

(1993) 02 GUJ CK 0021
In the Gujarat High Court
Case No : Sales Tax Reference No. 16 of 1990

Pamila Agro Processing	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 22-02-1993

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 41, 45(5), 45(6), 49, 49(2)

Citation : (1993) 02 GUJ CK 0021

Hon'ble Judges : M.B. Shah, J;C.V. Rane, J

Bench : Division Bench

Advocate : J.S. Joshi and S.L. Mody, for the Appellant; D.C. Dave, Assistant Government Pleader, instructed by H.V. Chhatrapati and Co., for the Respondent

Judgement

C.V. Jani, J.—The Gujarat Sales Tax Tribunal, Ahmedabad, has referred to this Court for its decision the following questions u/s 69 of the Gujarat Sales Tax Act, 1969, hereinafter, referred to as the "Act" :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was wrong in holding that the sale of manufactured goods by the applicant outside the State of Gujarat results in a breach of condition No. (2) of sub-item No. 2 of entry of the Government Notification issued u/s 49(2) of the Act and the wording of form "NN" specified thereunder ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was wrong in holding that the levy of purchase tax u/s 50 of the Gujarat Sales Tax Act, 1969, without instituting any independent proceedings under that section was valid and proper as it was levied in the course of assessment proceedings u/s 41 of the Act, 1969 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was wrong in holding that penalty under u/s 45(6) of the Gujarat Sales Tax Act, 1969, should be imposed at half the amount determined by the sales tax authorities ?"

2. These questions have been referred in the background of the following facts :

The applicant, M/s. Pamila Agro Processing, is a new small-scale industrial unit commissioned after November 1, 1977, at Vapi in south Gujarat, which is a registered dealer the Act, manufacturing dyes and at the relevant time sending manufactured goods to its branch office at Bombay for being sold at Bombay. In order to earn exemption from sales tax under suitable package of incentives for encouragement of industries in the State as per the relevant Government Resolution, the applicant had applied for and was holding exemption certificate under entry 94 of the Government Notification dated June 22, 1978, issued u/s 49 of the Gujarat Sales Tax Act, 1969, pursuant to which he was required to furnish a certificate in form "NN" appended to the notification which contained a certain undertaking on its part in order to earn exemption. The applicant made purchases of raw materials against such certificate in form "NN" from other registered dealers, free of tax, and these raw materials were used at the applicant's unit at Vapi for the purpose of manufacturing dyes, but the manufactured goods were then sent to its branch office at Bombay, as stated earlier. The Sales Tax Officer was of the view that the applicant had committed breach of condition and undertaking mentioned in form "NN" and, therefore, it was liable to pay purchase tax u/s 50 of the Act, in respect of the goods purchased against the certificates issued in form "NN". He, therefore, levied purchase tax at the rate of 4 per cent on such goods u/s 50, and also levied penalties u/s 45(6) and 45(1)(b) of the Act. The applicant challenged this assessment order by filing first appeals which came to be dismissed by the Assistant Commissioner of Sales Tax. The applicant's two second appeals before the Tribunal were dismissed in substance, but the order regarding the penalties came to be modified.

3. The relevant entry which came up for interpretation of the Tribunal as well as this Court, is entry No. 94(2) of the Government Notification dated June 26, 1978, issued u/s 49 of the Gujarat Sales Tax Act, 1969. As per this entry the sales of machinery, raw materials, processing materials, consumable stores or packing materials by a registered dealer, to a specified manufacturer would be exempt from the whole of tax (which would include sales tax or purchase tax as per the context) provided the following conditions are satisfied :

(i) The manufacturer establishes a new small-scale industry after November 1, 1977, in any of the designated areas, the population of which is not more than one lakh;

(ii) Such a manufacturer who is called a "specified manufacturer" has obtained an eligibility certificate from the Industries Commissioner of Gujarat State;

(iii) If such a specified manufacturer furnishes to the selling dealer a certificate in form "NN" declaring, inter alia, that the goods are required for use by him, within the State of Gujarat, as machinery, raw materials, processing materials or consumable stores in the manufacture of goods for sale which shall not take

place outside the State of Gujarat.

