(2012) 04 P&H CK 0150

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 14722 of 1990 (O and M)

M/s Milkfood Ltd.		APPELLANT
	Vs	
State of Punjab and Another		RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 4(2A), 4B, 5(1A), 5(2)(a)(ii), 7(3)

Citation : (2012) 166 PLR 727

Hon'ble Judges : M.M. Kumar, J;Alok Singh, J

Bench : Division Bench

Advocate : M.L Puri, for the Appellant; Piyush Kant Jain, Addl. A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition filed under Article 226 of the Constitution prays for quashing the assessment order dated 20.3.1990, passed by the District Excise and Taxation Officer-cum-Assessing Authority, Patiala (P-1), qua levy of tax on packing material, ice and Light Diesel Oil (LDO) and to refund the amount of tax paid. A further prayer has been made for striking down clause (ii) and (iv) of Section 4-B of the Punjab General Sales Tax Act, 1948 (for brevity, ''the Act'') being ultra vires of the State Legislature as also striking down Rule 29(xii) of the Punjab General Sales Tax Rules, 1949 (for brevity, ''the Rules'') repugnant to the provisions of Section 7(3) and 5(2)((a)(ii) of the Act. Still further a prayer has been made for declaring the Skimmed Milk Powder as Milk and not liable to tax on sale if on the purchase of Milk tax has been paid. The petitioner is a Public Limited Company engaged in the manufacture and sale of Desi Ghee, Skimmed Milk Powder, Whole Milk Powder, Infant Milk Powder and Ice Cream etc. It is a registered dealer under the Act as well as the Central sales Tax Act, 1956. The petitioner purchases milk from within and outside the State of Punjab and use it for manufacturing of Desi Ghee, Skimmed Milk Powder etc.. Milk is a highly perishable commodity and in order to preserve the same the petitioner used to purchase ice. A notification u/s 5(1-A) of the Act was issued and ice was made liable to tax on first stage w.e.f. 30.5.1984. At the relevant time, the petitioner also used Light Diesel Oil to run its plant, which was also liable to tax at first stage w.e.f. 11.1.1985.

2. It is claimed that during the year 1985-86, the petitioner purchased bulk tins and poly liners for packing of Ghee and Milk Powder from within the State, for a sum of Rs. 75,23,579/-. It transferred the manufactured goods for sale out of Punjab, valued at Rs. 32,62,05,676.56, to its branches and agents. For the assessment year 1985-86, an assessment Order, dated 20.3.1990, has been passed by the Assessing Authority levying the additional tax of Rs. 55,683/-, which was paid on 6.4.1990. According to the petitioner, the said additional tax has been levied despite the fact that it was specifically brought to the notice of the Assessing Authority that Skimmed Milk Powder is nothing but Milk in powder form and as the tax on Milk has been paid, therefore, the sale of Skimmed Milk Powder is not liable to tax in terms of Section 4(2-A) of the Act, which forbids the tax on sale of goods if the tax on their purchases is payable under the Act. However, the said contention has been rejected by the Assessing Authority (P-1). A similar contention was also dismissed by the Sales Tax Tribunal, Punjab, in the case of the petitioner in respect of proceedings for the Assessment Year 1981-82, vide order dated 25.3.1990 (P-2).

3. We have heard learned counsel for the parties at length and perused the paper book with their able assistance. The issues raised in the instant petition are no longer res integra. Similar issues concerning taxable event in such circumstances have been subject matter of consideration of Hon''ble the Supreme Court in the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, , which took the view that taxable event would not be the stage when the goods have been purchased by a taxable person being the last purchaser. However, the view taken in the case of Goodyear India Ltd. (supra) did not find approval of the 3-Judge Bench of Hon''ble the Supreme Court in the case of Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., . The rationale for doing so is discernible from para 91 and the relevant extracts reads as under:-

91. Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, takes only the last eventuality and holds that the taxable event is the removal of goods from the State and since such removal is to dealers'' own depots/agents outside the State, it is consignment, which cannot be taxed by the State legislature. With the greatest respect at our command, we beg to disagree. The levy created by the said provision is a levy on the purchase of raw material purchased within the State which is consumed in the manufacture of other goods within the State. If, however, the manufactured goods are sold within the State, no purchase tax is collected on the raw material, evidently because the State gets larger revenue by

taxing the sale of such goods. (The value of manufactured goods is bound to be higher than the value of the raw material). The State legislature does not wish to - in the interest of trade and general public - tax both the raw material and the finished (manufactured) product.

4. Hon''ble the Supreme Court also opined on the State policy of taxation, namely, when the manufactured goods are not sold within the State but are yet disposed of or where the manufactured goods are sent outside the State otherwise than by way of interstate sale or export sale, the tax has to be paid on the purchase value of the raw material. In the event of non-payment of purchase tax, the revenue is likely to suffer because it would neither be paid sales tax nor the purchase tax in respect of manufactured goods which are disposed of otherwise than by sale within the State or are sent out of State like consigned to dealers own depots or agents. In such like situation, law does not permit bearing of purchase tax. Giving detailed reasoning to conclude that the taxing event is the purchase of raw material like paddy in the present case, Hon''ble the Supreme Court has observed as under:-

The object is to tax the purchase of goods by a manufacturer whose existence as such goods is put an end to by him by using them in the manufacture of different goods in certain circumstances. The tax is levied upon the purchase price of raw material, not upon the sale price - or consignment value - of manufactured goods. Would it be right to say that the levy is upon consignment of manufactured goods in such a case?

True it is that the levy materialises only when the purchased goods (raw material) is consumed in the manufacture of different goods and those goods are disposed of within the State otherwise than by way of sale or are consigned to the manufacturing-dealer''s depots) agents outside the State of Haryana. But does that change the nature and character of the levy? Does such postponement - if one can call it as such -convert what is avowedly a purchase tax what is on raw material (levied on the purchase price of such raw material) to a consignment tax on the manufactured goods? We think not Saying otherwise would defeat the very object and purpose of Section 9 and amount to its nullification in effect. The most that can perhaps be said is that it is plausible (as pointed out by Ranganathan, J. in his separate opinion) to characterise the said tax both as purchase tax as well as consignment tax. But where two interpretations are possible, one which sustains the constitutionality and/or effectuates its purpose and intendment and the other which effectively nullifies the provision, the former must be preferred, according to all known canons of interpretation.

5. It is worthwhile to mention here that Hon''ble the Supreme Court in Hotel Balaji''s case (supra) has also affirmed the view taken by a Full Bench of this Court in the case of Des Raj Pushap Kumar Gulati v. State of Punjab,3(1985) 58 STC 393 (P&H) that the taxing event is the act of purchase of goods which are used in the manufacture of end-products and not the act of despatch or

consignment.

6. Once the aforesaid principles are clear then there is no escape from the conclusion that the petitioner becomes liable to pay purchase tax when it purchase the raw material being the last purchaser. It is a different matter that the payment of purchase tax is deferred till it is found that the manufactured goods are not to be subjected to sales tax. Therefore, the petitioner cannot escape the liability to pay purchase tax. It is on the basis of sound taxation policy of the State in respect of the declared goods that if sales tax is paid on the manufactured goods then the purchase tax on the raw material would not be payable but if sales tax is not paid then the liability to pay purchase tax is to continue. The aforesaid policy has been incorporated by the legislation in order to avoid double taxation. As a sequel to the above discussion, the instant petition is devoid of merit and the same is accordingly dismissed.

