
(1986) 02 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 834 of 1985

Mahabir Industries

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1987) 65 STC 251

Hon'ble Judges : Om Prakash, J;A. Banerjee, J

Bench : Division Bench

Advocate : Ravi Kiran Jain, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—This is a writ petition under Article 226 of the Constitution of India for quashing the notice dated 5th September, 1985, issued by the Sales Tax Officer, Saharanpur (respondent No. 2), which is annexure 3 to the writ petition ; for restraining the respondents from taking any proceedings for the cancellation of the recognition certificate issued u/s 4-B of the U.P. Sales Tax Act, 1948 (briefly "the Act"), to the petitioner for the manufacture of packing paper and for issuing a suitable writ that the petitioner is entitled for exemption from payment of tax on the purchase of raw materials required for the manufacture of waterproof packing rolls and sheets.

2. The petitioner, a registered firm is engaged in the manufacture of waterproof packing rolls and sheets by sandwiching bitumen by craft paper on one side and hessian or polythene on the other side. The packing material manufactured by the petitioner is wholly used for waterproof packing of the goods. The Government of Uttar Pradesh issued a notification dated 31st December, 1976 (annexure 1 to the writ petition) (hereinafter referred to as "the notification"), Clause 2 of which provides inter alia, that no tax shall be payable on the sales or purchases by any unit in respect of raw materials required by it for the use in the

manufacture of the goods, mentioned in annexure III, as referred to in Clause 2 of the notification. Item No. 4 in annexure III as referred to in Clause 2 of the above notification is as under :

4. All kinds of packing materials including cases and containers.

3. So, the case is that the manufacturing unit of the petitioner being engaged in the manufacture of packing material is entitled to full exemption of tax on the purchase of raw materials within the meaning of Clause 2 of the notification, that the petitioner was granted a recognition certificate as such u/s 4-B of the Act, which is annexure 2 to the writ petition, in May, 1976 and that the petitioner continued to avail the exemption thereafter. A show cause notice dated 5th September, 1985, was received from the respondent No. 2 by the petitioner calling upon it to show cause as to why the recognition certificate (annexure 2) be not cancelled. The said notice is based upon the circulars, issued by the Sales Tax Commissioner on 12th July, 1985 and 3rd December, 1983, to the departmental officers that the packing paper is covered by item 3 of annexure III, (sic) as referred to in Clause 2 of the notification.

4. The contention of the petitioner is that the notice issued by the respondent No. 2 (annexure 3) is absolutely without jurisdiction, as exemption of tax on purchase of raw material is available to the petitioner under Clause 2 of the notification, read with item 4 of the annexure III as referred to in Clause 2 of the said notification. In paragraph 26 of the petition, it is stated that the respondent No. 2 appears to have initiated action against the petitioner for cancellation of recognition certificate under Clause 3 of the notification, which excluded a unit, engaged in the "manufacture of paper" from the benefit of tax. The petitioner-firm being engaged in the manufacture of packing material, which is covered by Clause 2 of the notification, read with item 4 of annexure III to the said notification, it is contended that Clause 3 of the notification, which is applicable only to the unit, engaged in the manufacture of paper, is not applicable to the petitioner.

5. The respondent No. 2 filed a counter-affidavit. It is admitted in paragraph 3 of the counter-affidavit that the petitioner is engaged in the manufacture of packing paper, which is used for waterproof packing. It is also admitted that the packing paper is manufactured by sandwiching bitumen by craft paper and hessian. It is not disputed that the petitioner was granted recognition certificate u/s 4-B of the Act and the raw materials for the manufacture of waterproof packing was craft paper, bitumen and hessian. In paragraph 3(b) of the counter-affidavit, it is stated that in the case of Commissioner of Sales Tax, U.P. v. Marsh Paper and Board Manufacturing Company 1985 UPTC 15 it has been held that even packing and wrapping papers fall in the definition of "paper" and, as such, a show cause notice was served on the petitioner. It is said that the product of the petitioner is popularly known as waterproof packing paper and to evade tax that has been described by the petitioner as waterproof packing sheets and rolls.

