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(1964) 10 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1613 of 1962

Janki Dass Bhagat Ram — APPELLANT

Vs

The Excise and Taxation Officer and Another — RESPONDENT

Date of Decision : 05-10-1964

Acts Referred:
Constitution of India, 1950 — Article 286
Punjab General Sales Tax Act, 1948 — Section 2, 5

Citation : (1965) 16 STC 542

Hon'ble Judges : Jindra Lal, J;Harbans Singh, J

Bench : Division Bench

Advocate : R. Sachar and Kuldip Chand Sud, for the Appellant; Gokal Chand Mittal and D.S. Nehra, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh, J.—This writ filed by Messrs Janki Das Bhagat Ram challenges the order of assessment passed by the Assessing Authority under the Sales Tax Act and was referred to a Division Bench by me because of a number of law points that were raised in it.

2. The relevant facts necessary for the disposal of this writ may briefly be stated as under:--Under Sub-section (1) of Section 5 of the Punjab General Sales Tax Act, tax is levied on the "taxable turnover" at a particular rate mentioned therein. Under Sub-section (2) of this section "taxable turnover" means "that part of a dealer''s gross turnover during any period which remains after deducting therefrom" certain sales and purchases that are detailed under various clauses under that sub-section. "Gross turnover" means the "aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period..." It may be mentioned here that according to Clause (ff) of Section 2, "purchase" for the purposes of the section means "the acquisition of goods specified in Schedule C" and "sale" means "any transfer of property in goods other than goods specified in Schedule C".

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3. From the above it is clear that there are certain commodities detailed in Schedule C, on which tax is levied at the time of their purchase. In respect of those commodities, no tax is leviable on their sale, and, conversely, tax is leviable on sale of commodities other than those mentioned in Schedule C. Cotton, which expression includes ginned and unginned cotton, and oil seeds which include cotton seeds, are amongst the commodities mentioned in Schedule C and on these, only the purchase value thereof is to be added in determining the gross turnover of a dealer.

4. The petitioner-company submitted its return to the Assessing Authority under the General Sales Tax Act for the assessment year 1960-61. Out of the gross turnover they claimed certain deductions, as provided under Sub-section (2) of Section 5. Some of these deductions were allowed and others, it is alleged, were disallowed. In paragraph 21 of the petition, five items were detailed which had been so disallowed and these are as follows:--

(i) Purchase of oil seeds amounting to Rs. 1,34,815-75 nP.

(ii) Sale of binola within six months from the close of year which had been earlier purchased from the market: Rs. 53,685-94 nP.

(iii) Sales which had taken place in the course of export out of the territory of India: Rs. 1,52,657-07 nP.

(iv) Sale of binola (which had been extracted from cotton purchased) to registered dealers: Rs. 1,38,943-58 nP.

(v) Sale of cotton within six months from the close of the year which had been purchased earlier in the market to registered dealers: Rs. 23,954-63 nP.

5. So far as the first item is concerned, it is now conceded by the learned Counsel for the petitioner-company that in view of certain decisions of this Court, this amount could not be deducted out of the gross turnover, and, consequently, this item need not be considered.

6. Exemption with regard to the remaining four items is sought under Sub-clauses (ii) and (vi) of Clause (a) of Sub-section (2) of Section 5 of the Act. The relevant portions of these may be reproduced as below:--

(a) his turnover during that period on--

(i) ... ... (ii) sales to a registered dealer of goods declared by him in a prescribed form....

...or sale in the course of export of goods out of the territory of India... (vi) the purchase of goods which are sold not later than six months after the close of the year, to a registered dealer or in the course of inter-State trade or commerce or in the course of export out of the territory of India.

7. As would be clear from the items detailed in paragraph 21 of the petition as reproduced above, we are concerned only with the sale or purchase of cotton and

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cotton seeds. As already indicated above, no tax is leviable on the sale of these goods. Tax is levied only on purchase of these commodities and, consequently, Sub-clause (ii) has no bearing on the matters before us because that sub-clause relates only to sales as defined in the Act and the word "sale" as already indicated, refers to transfer of goods (for cash or similar consideration) other than those mentioned in Schedule C.

8. It will be noticed that even in the impugned assessment order, this distinction between Clauses (ii) and (vi) has not been kept. The two clauses are materially the same except that Sub-clause (ii) relates to sales of goods other than those mentioned in Schedule C and Sub-clause (vi) gives a corresponding relief with regard to purchases within certain limitations. For example, paragraph 5 of the impugned assessment order runs as follows:--

Deduction claimed u/s 5(2)(a)(ii) has been scrutinised. It contains sales of binola (cottonseeds) worth Rs. 1,70,051-66 for which claim is untenable as the binola was not acquired by the dealer but he got as bye-product from ginning cotton. As such, claim under this head is allowed to the tune of Rs. 13,46,330-00.

