
(2007) 01 AHC CK 0122
In the Allahabad High Court

ITC Limited

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Constitution of India, 1950 — Article 142, 226

Citation : (2007) 2 ADJ 245

Hon'ble Judges : Sushil Harkauli, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sushil Harkauli and Pankaj Mithal, JJ.—By this writ petition, the petitioner has challenged the order dated 17.11.2006 passed by the Deputy Commissioner Trade Tax, Saharanpur under Rule 41 (6) of the U.P. Trade Tax Rules by which purchase tax at the prescribed rate of 4% amounting to Rs. 2,33,00,663/- has been imposed along with interest at the rate of 14% on the admitted purchase of wheat.

2. The petitioner had claimed that the said purchase of wheat is exempted from the purchase tax under the Notification dated 29.8.2003 issued u/s 4-B(1)(a-1) of the U.P. Trade Tax Act. The submission has been rejected by the impugned order. The same issue has been raised in this writ petition.

3. Before considering the submission of the petitioner it may be stated here that the relevant facts are that admittedly the petitioner purchased wheat worth Rs. 58,25,16,579.62 in the month of May 2006 and supplied (not sold) this wheat for conversion into flour by grinding process to three flour mills know as (i) M/s Venkatesh Agro Food Private Limited, Chandauli, (ii) M/s Bhawani Roller Flour Mill Private Limited, Ghaziabad and (iii) M/s Goverdhan Agri Flour Mill Private Limited, Agra. After conversion of wheat into flour, it was taken back from these flourmills by the petitioner for onward sale.

4. On the sale of wheat there is no trade tax (sales tax), but on the purchase of

wheat, purchase tax is payable by first purchaser on the first purchase in U.P. Thereafter, if the wheat is sold again in U.P., there is no trade tax or purchase tax on the said re-sale. There is no trade tax on the sale of flour in U.P.

5. For the benefit of those who are unfamiliar with the law of tax on sales in U.P. it may be clarified that sales tax (now known in U.P. as trade tax) is payable on sale by the seller, while purchase tax is payable on purchase by the purchaser. The two taxes are really one and the same and the difference in nomenclature is only to denote the hands in which the transaction would be taxed. Thus, sale of goods is subjected either to sales tax (now known as trade tax) or to purchase tax depending upon in which hand the transaction is intended to be taxed.

6. Purchase tax is payable on the turnover of the purchase by a dealer u/s 3-D, which is the charging section in the case of purchase tax. The U.P. Trade Tax Act in that very charging section makes it clear that the State Government has the power to fix the rate of tax and has also the goods, sales of which will be amenable to purchase tax.

7. However, the purchase tax or the sales tax leviable under the said Act is single point tax and is not payable repeatedly on every subsequent sale or purchase.

8. However, if after purchase the goods are altered into different goods through process of manufacture or otherwise, the trade tax or purchase tax may be levied again.

9. For ensuring that purchase tax remains a single point tax there are various provisions in the Act. Section 4-B (1) is one such provision.

10. In order to make the meaning and intent of Section 4-B (1) more clear certain words from sub Clause (a) and (a-1) of Sub-section 1 are being rewritten in simplified language below:

4-B Specific relief to certain manufacturers

(1) Notwithstanding any thing contained in Sections....3-D -

(a) Where any goods liable to (purchase) tax...are purchased by a dealer....(who) holds a recognition certificate issued u/s 4-B (2), such dealer may be granted whole or part exemption from purchase tax either unconditionally or subject to the conditions specified.

(1-a) Where any goods liable to purchase tax either sold or supplied by first purchaser to another dealer, where the latter holds a recognition certificate u/s 4-B (2), the State Government may grant similar relief as mentioned in Clause (a) to the first purchaser.

11. Recognition Certificate u/s 4-B (2) is for raw material or packaging material (hereinafter referred as input goods) used by a dealer in manufacture/packaging notified goods meant for

(a) sale in U.P.; or

(b) inter-state sale; or

(c) export out of India.

12. Thus, apparently the above provision contemplates that because notified goods manufactured or packed out of input goods will be either

(a) liable either to trade tax when sold within the State; or

(b) liable to Central Sales Tax when sold by way of inter State sale; or

(c) will get foreign exchange by export out of India; and therefore

in such cases, the input goods may be exempted whole or partly from trade tax if the State Government deems fit.

13. We have not been shown any case where the State Government has exempted input material where input material is wheat.

14. Further, where input materials are exempted as above, there may be two situations as below ;-

(1) if he is the first purchaser the manufacturing dealer will get exemption from purchase tax on the purchase of input materials u/s 4-B (1) (a); and

(2) if the manufacturing dealer buys or obtains input material from another person who is the first purchaser of that input material, then the same exemption is extendable to the said first purchaser u/s 4-B (1) (a-1).

Section 4-B (1) (a-1) covers only that field which is covered by Section 4-B (1) (a) and does not grant any other or further exemption. Thus where purchases of input goods are not exempt from purchase tax u/s 4-B (1) (a), no exemption will be available u/s 4-B (1) (a-1).

The Notification dated 29.8.2003 has been issued towards that objective, and has to be interpreted in the light of that object.

15. The notification in short says that where wheat is sold or supplied by a registered dealer (being its first purchaser) to a flour mill having recognition certificate u/s 4-B (2) then the dealer will be exempt from purchase tax provided the following conditions are fulfilled : - (a) the wheat has been purchased (within U.P.) by the flour mill from its first purchaser; (b) the flour mill has been given compounding benefit u/s 7-D; (c) the dealer has not added the purchase tax to the price of the wheat sold by the dealer to the flour mill (and such non-passing-on of the tax liability is certified by the flour mill).

