(2012) 08 BOM CK 0232

In the Bombay High Court

Case No : Writ Petition No. 1723 of 2006

M/s. Somras Distillers — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 36(2A), 41

Citation : (2013) 2 ABR 414

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari and H.D. Dahgre, for the Appellant; Rohit Deo, Special Counsel, for the Respondent

Final Decision : Allowed

Judgement

Vasanti A. Naik, J.—The only issue involved in the writ petition is whether in the facts and circumstances of the case the petitioner is entitled to the exemption under entry A-15 of notification dated 20.2.1997 issued u/s 41 of the Bombay Sales Tax Act, 1959. Few facts giving rise to the petition are stated thus:-

The/petitioner is a partnership firm registered under the Partnership Act, 1932 and was carrying on business of manufacturing country liquor. The dispute pertains to the claim of exemption of sales tax during the assessment years 1997-98, 1998-99 and 1999-2000. The petitioner claimed exemption of sales tax for the three assessment years in terms of the notification dated 20.2.1997. The Assistant Commissioner of Sales Tax passed three separate assessment orders on 25.7.2002 levying sales tax, interest and penalty u/s 36(2A) of the Act of 1959 to the tune of approximately rupees ten crores. According to the Assistant Commissioner of Sales Tax, the petitioner was not entitled to exemption under the notification dated 20.2.1997, issued u/s 41 as the second condition of the notification that the liquor bottle or package should bear the statement "For Sale in Maharashtra State Only" was not complied with. The Assistant Commissioner further found that the petitioner had produced false labels with such statement and had misled the Authorities. Three separate appeals were preferred by the petitioner u/s 55 of the Bombay Sales Tax Act before the Deputy Commissioner of Sales Tax. The first appellate authority, by a common order dated 29.4.2003, partly allowed the appeals filed by the petitioner. The finding recorded by the Assessment Authority that the petitioner was not entitled to the benefit of the notification was confirmed in the first appeals. However, the order imposing interest and penalty was set aside. Separate second appeals were preferred by the petitioner before the Maharashtra Sales Tax Tribunal against the common order dated 29.4.2003 confirming the order of the Assessment Authority that the petitioner was not entitled to the benefit of the notification dated 20.2.1997. By a common judgment and order dated 15.11.2003, the appeals were dismissed. Since all the three authorities held that the petitioner was not entitled to exemption, the petitioner has preferred this writ petition challenging the three orders.

2. Shri Dharmadhikari, the learned senior counsel appearing on behalf of the petitioner, submitted that in terms of the notification, exemption was granted subject to two conditions-that the dealer proves that the excise duty levied under the Bombay Prohibition Act, 1949 on the country liquor had been paid to the Government of Maharashtra and the bottle or, as the case may be, the package bears a label with the statement "For Sale in Maharashtra State Only". According to the learned senior counsel, the sale of country liquor was exempted from sales tax on payment of excise duty in full and if the dealer did not sell the country liquor outside the State of Maharashtra. It is submitted that admittedly the first condition of payment of full excise duty was complied by the petitioner and though the petitioner had not incorporated the statement on the label of the liquor bottle or package, admittedly the petitioner had not sold the country liquor out of the State of Maharashtra. The learned senior counsel submitted that the manufacture and sale of country liquor is controlled by the provisions of the Maharashtra Country Liquor Rules and the sale of country liquor outside the State of Maharashtra is prohibited and is also not possible. According to the learned senior counsel, the provisions of the Maharashtra Country Liquor Rules, specially Rules 3, 6(42) 7, 8, 10, 31 and Forms CL-1, 2 and 3 which mention the conditions of licence clearly point out that the sale of country liquor outside the State of Maharashtra is prohibited. It is submitted on behalf of the petitioner that the second condition in the notification dated 20.2.1997 was merely a restatement of law in the Maharashtra Country Liquor Rules and non-compliance of the condition could not have resulted into denial of the benefit of exemption under the notification dated 20.2.1997.

3. It is submitted on behalf of the petitioner that excise duty was restructured in the years 1997-98 and sales tax was included in the same. In this background, according to the learned senior counsel, the State decided to grant exemption of sales tax during the three relevant years 1997-98, 1998-99 and 1999-2000. The learned senior counsel referred to the affidavit in reply filed by the Deputy Commissioner of Sales Tax, the budget speech and the note of Finance Ministry

that sales tax was not liable to be imposed w.e.f. 8.1.1997 as the restructured scheme of excise duty was to be made effective from that date. In the said set of facts, according to the learned senior counsel, the object of the notification dated 20.2.1997 was fulfilled on the compliance of the first condition in regard to the payment of excise duty and the second condition of printing the statement on the label of the package or bottle was tangential. The learned counsel referred to the circulars issued by the Excise Department on 19.10.2001, 3.9.2002 and 10.9.2003 clarifying that since country liquor could not have been exported under the Rules, it was not necessary to print the words "For Sale in Maharashtra State Only" on the labels. Relying on the said circulars, it is canvassed on behalf of the petitioner that even the officers of the State understood condition No. 2 of the notification to be directory and not mandatory. In any case, according to the learned senior counsel, there was a substantial compliance of the conditions in the notification dated 20.2.1997 inasmuch as the petitioner had paid the excise duty in full and had not sold the country liquor outside the State of Maharashtra.

