

(1962) 07 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 2115 and 2157 of 1959 and 753 of 1961

Katyar and Co.

APPELLANT

Vs

The Sales Tax Officer and Another

RESPONDENT

Date of Decision : 17-07-1962

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 7
Central Excises and Salt Act, 1944 — Section 2
Central Sales Tax Act, 1956 — Section 15, 2
Constitution of India, 1950 — Article 286

Citation : (1963) 14 STC 133

Hon'ble Judges : Brijlal Gupta, J

Bench : Single Bench

Advocate : Hari Swarup, for the Appellant; Shanti Bhushan, Additional Senior Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Brijlal Gupta, J.—These three writ petitions raise common points and can be conveniently disposed of by a common judgment.

2. The petitioners in two writ petitions are manufacturers of handmade biris and an importer in the third petition. They were assessed to sales tax under the U.P. Sales Tax Act for the assessment year 1958-59 on the sale of hand-made biris. It is common ground that with effect from 1st July, 1958, the turnover of hand-made biris was exempted from sales tax. The question which has arisen is in respect of the sales tax assessed on the sale of such biris during the period 1st April, 1958, to 30th June, 1958. During this period Notification No. ST-905/X dated 31st March, 1956, was in force. Under this notification sales tax was leviable at the rate of one anna per rupee on the sale of biris by manufacturers and importers.

3. Sri Hari Swarup learned counsel for the petitioners has challenged the validity of the assessment orders passed in these cases. He has invited my attention to

the provisions of Section 15(a) of the Central Sales Tax Act and the explanation thereto. That section as it stood at the material time was as follows :-

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.-Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall be levied only in respect of the last sale or purchase inside the State and shall not exceed two per cent, of the sale or purchase price;

Explanation.-The expression "last sale or purchase inside the State" means the transaction in which a dealer registered under the sales tax law of the State-

(i) sells to or purchases from another such dealer declared goods for use by the purchaser in the manufacture of goods for sale or for use by the purchaser in the execution of any contract; or

(ii) purchases declared goods from another such dealer for sale to a dealer not registered under the sales tax law of the State or to a consumer in the State.

4. He has urged that biris are "declared goods" and the levy by a State of sales tax on bins is subject to two restrictions: (i) that sales tax is to be levied only in respect of the "last sale", and (ii) that the levy is "not to exceed 2 percent."

5. To establish his point that "declared goods" in this section include bins, Sri Hari Swarup has invited my attention to Section 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. That section is :-

7. Declaration of certain goods to be of special importance in inter-State trade or commerce.-It is hereby declared that the following goods namely, sugar, tobacco, cotton fabrics, rayon or artificial silk fabrics and woollen fabrics are of special importance in inter-State trade or commerce and every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of the declared goods, be subject as from the 1st day of April, 1958, to the restrictions and conditions specified in Section 15 of the Central Sales Tax Act, 1956 (74 of 1956).

6. This provision contains a declaration inter alia that "tobacco" is goods of special importance in inter-State trade or commerce, and the sales tax law of a State imposing a tax on the sale of such goods shall as from 1st April, 1958, be subject to the restrictions and conditions specified in Section 15 of the Central Sales Tax Act, 1956.

7. Sri Hari Swarup also invited my attention to the provision in Article 286(3) of the Constitution in this connection. That provision is:-

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of

special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

8. By reference to this provision, Sri Hari Swarup argued that the declaration of tobacco as goods of special importance in inter-State trade or commerce was made by Parliament by the Additional Duties of Excise (Goods of Special Importance) Act, 1957. He has further argued that the restrictions and conditions subject to which a law of a State could impose the levy of sales tax was provided for by another law enacted by Parliament, namely the Central Sales Tax Act, 1956, in its Section 15.

9. Sri Hari Swarup then argued that the word "tobacco" in Section 7 of the Additional Duties of Excise (Goods of Special Importance) Act of 1957 includes hand-made biris, and as such the restrictions imposed on the levy of sales tax under a sales tax law of a State by Section 15 of the Central Sales Tax Act would apply in the case of sale of such biris. He argued that the word tobacco is defined in Section 2(c) of that Act. The definition is to the effect that the word tobacco shall have the same meaning as in item No. 9 of the First Schedule to the Central Excises and Salt Act, 1944. He referred me to that item of the First Schedule of that Act. There tobacco is described as meaning "any form of tobacco whether cured or uncured, and whether manufactured or not, and includes the leaf, stalk and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth."

10. He then referred me to the definition of the word "manufacture" in Section 2(f)(i) of that Act. The definition is as follows : -

(f) Manufacture includes any process incidental or ancillary to the completion of a manufactured product; and (i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff, and...

11. Sri Hari Swarup argued that "manufacture" being any process resulting in a manufactured product and biris being undoubtedly manufactured products from tobacco, biris made by hand are subjected as much to a process of manufacture as biris made by machines. It followed that when item No. 9 of the Schedule spoke of tobacco whether manufactured or not, it must be taken to include biris manufactured by hand also. In support of his submission Sri Hari Swarup relied on a decision of the Patna High Court in *Singhbhum Tobacco and Biri Merchants' Association v. Assistant Superintendent of Sales Tax* [1960] 11 S.T.C. 808. The decision entirely supports his contention.