16. In order to understand the three conditions placed in the said Notification it will be necessary to appreciate that a flour mill purchasing wheat is liable to pay purchase tax on the said wheat unless purchase tax has already been paid by first purchaser thereof and the flour mill is buying wheat from the first purchaser. Indeed if the flour mill were not so liable there would be no occasion for it to opt

for the compounding of tax liability u/s 7-D.

17. u/s 7-D, there is a scheme of composition under which instead of paying purchase tax on individual transactions which would require maintaining of accounts of each transaction and checking of correctness of such records, the flour mill owners have been given the option to have the grinding capacity of mill computed and assessed in accordance , with the scheme and to have the compounding amount computed in the same proportion and to pay it in lieu of paying purchase tax on every transaction of purchase. The scheme provides that if the mill is using one roller body of size 40 inch, the grinding capacity would be deemed to be 3000 metric ton per year.

18. However, the compounding scheme for the relevant year 2006-07 which has been issued by the U.P. Government under Notification dated 22.6.2006 provides in Clause (3) thereof that if the purchase of wheat exceeds the grinding capacity assessed as above, the flour mill will have to pay purchase tax plus interest on the amount by which the purchase of wheat exceeds the grinding capacity assessed.

19. In other words this scheme of taxation means that the flour mill has paid advance purchase tax by way of composition and charges on the expected quantity of purchase as assessed under the compounding scheme. If the purchase of wheat by flour mill during the period when compounding is in force is less than the expected and assessed amount, there would be no occasion for any refund. But if the purchase exceeds the assessed grinding capacity, the flour mill will have to pay purchase tax and also interest on the excess quantity. However, this excess quantity is only that excess quantity which has been purchased by flour mill and will not include any excess quantity if the same has been obtained by flour mill not by way of purchase but by way of supply as in the present writ petition.

20. Thus, the scheme of levy of purchase tax on wheat is quiet clear namely that there will be purchase tax on wheat once which may either be in hands of first purchaser or in the hands of flour mill if the flour mill happens to be second purchaser from the first purchaser.

21. According to the petitioner, the Notification should be interpreted to mean that the conditions mentioned in three clauses of Notification dated 29.8.2003 apply only to the cases where wheat is sold by first purchaser to a flour mill, but if wheat is not sold but only supplied by first purchaser to the flour mill, purchase of wheat in the hand of first purchaser should be free of tax under the said Notification without any condition.

22. This argument is primarily based upon the use of words "sold or supplied" in the first part of the Notification dated 29.8.2003.

23. Having examined the said Notification we are of the view that the words "or supplied" in the first part of the Notification have been mechanically borrowed

from the words of Section 4-B (1) (a-1) of the Act and are redundant.

24. The basic concept as stated above is that wheat will be taxed in the hands of the first purchaser. The first purchaser will get exemption from purchase tax only when first purchaser sells (not merely supplies) the wheat to a flour mill having recognition certificate u/s 4-B (2), because:

(a) in such cases if the wheat so purchased by the flour mill is within the assessed grinding capacity of the flour mill purchase tax on it would stand paid being covered by the composition charges; and

(b) in cases where the wheat so purchased by the flour mill exceeds the assessed grinding capacity, the flour mill will pay additional tax plus interest on the excess in terms of clause 3 of the compounding scheme.

25. The reasons for excluding the redundant words "or supplied" in the Notification is that the interpretation suggested by the petitioner would mean that every flour mill will be able to misuse the Notification dated 29.8.2003 and evade payment of purchase tax merely by setting up a middle man or an agent who will be first purchaser who will claim exemption under the said Notification, and who after such first purchase will supply wheat to the flour mill beyond its assessed grinding capacity and the excess quantity of wheat which flour mill will receive only by way of supply and not by way of purchase, will not be subjected to tax and interest contemplated by Clause (3) of the Scheme.

26. While it is well settled that assessee is liable to pay tax only if he is covered by letter of law and there can be no taxation by interference although it is well settled that where two interpretation is reasonably possible, the court should adopt the interpretation favourable to the assessee, but in the present case we do not think that any other interpretation than what we have placed above, is possible on the Notification dated 29.8.2003 reasonably. The petitioner is not covered by the exemption Notification, which applies only to cases of purchase by flour mills, and therefore cannot claim exemption from the purchase tax. The petitioner is covered by Section 3-D and therefore is liable to pay purchase tax. No other provision of exemption from the said tax has been shown to us.

27. We have enquired from the learned Counsel for the petitioner as well as learned Standing Counsel as to whether the wheat supplied by the petitioner who is the first purchaser to the first and third flour mills, the second flour mill not having the recognition certificate, exceeds the assessed grinding capacity of the said first and third flour mills. The learned Counsel for the petitioner has submitted that the supplied wheat along with other wheat purchased by the said flour mill was well within their assessed grinding capacity.

28. If this factual contention is correct it would mean that wheat so supplied has been subjected to purchase tax in the hands of the petitioner also and also in the hands of the flour mill through the compounding charges.

29. However, it is well settled that hard cases do not justify making of or laying

down of bad law. We therefore refrain from giving an interpretation which will be capable of obvious misuse for evasion of tax.

30. We have not been shown, despite request, any provision in U.P. Trade Tax Act, where relief can be granted in such cases of double taxation due to technicality of law.

31. Although under Article 142 of the Constitution of India, the Supreme Court has the power to pass any order to do complete justice between the parties, but under Article 226 of the Constitution of India, the High Court does not have any such power.

32. In the circumstances, we have no option but to dismiss the writ petition. It is accordingly dismissed.