4. It is further submitted on behalf of the petitioner that it was apparent from the surrounding circumstances that condition No. 2 of the notification was directory in nature as in case of M/s. Vidarbha Bottlers, M/s. Nagpur Distillers, M/s. Vidharbha Distillers, M/s. Royal Drinks, M/s. Konkan Agro, Marine Industries and several other manufactures the State had adopted a different policy inasmuch as the said manufacturers were granted exemption under the notification though they had not complied with the second condition and had not printed the required statement on the bottles or packages. According to the learned senior counsel, the aforesaid fact makes it clear that the State of Maharashtra had also intended the second condition in the notification to be directory. It is submitted that both the appellate authorities did not advert their mind to the main issue as regards the nature of the second condition, being directory or mandatory and decided the appeals against the petitioner on unsustainable reasons. The learned senior counsel relied on the Constitution Bench Decision of the Hon''ble Supreme Court in the case of Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others, etc. etc., substantiate his submission that failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption, would not render in the denial of the benefit of the exemption notification.

5. Shri Rohit Deo. the learned special counsel appearing on behalf of the respondents, supported the orders of the authorities and submitted that the submission of the petitioner that the officers of the respondents understood the condition as directory is incorrect. According to the learned counsel, though the respondents may not have proceeded against some of the other manufacturers mentioned by the petitioners, at the most it could be said that the department had erroneously granted the benefit of the notification to them. It is submitted that a condition cannot be held to be mandatory or directory by considering how the State officers understood the same. It is submitted that when a fiscal

arrangement is made by the State, the Courts cannot scrutinize whether a condition is meaningless or redundant and the condition needs to be strictly construed. It is submitted that merely because the petitioner had paid the excise duty, it cannot be said that the petitioner was entitled to the benefit of the exemption notification as both the conditions were independent of each other and it was necessary for the petitioner to have complied both of them. It is canvassed that only a procedural condition can be held to be directory and it would be necessary to comply with all the conditions of eligibility. It is submitted that a condition of eligibility cannot be directory in nature and in the instant case since the second condition is a condition of eligibility, the same is mandatory and not directory as canvassed on behalf of the petitioner. It is submitted that assuming that the condition is directory in nature, since, the petitioner was required to seriously obey the condition, the petitioner cannot be granted relief only because the condition is directory, specially when it had not taken the condition seriously.

6. It is admitted on behalf of the respondents that the exemption notification was brought into existence because there was a change in the fiscal policy and excise duty was restructured. It is submitted that it is not possible to explain whether the sales tax was included in the restructured excise duty. It is however, admitted that due to placement of additional financial burden, the exemption was granted by the notification dated 20.2.1997. It is submitted that the findings of the appellate authorities not being unreasonable, this Court may not interfere with the same in exercise of the writ jurisdiction.

7. To consider the submissions made on behalf of the parties, it would be necessary to consider the factual background in which the notification dated 20-2-1997 came to be issued.

8. The exemption notification dated 20.2.1997 reads as under:-

NOTIFICATION

In the Exercise of the powers conferred by sub-section (1) of Section 41 of the Bombay Sales Tax Act, 1959 (Bom LI of 1959). the Government of Maharashtra hereby further amends Govt. Notification, Finance Department No. STA/1095/37/ Taxation - 2 dated the 22nd Sept., 1995, as follows, Namely:-

In the Schedule to the said notification, in Group A, for the entries of serial numbers 15 and 16, the following shall, with effect from 15th Jan, 1997 be substituted, Namely:-

(See Table below)

9. Since we wanted to know the exact reason for granting exemption of sales tax by (Contd. on Col 2) the notification and also to know whether the State had included the sales tax in the restructured excise duty, we had asked the State Government to make their stand clear in this regard. On the query made by us, the Deputy Commissioner of Sales Tax has filed an affidavit on 24.7.2012. It is

stated in the affidavit that with the introduction of the ad valorem scheme of imposition of state excise duty one of the budgetary proposals was that the sales tax on liquor shall be exempted. It is stated that since the ad valorem scheme of excise duty was made effective from 15.1.1997, a notification was issued on 20.2.1997 u/s 41 of the Bombay Sales Tax Act exempting country liquor from payment of sales tax with effect from 15.1.1997. Two documents. a copy of the extract of the budget speech and a copy of the note of the Finance Ministry, are annexed to the affidavit. It would be necessary to refer to paragraphs 64 to 66 of the budget speech which read as under:-

10. A copy of the note of Finance Ministry dated 5.9.1997 reads that it is obligatory to abolish sales tax with effect from 8.1.1997 as the new scheme of excise duty is to be made effective from that date.