6. The short question for consideration in this writ petition is whether the manufacturing activity of the petitioner can be held to be the manufacturing of paper within the meaning of Clause 3 of the notification and whether the petitioner can be said to carry out manufacture of "packing materials" within the meaning of item 4 of annexure III, as referred to in Clause 2 of the notification ? Clause 2 of the notification declares that no tax shall be payable on the purchase by any unit in respect of raw materials required by it for the use in the manufacture of the goods mentioned in annexure III. The contention of the petitioner is that it is engaged in the manufacture of packing materials, as envisaged by item 4 of annexure III as referred to in Clause 2 of the notification and, therefore, no tax is leviable on purchase of raw materials required in the manufacture of packing materials. It is undisputed that a recognition certificate (annexure 2) was granted to the petitioner and benefit of exemption of tax has been availed by the petitioner under the certificate. The case as set up in the counter-affidavit is that the petitioner is not engaged in the manufacture of packing materials within the meaning of item 4 of annexure III, read with Clause 2 of the notification but is engaged in the manufacture of paper, as envisaged by Clause 3 of the notification and, therefore, the petitioner is not entitled to the benefit of tax exemption. Whereas, Clause 2 of the notification affords full exemption of tax on purchase of raw materials required by a unit for the use in the manufacture of the goods mentioned in annexure III or for the packing of the said goods manufactured. Clause 3 of the notification carved out an exception to the unit, engaged in the manufacture of paper inter alia. So the contention of the respondent No. 2 is that the manufacturing activity of the petitioner comes within the exclusory Clause 3 of the notification and, therefore, the notice (annexure 3) was caused to be served on the petitioner. Before giving any decision over this question, it is necessary to see as to what is manufactured by the petitioner. A sample of product of the petitioner is placed on the file. It is just the same what has been described in paragraph 17 of the writ petition. It has been stated in paragraph 17 that the process of manufacturing of waterproof packing rolls and sheets is that craft paper is first bitumenised and then it is bounded with the hessian or with polythene. The sample of the product fully demonstrates that bitumen layer has been sandwiched by hessian and by the craft paper. Sometimes in place of hessian, polythene is also used. The question is whether this kind of product can be said to be a paper ? If it cannot be regarded as paper, then the petitioner cannot be said to manufacture paper, as envisaged by Clause 3 of the notification. The answer of this question does not depend on interpretation of any law or on any long drawn arguments, but more on a common sense. The broad test to find out the correct nature or meaning of the aforesaid product is whether any one, to whomsoever this product is shown, can call it a paper and if there were a demand of paper, then whether the supply of such a product will satisfy the demand of paper. The answer is simple. If any person is asked to bring the paper for ordinary use in the household, then nobody would buy the product of the petitioner and that can never be the substitute for paper. So, the product of the petitioner is neither paper in

appearance, nor can it be used for the purpose for which a paper is ordinarily used. The product of the petitioner can be used only for a specific purpose, i.e., for waterproof packing.

7. The matter may be looked at from another angle also. The product of the petitioner has three components, namely, craft paper, bitumen and hessian or polythene. For the petitioner, it was stated that it does not manufacture craft paper. The other two components have no semblance of paper. So one of the components, which is paper, is also not manufactured by the petitioner. So, looking to the actual manufacturing, it cannot be said that the petitioner is engaged in the manufacture of paper.

8. There is a trite law that in the matters of taxation or specially when there is a question whether a given classified item is entitled to the benefit of tax exemption, technical or dictionary meaning should not be resorted to, but the decision should turn on as to how it is regarded in the commercial world in common parlance. In commercial world, there is different section of traders who deal in the product in question and such product is not available with the dealers, who are ordinarily engaged in the sale or purchase of paper. So, neither in common parlance, nor in the commercial sense the product of the petitioner, a sample of which is included in the file, can be regarded as paper.

