to get back that amount even by filing a suit in the civil court.

14. Even in the Act itself, the word "tax" is not used in one sense only. For

example, section 52, while providing for refund of excess amount has described the amount which is collected in excess of the amount due as the amount of tax.

15. Thus, the amount which is levied and collected in excess of the amount really due and payable under the Act is also treated as tax for certain purpose. If an amount is paid pursuant to an order of assessment, we see no reason why that amount should not be treated as amount of tax for the purpose of rule 42. Section 47 also, by using the words, "the amount of tax assessed" indicates that whatever is paid as a result of assessment has to be regarded as amount of tax. If for the purpose of refund excess amount paid as a result of assessment is treated as an amount of tax, there is no reason why for the purpose of set-off the excess amount paid as a result of assessment or on determination by the sales tax authority, should not be regarded as amount of tax, even though subsequently It may turn out that the whole amount was not really payable under the Act as tax.

16. It was, however, urged by the learned Assistant Government Pleader appearing for the Revenue that if the amount paid by way of tax is also regarded as tax for the purpose of clause (a) of rule 42(B)(i), then, it will lead to an anomalous result, because, we will have to give a different meaning to the word "tax" while interpreting clause (b) of that rule. Clause (a) deals with a situation where sales tax and general sales tax have been recovered separately by the dealer from the purchaser of goods. Clause (b) deals with a case where the sales tax or general sales tax has not been so recovered. In a case falling under clause (b), no measure is available on the basis of which the extent of set-off can be worked out and it is for that reason that the rule-making authority has prescribed a formula for that purpose. In cases covered by clause (a), the measure is the amount of sales tax or amount of general sales tax actually paid by the purchasing dealer. Thus, the two clauses deal with different situations and in this context, if the word "tax" is interpreted differently, in our opinion, it cannot be said that, that will lead to an anomalous situation.

17. The learned Assistant Government Pleader referred to the decision of the Supreme Court in *D.R. Kohli and Others Vs. Atul Products Ltd.*, , and submitted that the amount which is not paid under the Act cannot be regarded as tax and, as set-off is relatable to tax, set-off can only be available in respect of the amount which has been paid under and not de hors the Act. In *D.R. Kohli and Others Vs. Atul Products Ltd.*, , what had happened was that the assessee had paid excise duty on dyes, which were not liable for such payment, and which were used in the manufacture of processed dyes and yet claimed exemption under the notification which exempted the specified dyes from the whole of excise duty leviable thereon, if such dyes were manufactured from any other dyes on which excise duty or countervailing customs duty was payable and paid. The Supreme Court found that really no duty was payable on the dyes at the time when the assessee had paid duty and thus it was a voluntary payment and thus they did not earn any exemption under the notification. The Supreme Court

then observed :

"..... The language of the notification left no room for doubt at all. It stated that if and only if such dyes were manufactured from any other dye on which excise duty or countervailing customs duty had already been paid, they would be exempted from duty. Payment of excise duty on dyes was possible only if they had been manufactured after the introduction of item 14D into the First Schedule to the Act. Admittedly in this case the dyes which were used by the respondent had been manufactured prior to that date."

18. Thus, it was held that the case of the assessee did not fall under the notification granting exemption since the basic dyes used by it in producing other processed dyes were not subject to levy of excise duty when they were manufactured and cleared. The facts of that case are thus not comparable with the facts of this case and the question which we are required to consider in this case did not arise for consideration in that case. Whether an amount paid can be regarded as the amount paid under the relevant Act will depend upon the scheme of that Act and language of the relevant provision. Merely because voluntary payment of excise duty was not regarded by the Supreme Court as payment under the Central Excises and Salt Act, 1944, it cannot be said that the amount paid by the assessee under the Act as a result of assessment even if it is for the previous year cannot be regarded as an amount of tax under the Act for the purpose of drawback, set-off or refund.

19. One more ground, which was urged by the learned Assistant Government Pleader, was that if this interpretation is given to the word "tax" in rule 42(B)(i) (a), the assessment proceedings of the manufacturing dealer will drag on till the assessment proceedings of the selling dealer are finalised. If the purchasing dealer has paid tax, and if there is no other dispute and the purchasing dealer claims set-off, it is difficult to appreciate how as a result of such a claim the assessment proceedings of the purchasing dealer will have to be kept pending till the assessments of his vendors are finalised.

20. For all these reasons, we are of the view that the word "tax" in clause (a) of rule 42(B)(i), on correct interpretation means the amount paid by way of sales tax or general sales tax and recovered as such. In other words, the amount of tax contemplated by rule 42(B)(i)(a) is the amount of sales tax or general sales tax actually paid and recovered by way of tax, and not, only that amount of tax which could have been legally recovered. We, therefore, answer the question referred to us in the negative, i.e., in favour of the assessee and against the Revenue. No order as to costs.

21. Reference answered in the negative.