(iv) The specified manufacturer actually uses the goods within the State as machinery, raw materials, processing materials, or consumable stores in the manufacture of any goods for sale, which shall not take place outside the State of Gujarat.

The order conditions are not material for deciding the aforesaid questions.

4. In the present case, the applicant, M/s. Pamila Agro Processing, was a specified manufacturer; it established a new small-scale industry after November 1, 1977, in the designated area; it obtained eligibility certificate from the Industries Commissioner of the Gujarat State; it also furnished a certificate in form "NN"; it used the raw materials, processing materials and consumable stores in the manufacture of goods inside the State of Gujarat, but it sold the manufactured goods outside the State of Gujarat. The main question is, therefore, whether such a sale is the breach of undertaking given in form "NN", and whether the purchase of machinery and raw materials by the applicant from a registered dealer in such case, would not entitle him to any exemption.

5. The form in which the specified manufacturer purchasing goods for use in manufacture of goods has to furnish a certificate, is couched in the following words :

"FORM NN

Certificate by a specified manufacturer purchasing goods for use in manufacture of goods.

[See entry at serial No. 94 inserted by Government Notification, Finance Department No. (GHN-39)-GST-1078/(S.49)-(67)-TH dated the June 26, 1978 issued u/s 49(2) of the Gujarat Sales Tax Act, 1969.]

I, of M/s address do certify that I/the said am/is a registered dealer holding a certificate of registration No dated and also holding a certificate No.....datedgranted by the Commissioner under Government Notification No. (GHN-39)-GST-1078-(S.49)-(67)-TH dated the June 26, 1978 and that the goods being machinery, raw materials, processing materials or consumable stores mentioned in bill/cash memo/invoice No dated of M/s will be used by me/the said within the State in the manufacture of goods (for sale by me/the said firm/the said company) which shall not take place outside the State of Gujarat or being the packing materials mentioned in bill/cash memo/invoice No dated of M/s will be used in the packing of the goods so manufactured namely

I further certify that the aforesaid certificate was in force on the date of the aforesaid purchase of goods.

Place : Signature : Date : Status : By order and in the name of the Governor of

Gujarat"

As per this certificate the specified manufacturer has to undertake that he will use the machinery, raw materials, processing materials or consumable stores, within the State in the manufacture of goods for sale, which shall not take place outside the State of Gujarat. The question is whether the words "which shall not take place outside the State of Gujarat" qualify the term "manufacture" or the term "sale" appearing in entry 94(2) or in form NN.

6. Mr. J. S. Joshi, learned counsel appearing on behalf of Mr. S. L. Mody, for the applicant, submitted that the phrase "which shall not take place outside the State of Gujarat" appearing in entry 94(2) as well as in form NN qualifies the term "manufacture" and not the term "sale", and that the specified manufacturer is under an obligation to use the machinery, raw materials or consumable stores, inside the State of Gujarat as per the undertaking and the language of entry 94(2), but he is not bound to sell the manufactured goods within the State of Gujarat. He submits that the phrase immediately follows the term "sale" and, therefore, it would qualify the said term and not a remote term "manufacture" (sic). He further submits that the purpose of granting an exemption to new small-scale industries in the State would be frustrated if such industrialists are prevented from selling the manufactured goods outside the State as they would not be able to stand in competition with the giant industrialists of the State who do not need any financial incentives and who would be able to sell their goods all throughout the country without any restriction.

7. Mr. D. C. Dave, learned Assistant Government Pleader appearing for the State on the other hand submits that a literal interpretation has to be placed on entry 94(2) of the notification as well as form NN, and any inquiry about the object of the legislation would be outside the scope of interpretation when the language is clear and not capable of different meanings. He further submits that even if the court wants to indulge in the exercise of finding out the intention behind the legislation, the Government Resolution dated December 22, 1977, which he seeks to bring on record, from which the notification in question flows, would be helpful in tracing the intention of the Government in issuing the notification. He submits that as per the package of incentives for encouragement of industries in the State, the Government had given exemption to new small-scale industrial units from sales tax and had also given interest-free sales tax loans and exactly these incentives were not available to other industrialists. Naturally the Government would not be intending to suffer a loss of sales tax at the point of purchase of raw materials or consumable stores by the specified manufacturer and also at the point of sales of its manufactured goods since sale outside the State would result in loss of Revenue for the State, and hence, according to Mr. Dave, the literal interpretation of the entry as well as the relevant form would clearly reflect the intention of the Government. He further submits that the applicant in the present case had clearly committed a breach of the undertaking