9. The argument of Sri Upadhyaya, learned standing counsel, is that the product of the petitioner is nothing but waterproof paper and, therefore, the petitioner is engaged in the manufacture of paper. The argument proceeds on the basis that so long as the product of the petitioner can be described as paper, it retains the character of paper. In our view this is an attempt of oversimplification. The product may be described as waterproof paper for convenience sake, but that will not be guiding factor to judge the question whether the product is really paper or packing material. Sand paper, which is used for smoothening the walls or furniture, though described as paper, but in true sense it is not the paper, nor is it regarded as paper in common parlance or commercial parlance. So the argument that so long as the word "paper" is suffixed to the product it continues to be in the nature of paper is without any logic. The product of the petitioner can be termed as packing paper for easy description, but as already pointed out, it is not known as paper to the commercial world, nor is it regarded as paper in common parlance. In paragraph 15 of the writ petition, it is stated that the petitioner manufactures packing materials, which is known to the commercial world as waterproof packing rolls and sheets. Looking to the product, it seems to be the correct description.

10. On the admitted facts of this case, we unhesitatingly hold that the petitioner is not engaged in the manufacture of paper within the meaning of Clause 3 of the notification and, therefore, it cannot be deprived of the benefit of tax exemption, which it has been availing of under the recognition certificate issued u/s 4-B of the Act. The petitioner is engaged beyond doubt in the manufacture of packing materials, as envisaged by item 4, annexure III, as referred to in Clause 2 of the

notification and, therefore, the issue of notice (annexure 3) is absolutely without jurisdiction.

11. Sri Upadhyaya vehemently argued that merely a notice has been issued by the respondent No. 2 and the petitioner has the fullest opportunity to show cause to the respondent and if any adverse order is recorded by the respondent No. 2, then the petitioner will have the remedy of appeal and, therefore, this is not a fit matter in which either a writ of prohibition or any other writ can be issued. We are not impressed by this argument at all. Annexures 4 and 5 to the writ petition are the circulars issued by the Commissioner of Sales Tax. The case of the petitioner is that the respondent No. 2 caused the notice (annexure 3) to be served on the petitioner following the aforesaid circulars. The learned standing counsel adhered to these circulars before us and argued that the circulars were rightly issued and the petitioner being engaged in the manufacture of paper, is not entitled to the benefit of tax exemption on purchase of raw materials. In these circumstances, the order of the respondent No. 2 is a foregone conclusion. The circulars of the Commissioner being binding on the respondent No. 2, he cannot deflect from them and there would be an order against the petitioner. So, giving reply to the respondent No. 2 against the notice will be an idle formality and the petitioner will not be benefited in any way. Moreover, the question is whether the petitioner is entitled to a writ of prohibition when the respondent No. 2 does not have the jurisdiction to issue the impugned notice (annexure 3). It will be seen that there is no dispute on facts and on the facts, as stated above, we have already concluded that the respondent No. 2 does not have the jurisdiction to cancel the recognition certificate issued u/s 4-B of the Act. This being so, we are of the considered view that this Court can direct the respondent No. 2 not to pursue the notice (annexure 3) and not to take any action on its basis. In taking this view we are fortified by *Ram and Shyam Company Vs. State of Haryana and Others*, , *Dr. Gaurhari Singhania v. Wealth-tax Officer 1986 UPTC 114* to which one of us was a member and *Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another*, . The rule laid down in all these authorities is that where the order complained against is alleged to be illegal or invalid, as being contrary to law, a petition at the instance of the person adversely affected by it would lie to the High Court under Article 226 of the Constitution and such a petition cannot be rejected on the ground that an appeal lies to the higher officer of the State Government. Sri Upadhyaya relied on *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, . In this case the Honourable Supreme Court ruled down that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. We have already referred to a later case of *Ram and Shyam Company Vs. State of Haryana and Others*, in which the Honourable Supreme Court has held that an illegal or invalid order can be quashed under Article 226 of the Constitution and that cannot be rejected merely on the ground of alternative remedy.

12. In the result, the writ petition is allowed, the notices dated 5th September,

1985 and 29th August, 1985, which are annexures 3 and 6 respectively, are quashed and the respondent No. 2 is directed not to cancel the recognition certificate (2) and allow the benefit of tax exemption to the petitioner on purchase of raw materials required for the manufacture of the waterproof packing rolls, a sample of which is included in the file. The parties will, however, bear their own costs.