9. It may be mentioned here that the total deduction claimed in this respect was to the tune of Rs. 15,16,381-27.

10. In view of the above, one of the preliminary objections taken by the learned Counsel for the Assessing Authority at the time of the arguments before us (though this argument was not taken when the case was argued before me earlier) was that inasmuch as claim was not made by the petitioner before the Assessing Authority for any deductions under Sub-clause (vi), petitioner cannot be given any such relief. This argument has no force for the simple reason that the Assessing Authority was also apparently considering relief under Sub-clause (vi) though it has mentioned Sub-clause (ii), and, in any case, if the law allows the petitioner-company to deduct certain items of purchases out of the gross turnover for arriving at the taxable turnover, it cannot be refused that relief simply because it mentioned the sub-clause, under which it claimed this relief, wrongly.

11. Having disposed of this preliminary point, I would now take up the various matters on merits.

12. The deductions claimed by the petitioner-company fall under three different heads:--

(1) Binola or kapas purchased as such in the market and sold within six months after the close of the year to a registered dealer [vide para. 21(ii) and (iv) of the petition];

(2) Purchase price of the binolas, which though not purchased in the market as such, were contained in the form of seed in the unginned cotton which had been purchased by the petitioner-company in the market and later binolas were separated by ginning and the binolas so obtained, out of the ginned cotton, sold

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to registered dealers within the prescribed period;

(3) Purchase price of the cotton purchased in the market at Jagraon, where the petitioner-company is carrying on its business, which was sent to their commission agents at Bombay and ultimately sold there to a foreign buyer for export.

13. I will deal with these in seriatim.

14. So far as the first head is concerned, as was mentioned in the return in reply to paragraph 21 of the petition, the wording of Sub-clause (vi) is absolutely clear and if the petitioner-company can prove that it purchased the binolas as such and sold them to registered dealers within the prescribed time, it would be entitled to deduct such purchase price from the gross turnover. The assessment order is not clear on this point but, in any case, the claim of the petitioner seems to be valid and this matter must be gone into by the Assessing Authority and if it is satisfied, in view of the material before it, that the allegations are correct, the petitioner-company would be entitled to the deduction claimed.

15. So far as the second category is concerned, the matter is now concluded by a Division Bench judgment of this Court in Patel Cotton Company Private Ltd. v. The State of Punjab and Ors. C.W. No. 114 of 1964 decided on 14th May, 1964; since reported at [1964] 15 S.T.C. 865 and the claim in this respect, which had been disallowed by the Assessing Authority, vide paragraph 5 of the assessment order reproduced above, shall have to be disposed of in terms of the decision mentioned above.

16. So far as the third category is concerned, the procedure for the sale of cotton for the purpose of export is given in paragraph 19 of the petition and briefly is as follows: Cotton is consigned from Jagraon to Bombay by the petitioner-company, the railway receipt being in favour of "self". This railway receipt is sent to the petitioner-company''s bankers at Bombay, and the commission agents there obtain this railway receipt after depositing with the bank approximately 75 per cent. of the price of the cotton by way of security. The cotton after being taken delivery of is kept in the godowns of the commission agent and when the commission agent "gets an offer of purchase from a foreign buyer, he gets into contact with the petitioner and obtains his consent for such a sale and only after obtaining this consent, he sells the goods on behalf of the petitioner to the foreign buyer. These goods are purchased under a certificate of ''K'' Form under the Bombay Sales Tax Act which certifies that the sale of these goods is in the course of exporting them out of India and the goods are then exported out of the territory of India. The commission agent thereafter remits the sale proceeds after adjusting the security already given and after deducting his commission on the sale. In the whole of the transaction, the commission agent acts merely as an agent of the petitioner and is only interested and entitled to his commission when the things are sold.... The petitioners are charged godown and storage charges and other incidental charges like handling etc., plus interest on the

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amount which had been given by the commission agent as a security." The details of the procedure as given in this paragraph are not controverted and, in fact, in the return, this paragraph is admitted. In paragraph 31 the petitioner-company stated that the levy of purchase tax without giving a deduction for the sales amounting to Rs. 1,52,657-07 [the amount is mentioned in Clause (iii) of paragraph 21] made in the course of export out of the territory of India is in violation of Article 286 of the Constitution of India. In reply, the return is to the following effect:--

Deductions in respect of purchases of goods are permissible if those goods are disposed of in the manner laid down.... In the case of the petitioner, instead of effecting ''sale'' as understood in the Sale of Goods Act, the goods were transferred by the petitioner to his commission agents at Bombay for sale on consignment basis. In determining his case, on the sales made by the petitioner in the State of Punjab are to be taken into account because he is a dealer under the Punjab General Sales Tax Act, 1948, in respect of the business done by him, and not of his commission agents outside the State of Punjab. In the circumstances of the case, the Assessing Authority is legally justified in rejecting the claim of the petitioner.