12. On the other hand, Sri Shanti Bhushan, learned counsel for the State, argued that that was not the meaning of the word tobacco in item No. 9, and the word tobacco in that item did not include handmade biris. For this he relied on paragraph 3 under division II of the item, viz., "manufactured tobacco". In paragraph 3 of that division the biris mentioned are biris manufactured with the

aid of machines, naturally excluding hand-made biris. The point of Sri Shanti Bhushan is that if item No. 9 is read as a whole, then the only class of biris contemplated by that item is biris manufactured by machines and not hand-made biris. He further argued that for the purpose of understanding the meaning of tobacco in item 9, one has to consider that item including its divisions into unmanufactured tobacco and manufactured tobacco, and not merely the opening portion of the item defining tobacco. I find no force in this submission. To my mind the item is divisible into two portions :-

(i) the definition portion, and

(ii) the portion prescribing a rate of duties on certain classes of goods falling under that definition but not necessarily on all classes of goods falling under the definition. If the entry is read in this way, then there is nothing inconsistent in the definition in that item including hand-made biris and in that class of biris being exempted from the levy of the excise duty. The exclusion of hand-made biris from the division of the manufactured tobacco for the purpose of the nonlevy of excise duty cannot control the meaning of the word tobacco in the definition portion of the item.

13. Sri Hari Swarup then went on to argue that the sale of hand-made biris by the two manufacturers and the importer in these petitions were merely the first sales and not the last sales and were not assessable in the hands of the petitioners, and if assessable at all, were assessable at a rate not exceeding 2 per cent, and not at the rate prescribed in the notification namely at one anna per rupee or 6.25 per cent.

14. Sri Hari Swarup argued that in his affidavit he had sworn that the sales by the petitioners were first sales in the series of sales and not the last sales. He further argued that in the counter-affidavits filed on behalf of the State it was admitted that the sales were by the manufacturers and the importer and it was not denied that they were not the last sales in the sense of sales to consumers. It was, therefore, submitted that it should be taken for granted that the tax having been levied on sales other than the last sales the levy was invalid and the orders should be quashed on that ground also.

15. To meet this point Sri Shanti Bhushan, the learned standing counsel, invited my attention to the explanation of the expression "last sale or purchase inside the State" contained in Section 15 of the Central Sales Tax Act itself. It was pointed out that the essential ingredients of the explanation were :-

(i) that the sale should be by one registered dealer to another registered dealer, and

(ii) that the sale should be for use by the purchaser in the manufacture of goods for sale or for use by the purchaser in the execution of any contract.

16. These ingredients required investigation into questions of fact, namely, whether the dealers to whom sales had been made were or were not registered,

and whether or not the purchasers had made the purchases for use as provided for in the explanation. In the absence of investigation into these questions of fact, it could not be said that the point that the sales were merely first sales and not last sales had been put beyond controversy. I see force in this submission, and it appears to me that without investigation into these questions of fact, it is not possible to hold that the assessment orders in these cases are necessarily invalid. If those orders are found to be invalid on other grounds and are set aside, then this question will also have to be investigated and necessary findings recorded while framing fresh assessments.

17. The next ground of attack on the validity of the assessment orders cannot, however, be resisted, and indeed has not been resisted by Sri Shanti Bhushan, the ground being that sales tax could not be levied in excess of 2 percent, and the levy at one anna per rupee or at 6.25 per cent, was invalid. The statutory provision in this behalf is plain enough, but Sri Hari Swarup has attempted to argue a further point in this connection. He has urged that what Section 15 of the Central Sales Tax Act provides is that sales tax cannot be levied in excess of 2 percent. According to the learned counsel this means that no sales tax is leviable at all unless, within the limit provided, a specific rate is fixed. In other words, what Sri Hari Swarup says is that unless, within the limit of 2 percent., a definite rate, either 2 percent, or any other definite rate below 2 percent, is specifically fixed, no tax can be levied at all. Sri Shanti Bhushan has, on the other hand, argued on behalf of the State that so long as the levy does not exceed 2 percent., the requirement of the restriction in Section 15 is complied with. In other words, having regard to the facts in the present cases, he has argued that even though the levy at one anna per rupee or 6.25 per cent, may be bad to the extent of the excess between the amount levied over a levy calculated at 2 percent., the amount of the levy up to 2 percent, is not invalid. I see force in this submission also. The restriction in Section 15 is only that the sales tax under the sales tax law of a State shall not be levied at a rate in excess of 2 percent. It follows that the excess portion of the levy will have to go, but that portion of the total levy, which does not exceed two per cent., will be valid and will be payable. This result may be achieved either by fixing a particular rate within the limit of two per cent., or by reducing the levy at a higher rate to a levy calculated at the rate of two per cent., but in either event the restriction imposed by Section 15 of the Central Sales Tax Act in this behalf shall have been complied with and the levy up to two per cent, even in the absence of a specifically fixed rate within the limit of two per cent, will be a valid levy. By the impugned assessment orders, a sales tax in disregard of the restriction imposed by Section 15 having been levied, the assessment orders must be struck down.

18. For the reasons stated above the writ petitions must be allowed, and the impugned assessment orders quashed. A writ of certiorari shall issue quashing the impugned assessment orders, and the notices of demand in the three writ petitions. The assessment proceedings shall be deemed to be pending, and a fresh assessment shall be made according to law in the light of the observations

made above. As the points urged by Sri Hari Swarup were not raised before the Sales Tax Officer, I make no order as to the costs of these petitions.