

(2011) 11 DEL CK 0083
In the Delhi High Court
Case No : STR 1-2 of 1997

M/s Jamuna Das Ram Kishan

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : (2011) 9 AD 498 : (2011) 184 DLT 35

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Randhir Chawla and Ms. Renu Sahgal, for the Appellant; A. K. Babbar, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed

1. In these references, the following questions have been referred to us for our opinion:

- a) Whether on the facts and circumstances of the case, the sales tax has been rightly imposed on the sales of cotton yarn amounting to Rs.34,67,657.83 under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi ?
- b) Whether the Tax imposed on cotton yarn under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, is in accordance with law irrespective of the fact that no stage of imposition has been fixed under the said Act?
- c) Whether under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, the tax imposed on cotton yarn without fixing the stage of imposition is in conformity with the provisions of Section 15 of the Central Sales Tax Act, 1956?

d) Whether on the facts and in the circumstances of the case the tax imposed on cotton yarn declared to be of special importance under Section 14 of the Central Sales Tax Act, 1956, is in accordance with law?

2. As noted in paragraph 3 of the statement of facts, the assessee M/s Jamuna Das Ram Kishan had preferred two appeals under the Bengal Finance (Sales Tax) 1941 and the Central Sales Tax 1956 pertaining to the year 1972-73 before the Appellate Tribunal, Sales Tax. It is an admitted position that the assessee transacts the business of cotton yarn, cotton thread, jute products etc. As noted in the said statement of facts, the controversy before the Appellate Tribunal revolved around the assessability of sales of cotton yarn.

3. The Financial Commissioner, Delhi, in the case of M/s Govind Saran Ganga Saran had held that yarn was not assessable in view of the provisions contained in Sections 14 and 15 of the Central Sales Tax Act, 1956. It was observed that cotton yarn was noted to have been classified as one of the goods of special importance in inter-state trade or commerce as envisaged by Section 14. Section 15 provided that sales tax on such goods of special importance should not exceed a specified rate and further that they should not be taxed at more than one stage. The issue arose because the stage itself had not been clearly specified. The Financial Commissioner in the case of M/s Govind Saran Ganga Saran had held that in the absence of any stage, there was a lacuna in the law and consequently cotton yarn could not be taxed under the sales tax regime. The decision of the Financial Commissioner in the case of M/s Govind Saran Ganga Saran was reversed by the Delhi High Court. The matter was taken in the appeal before the Supreme Court and was pending before the Supreme Court. In another case namely Dina Nath and Sons (37 STC 357) which was also heard along with the case of M/s Govind Saran Ganga Saran, the Delhi High Court did not approve the view of the Financial Commissioner as in the case of M/s Govind Saran Ganga Saran. In view of the decision of the Delhi High Court in those two cases, it was noted that the sales of cotton yarn was assessable to sales tax at one stage and that the State Sales Tax Act had only to ensure that they were not taxed at more than one stage. Consequently, the view of the Delhi High Court in the cases of M/s Govind Saran Ganga Saran and Dina Nath and Sons was that it was not necessary to specify a particular stage and all that was to be seen was that the said Act did not provide for taxation at more than one stage.

4. It is in the backdrop of these decisions that the questions have been referred to us. We may also point out that, initially, a reference was declined by the tribunal and it is only pursuant to directions given by the Supreme Court in Civil appeal No. 2202/1980 that the present reference has been made to this Court. The entire order of the Supreme Court passed in Civil appeal No. 2202/1980 passed on 8.8.1996 would be relevant. The same reads as under:-

The assessee applied to the Sales Tax Appellate Tribunal, Delhi, to refer the following questions for the opinion of the Delhi High Court.

