
(1975) 12 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1808 of 1975

Malwa Sugar Mills Co. Ltd.

APPELLANT

Vs

The Assessing Authority (Excise and Taxation Officer)

RESPONDENT

Date of Decision : 15-12-1975

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 2, 4B, 5

Citation : (1976) 38 STC 39

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Advocate : Bhagirath Dass and O.P. Goyal, for the Appellant; D.N. Rampal, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh Bains, J.—The petitioner-company is registered under the Companies Act, 1956, and its registered office is at Dhuri. It is doing the business of manufacturing sugar at Dhuri, District Sangrur. The petitioner-company purchased sugarcane from producers/growers at purchase centres and also at the mill premises for the purposes of manufacturing sugar. It is alleged in the petition that in the assessment year 1973-74, the petitioner-company has purchased sugarcane from producers directly. The petitioner-company filed its quarterly returns and also placed statements showing the purchases of sugarcane and sales of sugar. The Assessing Authority vide its assessment order dated 25th March, 1975 (annexure A) held that the petitioner-company was liable for purchase tax to the tune of Rs. 6,68,963.76. The petitioner-company submitted written arguments before the Assessing Authority that it was not liable but its arguments were rejected. It is against the assessment order dated 25th March, 1975 (annexure P-I) that the present writ petition has been filed.

2. Mr. Bhagirath Dass, the counsel for the petitioner, contends that the petitioner-company is not liable to pay the purchase tax on goods specified in Schedule B to the Punjab General Sales Tax Act, 1948 (hereinafter called "the Act"). The State

has filed the return. There is no controversy about the facts. Mr. D.N. Rampal, the learned counsel for the State, has conceded that during the assessment year 1973-74, the company had purchased the sugarcane from the growers direct but contends that the company is liable to pay purchase tax u/s 4B of the Act and the exemption, if any, is only given to the growers under entry No. 39 of Schedule B to the Act. To resolve the controversy, it is necessary to reproduce Section 4B of the Act, which is in the following terms:

4B. 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 any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the State in any manner other 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 other 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 provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under Sub-section (1) of Section 5 as the State Government may direct.

3. A reading of this section shows that a dealer is liable to pay tax under the Act if he purchases any goods other than those specified in Schedule B from any source. There is no ambiguity in the section. The intention of the legislature seems to be quite clear. It is settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them and nothing can be added or subtracted. Goods specified in Schedule B to the Act from any source purchased by the dealer are exempt from the payment of the purchase tax. Section 2(d) of the Act defines "dealer", which is as under:

"Dealer" means any person including a department of Government, who in the normal course of trade, sells or purchases any goods in the State of Punjab, irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, "dealer" includes the local manager or agent of such person in Punjab in respect of such business.

Explanations. -- (1) A co-operative society or a club or any association which

sells or supplies goods to its members or purchases goods specified in Schedule C is a dealer within the meaning of this clause.

(2) A factor, a broker, a commission agent, a dealer's agent, an auctioneer or any other mercantile agent by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling, supplying or purchasing goods, and who has in the customary course of business, authority to sell goods belonging to the principals or purchase goods on their behalf is a dealer.

(3) For the purposes of this clause, "Government" will include the Central Government or the Government of any other State.

4. A reading of this section shows that a dealer means any person including a department of Government, who, in the normal course of his business sells or purchases goods in the State of Punjab irrespective of the fact whether his main place of business is outside the said State and where the main place of business of any such person is not in the said State, dealer includes the local manager or agent of such person in Punjab in respect of such business. Explanation shows that a co-operative society or a club or any association which sells or supplies goods to its members or purchases goods specified in Schedule C is a dealer within the meaning of this clause. Explanation further shows that a factor, a broker, a commission agent, a dealer's agent, an auctioneer or any other mercantile agent by whatever name called and who carries on the business of selling, supplying or purchasing goods will also be a dealer. Government includes the Central Government or the Government of a State. It is also pertinent to reproduce entry No. 39 of Schedule B to the Act, which is in the following terms:

Agricultural or horticultural produce sold by a person or a member of his family grown by himself or grown on any land in which he has an interest whether as owner or usufructuary mortgagee, tenant or otherwise.

5. In entry No. 39, agricultural or horticultural produce sold by a person or a member of his family grown by himself or grown on any land in which he has an interest, whether as owner or usufructuary mortgagee or tenant or otherwise is mentioned.

6. Sugarcane is undoubtedly an agricultural produce and agricultural produce is mentioned in entry No. 39 of Schedule B to the Act. Therefore, no purchase tax can be levied on this item. Since during the assessment year of 1973-74, the purchases were made directly from the producers and such purchases are covered by entry No. 39 of Schedule B to the Act, such item does not come within the mischief of Section 4B of the Act as the purchases of goods mentioned in Schedule B to the Act are excluded.

7. No other provision is brought to my notice by the learned counsel for the State under which the purchase tax can be levied on the goods mentioned in Schedule B to the Act. Section 4B of the Act is the only section which deals with the levy of

purchase tax and goods mentioned in Schedule B to the Act are exempted from the purview of the purchase tax. If the legislature had an intention to impose purchase tax on the purchase of sugarcane from the growers, it could clearly omit to mention agricultural produce in Schedule B to the Act but that is not so. Entry No. 39 of Schedule B clearly mentioned agricultural produce. Learned counsel for the State has submitted that entry No. 39 only exempts the growers to pay the sales tax and it does not exempt the dealer from payment of purchase tax. This argument has no merit. As Section 4B of the Act is quite clear, the goods mentioned in Schedule B are exempted from the payment of purchase tax. If the State also wants to levy purchase tax on sugarcane or any other agricultural produce, it has the ample authority to remove this item from Schedule B. Till the agricultural produce is mentioned in Schedule B and the goods mentioned in Schedule B are exempt as provided in Section 4B of the Act, no purchase tax can be levied on such goods.

8. For the reasons recorded above, this petition is allowed and the assessment order (annexure P-I) is quashed and the respondents are directed not to realise the purchase tax from the company for the assessment year 1973-74. In the circumstances of the case, there is no order as to costs.