11. On a reading of the affidavit and the annexures appended thereto, it appears that the exemption of sales tax under Entry A-15 of the notification date 20.2.1997 was granted because of the restructuring of the excise duty. It is admitted by the respondents that since financial burden was placed on the assessees by the restructured excise duty, the exemption notification dated 20.2.1997 was issued. The note of the Finance Ministry and the budget speech clearly show that the State Government had decided to do away with the sales tax for the relevant period from 1997 to 2000 in view of the restructuring of excise duty. Para 66 of the budget speech clearly states that the sales tax on liquor will be exempted from the date on which the new scheme of excise duty will come into effect. It is apparent from a reading of the budget speech and the note of the Finance Ministry that the element of sales tax was taken care of while restructuring the excise duty. The exemption of sales tax for the relevant period was surely as a result of the restructuring of the excise duty and the said fact is also admitted by the respondent.

12. In this background, it would be necessary to consider whether the petitioner could have been denied the benefit of the exemption notification dated 20.2.1997 on the ground that the petitioner had not complied with the second condition of the notification. On a perusal of the Maharashtra Country Liquor Rules, it appears that the sale of country liquor is regulated by the same and the sale of country liquor outside the State of Maharashtra is not permissible. A reading of the provisions show that the manufacturer cannot sell the country liquor to any person other than the wholesaler and the wholesaler cannot remove it except under a permit. The wholesaler can withdraw the liquor only for sale to a retail licensee. A retailer can sell the liquor by a measure or bottle to a consumer. A perusal of the Rules clearly show that the Rules prohibit the sale of country liquor outside Maharashtra and a person contravening the Rules, is liable to be punished. It is asserted by the petitioner that the petitioner had sold the country liquor only to the wholesalers in the State of Maharashtra. It is also not the case of the respondents that the petitioner had sold country liquor outside the State of Maharashtra. In this background, we are required to consider the

effect of the omission to print the words "For Sale in Maharashtra State Only, on the label on the bottles or packages. We have already referred to the circumstances in which the exemption notification came into existence. It appears that there was a large scale evasion of sales tax during the relevant period and with a view to curb the same, the State Government decided to recover sales tax in the form of excise duty. Though the affidavit of the Deputy Commissioner of Sales Tax is somewhat evasive and does not specifically answer the query of this Court, it is clear from the affidavit that in view of the restructuring of the excise duty, the sales tax was done away during the relevant period. The object of the notification was to ensure that a manufacturer pays the excise duty in full and also does not carry on the trade in country liquor outside the State of Maharashtra. The first condition of the notification, as regards the payment of excise duty in full was admittedly complied with by the petitioner. It is rightly submitted on behalf of the petitioner that there is, in effect, a substantial compliance of the second condition also inasmuch as the petitioner had not sold liquor outside the State of Maharashtra and it is also not the case of the respondents that the petitioner had done otherwise. Since the exemption of sales tax was granted on the recovery of the full excise duty which apparently included the sales tax, we find that the mere omission to print the words "Not For Sale Outside the State of Maharashtra" would not result into denial of benefit of the notification to the petitioner. In the factual background and looking to the object of the notification, we find that the second condition was tangential, the non-compliance of which could have been forgiven. We have already found that the petitioner had orderly conducted the business and the country liquor was not sold out of Maharashtra State. The essence or substance of the notification granting exemption has not been affected on the failure on the part of the petitioner to comply with the second condition of the notification. We find that there is sufficient compliance of the conditions inasmuch as the excise duty had been paid by the petitioner and the petitioner had not sold the country liquor outside the State of Maharashtra. The intent and object of the notification has to be considered. A strict compliance of the second condition was not called for in the facts and circumstances of the case, the same being tangential in nature. While holding so, we have humbly followed the principles laid down by the Constitutional Bench of the Hon''ble Supreme Court in the case of Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others, etc. etc., . We do not read the second condition as a condition of eligibility and even if it is assumed to be one, we find that there is sufficient compliance of the second condition as the petitioner has not sold the country liquor outside the State of Maharashtra. The submission made on behalf of the respondents that since there were only two conditions and both of them were independent of each other, the strict compliance of the second condition was essential is liable to be rejected as in the factual background, we find that the second condition was tangential. The circulars issued by the Excise Department on 19.10.2001, 3.9.2002 and 10.9.2003 clarifying that it was not necessary to print the words "For Sale in Maharashtra State Only" on the labels, as the country liquor cannot be exported under the Rules show that the officers of the State also found the second condition of the notification to be tangential. It is also difficult to understand as to why the respondents picked and chose only the petitioner and denied the benefit of the notification to it for non-compliance of the second condition when the respondents had granted the benefit of the notification to several other distilleries, in spite of the non-compliance of the second condition. The first and the second appellate authorities did not consider the nature of the second condition though they were aware of the background facts and the object of the notification. The orders passed by the authorities cannot be sustained for the reasons recorded herein above.

13. The writ petition is allowed. The impugned orders passed by the respondent Nos. 1 to 3 are quashed and set aside. Rule is made absolute in terms of prayer Clause (a) with costs.