1. Whether on the facts and circumstances of the case, the sales tax has been rightly imposed on the sale of cotton yarn amounting to Rs.34,67,657.83 under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi?
2. Whether the Tax imposed on cotton yarn under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, is in accordance with law irrespective of the fact that no stage of imposition has been fixed under the said Act?
3. Whether under the Bengal Finance (Sales Tax) Act, 1941 as extended to the Union Territory of Delhi, the tax imposed on cotton yarn without fixing the stage of imposition is in conformity with the provisions of Section 15 of the Central Sales Tax Act, 1956?
4. Whether on the facts and in the circumstances of the case the tax imposed on cotton yarn declared to be of Special importance u/s 14 of the Central Sales Tax Act, 1956, is in accordance with law?

The Tribunal declined to do so, relying upon the Delhi High Court's Judgment in the case The Sales Tax Officer and Others Vs. The Sales Tax Officer and Others, . The decision in Dina Nath and Sons stand impliedly overruled by the Judgment of this court in Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, . This appeal by special leave against the decision of the Tribunal in appeal No. 551/73 declining to refer to the High Court the question quoted above must, therefore, succeed.

The appeal is allowed, the order under appeal is set aside and Appellate Tribunal is directed to refer the question set out above to the Delhi High Court for its opinion.

There shall be no order as to costs.

5. The learned counsel for the assessee submits that the four questions have been referred to us already stand answered in favour of the assessee and against the revenue by virtue of the decision of the Supreme Court in case of Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, .

6. The Supreme Court in the case of M/s Govind Saran Ganga Saran has clearly held that Section 14 of the Central Sales Tax enumerates the commodities declared to be goods of special importance in inter-State trade or commerce. Among the goods so declared is cotton yarn. Section 15 of the Central Sales Tax Act, 1956 stipulates that every sales tax law of the State shall, in so far as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the restrictions and conditions mentioned therein. One of the conditions was that tax payable under the law in respect of sale and purchase of such goods inside the State shall not exceed 3 per cent of the sale or purchase price thereof. Another condition is that the tax shall not be levied at more than one stage. The Supreme Court further observed as under:-

In the instant case, we are concerned with the taxation of goods which u/s 14 of the Central Sales Tax Act have been declared to be of special importance in inter-State trade or commerce. Where the turnover of such goods is subjected to tax under the sales tax law of a State, section 15 prescribes the maximum rate at which such tax may be imposed and requires that such tax shall not be levied at more than one point. The two conditions have been imposed in order to ensure that inter-State trade or commerce in such goods is not hampered by heavy taxation within the State occasioned by an excessive rate of tax or by multi-point taxation. Section 15 enacts restrictions and conditions which are essential to the validity of an impost by the State on such goods. If either of the two conditions are not satisfied, the impost will be invalid. Now in order that tax should not be levied at more than one stage it is imperative that the sales tax law of the State should specify either expressly or by necessary implication the single point at which the tax may be levied. Alternatively, it may empower a statutory authority to prescribe such single point for the purpose. Where such point is not prescribed, either by the statute or by the statutory delegate, no compliance is possible with section 15. The single point at which the tax may be imposed must be a definite ascertainable point so that both the dealer and the sales tax authorities may know clearly the point at which the tax is to be levied.

The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity.

The Supreme Court also observed as under:-

We are of opinion that there is ample power u/s 5A of the State Act enabling the Chief Commissioner to specify the single point at which tax may be levied in a series of sales. This can, however, be done by him only by a notification in the Official Gazette. No such notification has been placed before us which could relate to the assessment year under consideration. We hold therefore that a vital prerequisite of section 15 of the Central Sales Tax Act, namely, that the tax shall not be levied at more than one stage, has not been satisfied in respect of the turnover of cotton yarn, and accordingly the assessment complained of is liable to be quashed.

7. In the present case also, we find that there is no notification in the official Gazette by the Chief Commissioner and therefore, the vital pre requisite of Section 15 of the Central Sales Tax, namely, that the tax shall not be levied at more than one stage, has not been satisfied in respect of turnover of the cotton yarn.

8. Consequently, in view of the clear decision of the Supreme Court in the case of M/s Govind Saran Ganga Saran itself, the four questions that have been referred to us has to be answered in favour of the assessee and against the revenue. The references stand answered as above.