(2008) 03 SHI CK 0020

In the High Court Of Himachal Pradesh

Jiwan Singh Joginder APPELLANT

Vs

State of H.P. and Others RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:
Himachal Pradesh General Sales Tax Act, 1968 — Section 5A, 7

Citation : (2008) 1 ShimLC 502

Hon'ble Judges : Surinder Singh, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The present case involves the interpretation of Section 5-A of the H.P. General Sales Tax Act, 1968 (Act No. 24 of 1968) (hereinafter referred to as the Act).

2. The petitioner firm in the writ petition had also challenged the constitutional validity of the aforesaid Section. At the time of hearing of the petition, this point was not pressed by the learned Senior Counsel for the petitioner in view of the judgment of the Apex Court in the case of Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., , wherein similar provisions in the Sales Tax Acts of other States have been upheld.

3. The admitted facts are that the petitioner is a dealer and purchases maize from agriculturists. The case of the petitioner firm is that it receives orders from its principal M/s. Sukhjit Starch and Chemicals Limited, Phagwara, to purchase maize. The principal sends the packing material as well as trucks to transport the maize. The petitioner then purchases the maize on behalf of the principal and sends it to the principal. According to the petitioner, no tax is payable on this transaction.

Section 7 of the Act reads as follows:

7. Tax free goods.--(1) No tax shall be payable on the sale of goods specified in

the first column of Schedule ''B'', subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax free from time to time under this Section.

(2) The Government, after giving by notification not less than thirty days notice of its intention so to do, may, by like notification, add to or delete from Schedule ''B'' and thereupon Schedule ''B'' shall be deemed to be amended accordingly.

4. A bare perusal of this Section shows that no tax is payable on the sale of goods specified in the first column of Schedule ''B''. It is undisputed that agriculture produce sold by the person who has grown the same is exempted from payment of tax. The petitioner purchases the maize directly from the farmers and as such no tax is leviable in terms of Section 7 aforesaid. Thereafter the petitioner sends the same to M/s. Sukhjit Starch & Chemicals Limited. The Assessing Officer issued notices to the petitioner and levied sales tax in terms of Section 5-A of the Act which reads as follows:

[5-A. Levy of purchase tax on certain goods.--Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule "B" from any source, and-

(i) uses them within the State in the manufacture of goods specified in Schedule "B", or

(ii) uses them within the State in the manufacture of goods, other than those specified in Schedule "B", and sends the goods so manufactured outside the state in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, and no tax is payable on the purchase of such goods under any other provisions of this Act, there shall be levied a tax on the purchase of such goods equal to the rate as notified, under Sub-section (1) of Section 6, by the State Government].

5. On behalf of the petitioner three fold contentions have been raised before us; (i) that Section 5-A is not applicable in respect of the items covered under Schedule B; (ii) that there is no sale by the petitioner and that he is purchasing the maize from the producer on behalf of M/s. Sukhjit Starch & Chemicals Limited and as such there is no sale of it, and (iii) it is lastly contended that in case this transaction is considered to be a sale, then also the State is not entitled to levy tax because then the sale would amount to an inter State sale and the State has no power to levy tax on the same. In the alternative it is contended

that no tax can be levied on the sale at the second stage within the State of Himachal Pradesh in view of the restriction imposed by Section 15 of the Central Sales Tax Act.

6. We may firstly deal with the first point. The opening portion of Section 5-A clearly indicates that it only deals with goods other than "those specified in Schedule-B". Any goods which fall in Schedule B are not covered by Section 5-A and no tax can be levied on them in terms of Section 5-A. There is no ambiguity in the wording of the Section. The language is absolutely clear. The only interpretation which can be given is that Section 5-A applies to goods other than those mentioned in Schedule B.

7. The only exceptions are provided in the clauses of the Section itself. Under Clause (i) the goods, not being goods specified in Schedule B, but used to manufacture goods specified in Schedule B would then be liable to pay tax in terms of Sub-clause 1 of the said Section. Reliance on behalf of the State has been placed on Clause (iv) of the Section and it has been strenuously urged on behalf of the State that since the goods have been sent outside the State of Himachal Pradesh otherwise then by way of sale in the course of inter State trade, the tax is leviable u/s 5-A of the Act. We are not in agreement with this contention. As already pointed out above, opening portion of Section 5-A clearly indicate that the said Section deals with goods not specified in Schedule B. The word goods in the subsequent portion of the Section in Clauses (i) to (iv) must mean goods which are not specified in Schedule B.

8. Even assuming for the sake of argument that Section 5-A is applicable then also, in our opinion, no tax is leviable. The material on record, which material has been accepted by the Assessing Officer, clearly shows that orders were placed on the petitioner firm by M/s. Sukhjit Starch & Chemical Ltd. who used to send a truck containing the packing material (Bardana) for packing the maize and the maize was to be purchased by the petitioner in the accounts of M/s. Sukhjit Starch & Chemicals Limited. These findings have not been challenged by the State and in fact the Assessing Officer has accepted the plea of the petitioner''s firm. The relevant portion of the assessing order reads as follows:

The dealer has received bardana from the buyers for the packing of maize i.e. 26,300 bags and has send the maize after packing to the concerned suppliers. The dealer has produced photo copies regarding order and consignment of such bardana. The same is allowed after verification.

9. The Assessing Officer has simply held that the dealer is liable to pay tax in terms of Section 5-A. He has not given any reasons. Once the Assessing Officer had accepted the fact that the petitioner has purchased the maize on behalf of M/s. Sukhjit Starch & Chemicals Ltd., it is obvious that the maize was purchased by the petitioner as an agent of M/s. Sukhjit Starch & Chemicals Ltd. The maize was purchased directly from the farmer and as such was exempt from payment of tax in terms of Section 7 of the Act. Even if the converse situation is accepted and it

is found that the petitioner purchased the maize on his own behalf and thereafter sold it outside the State, then also no tax would be leviable in view of the fact that then it would amount to an inter State sale and the incidence of tax would arise on the goods being sold and sent outside the State of Himachal Pradesh.

10. Great emphasis have been laid on behalf of the State on the fact that the dealer has transferred the goods to M/s. Sukhjit Starch & Chemicals Ltd. on the basis of Form F which is a declaration required u/s 6-A of the Central Sales Tax Act and the goods are being sent/transferred otherwise then by way of inter State sale. The contention of the State is that by doing so, the petitioner has also evaded payment of Central Sales Tax. We are not impressed with this argument. The case of the petitioner always has been that he is an agent of M/s. Sukhjit Starch & Chemicals Ltd. and, therefore, obviously the declaration has been issued in this behalf. It was for the Central Sales Tax Authority to decide whether the declaration is proper or not. The State, however, cannot levy tax on the maize purchased by the petitioner on behalf of M/s. Sukhjit Starch & Chemicals Ltd. directly from the farmer. In view of the fact that we are of the opinion that the petitioner has purchased the maize on behalf of M/s. Sukhjit Starch & Chemicals Ltd., we had not decided the other contentions of the petitioner.

11. In view of the above discussion, the writ petition is allowed and the assessment order, Annexure P-2, dated 31.3.1997 is quashed and set aside.