17. From the above, it appears that there were two matters which were taken into consideration by the Assessing Authority in disallowing relief under this head; first, that the sale was not by the petitioner to the seller for the purpose of export but the "sale was by the petitioner on consignment basis" to the commission agent and it was the commission agent who had made a further sale and secondly, that the sale has not taken place in Punjab but in Bombay.

18. The procedure detailed in paragraph 19 of the petition, which is not controverted, leaves no manner of doubt that the commission agents at Bombay act as mere agents of the petitioner-company. They hold the goods on their behalf and enter into all contracts on their behalf. It would certainly be open to the petitioners to carry the goods with them to Bombay and there stock the goods in a godown of their own and then try to contact a foreign buyer and when they get one, sell the goods to him for export purposes. If that would amount to a sale by the petitioner--and it cannot be denied that it would be so--then the sale by the petitioner through the commission agents cannot be put in a different category. Consequently, the first objection, in my view, has no force.

19. This brings me to the second objection. The relevant portion of Sub-clause (vi) is as follows:--

The purchase of goods which are sold...in the course of export out of the territory of India.

20. Article 286 of the Constitution of India prohibits a State Government from levying any tax on the sale or purchase of goods which are exported or imported. The idea apparently is that the goods, which are to be exported out of the country, should not be subjected to any additional burden of sales tax or

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purchase tax. One cannot understand and how it will make the slightest difference to the debated question as to whether a sale is in the course of export out of the Indian territory or otherwise, whether the foreign buyer comes to Jagraon and enters into a contract or such a buyer contacts the petitioner by correspondence at Jagraon or contacts the petitioner through his commission agents at Bombay. Further it will not make any difference whether the goods, which are actually exported as a result of such a contract for sale are moved from Jagraon, after a contract has been entered into, of the petitioner, in anticipation of contacting a foreign buyer, moves the goods to Bombay. What is meant by "a sale by export" was dealt with in State of Travancore-Cochin and Others Vs. The Bombay Co. Ltd., and Patanjali Sastri, C.J., at page 1118 of the report observed as follows:--

A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Assuming without deciding that the property in the goods in the present cases passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey as found by the Sales Tax Authorities, the sales must, nevertheless, be regarded as having taken place in the course of the export and are, therefore, exempt under Article 286(1)(b). That clause, indeed, assumes that the sale has taken place within the limits of the State and exempts it if it takes place in the course of the export of the goods concerned.

At page 1120 of the report it was further stated:--

We accordingly hold that whatever else may or may not fall within Article 286(1)(b), sales and purchases which themselves occasion the export or the import of the goods, as the case may be, out of or into the territory of India come within the exemption and that is enough to dispose of these appeals.

21. The words underlined by me, in the observations above, fully apply to this case, even if the contract of sale is entered into between the foreign buyer on the one hand and the petitioner through its agent at Bombay or Jagraon on the other. Such a sale would certainly be in the course of export if it occasions, or results in, the export of goods outside the territory of India. And again, this would be so, irrespective of the fact whether the goods are actually stocked at Bombay or Jagraon, at the time of the contract.

22. The learned Counsel for the Assessing Authority at the end urged that there is nothing on the record to show that it is the sale by the commission agents which resulted in the export of the goods. He contended that it may be that the

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commission agents sold the goods to an exporter and it was the exporter who, in turn, sold the goods to a foreign buyer and, consequently, it was the subsequent sale which resulted in the movement of the goods outside the country. No such point was raised in the return and, in any case, it was conceded on behalf of the petitioner that if the real facts be as suggested, the petitioner would certainly be not entitled to deduct the purchase price of such goods because in such a case the petitioner''s sale would be to a person in India and the goods did not get exported as a result of such sale and it would make no difference that the purchaser from the commission agents purchased the goods with a view to sell them to a foreign buyer to export them.

23. In view of the above discussion, therefore, in respect of the cotton sold through the commission agents of the petitioner, at Bombay for and on behalf of the petitioner, to a foreign buyer resulting in the export of the cotton sold, the petitioner is entitled to deduct the purchase price thereof from the gross turnover under Sub-clause (vi) of Clause (a) of Sub-section (2) of Section 5 of the Act. It is not necessary for us to determine what that amount would be because that shall have to be determined by the Assessing Authority after taking into consideration all the facts established before it.

24. For the reasons given above, therefore, the rule is made absolute and the order of the Assessing Authority is quashed to the extent to which it runs counter to the observations made above. The Assessing Authority will reconsider the whole matter and proceed in accordance with law after hearing the petitioner. In view of the fact that the points involved, particularly the one with regard to the cotton seeds extracted out of unginned cotton, were far from clear, the parties are left to bear their own costs.

Jindra Lal, J.

25. I agree

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