given by it, in form NN, and, therefore, his purchases would not be exempt from sales tax. He also submits that whenever the Government intended to permit sales outside the States, it has clearly mentioned such permission in the relevant entry. By way of example, he referred to entry No. 95 relating to manufacturer of products of village industries or khadi who has to furnish certificate in form PP and who is required to use the goods within the State as machinery, raw materials or consumable stores in the manufacture of such goods for sale, whether in the State of Gujarat or outside the State of Gujarat. In form PP such a manufacturer has to give a corresponding undertaking which is not similar to the undertaking given in form NN.

8. Mr. Dave is right in his submission. On reading the language of entry 94(2) as well as form NN which is reproduced hereinabove, we are of the view that a literal interpretation of the relevant part of the entry which is accepted by the Tribunal, is absolutely correct, and the insertion of the comma after the term "sale" in the entry, does not make any difference. The term "specified manufacturer" itself brings in the concept of manufacturing in a designated area within the State of Gujarat; and so it would not be necessary for the Government to use the phrase "not outside the State of Gujarat" so far as the activity of manufacturing by such a dealer is concerned. The term "specified manufacturer" itself involves the concept of manufacturing inside the State. Naturally, therefore, the phrase "which shall not take place outside the State of Gujarat" qualifies the term "sale", and not the term "manufacture".

9. So far as the form NN containing the certificates furnished by the specified manufacturer is concerned, the dealer had to give an undertaking to use machinery, raw materials, processing materials, or consumable stores within the State in the manufacture of goods shall not take place outside the State. Therefore, the certificate in form NN contains a specific double undertaking - one to use the goods purchased by it within the State; and to sell the manufactured goods within the State. Having given such an undertaking in form NN it would not be open to the applicant-dealer to contend that the language of the relevant entry was capable of any other interpretation. In the form NN in which the applicant had given the certificate, there was clear absence of such words as "whether in the State of Gujarat or outside the State of Gujarat" used with reference to "sale" of khadi or village industries which are actually found in form PP required to be furnished by the manufacturer in order to earn exemption under entry 95 of the notification. Such an omission in form NN cannot be said to be without purpose, and no departure from its ordinary meaning can be permitted while interpreting such an exemption notification.

10. We also accept this interpretation in the context of Government Resolution dated December 22, 1977, laying down the scheme of incentives for new small-scale industrial units which shows that such units earn certain benefit like exemption from sales tax and interest-free sales tax loans which are denied to others. The Government cannot have intended to give its claim for sales tax on

the goods or raw materials purchased by the specified manufacturers at the time of giving such incentives if they commit breach of the undertaking given by them in the prescribed form.

11. In view of the clear language of the relevant entry, and also the certificate furnished by the applicant in form NN it is not necessary to go into the question whether it is necessary to do any violence to the language of the entry in order to find out the hidden intention of the Government in issuing the exemption notification. Question No. 1, therefore, is required to be answered in the negative.

12. Once question No. 1 is answered as aforesaid, the question No. 2 would not survive and naturally Mr. Joshi does not press the same.

13. So far as question No. 3 regarding imposition of penalty is concerned, Mr. Joshi submits that the applicant might have committed breach of its undertaking because of misunderstanding on its part regarding interpretation of entry No. 94(2). He submitted that the applicant was of the opinion that it was required to manufacture the goods within the State of Gujarat, but was not prohibited from selling the goods outside the State of Gujarat. This submission is stated merely to be rejected in view of the fact that the undertaking given by the applicant in form No. NN is explicitly clear in term. It imposed double obligation on the applicant - one to manufacture goods within the State of Gujarat, and the other to sell the manufactured goods within the State. Therefore, it cannot be said that the breach was committed because of misunderstanding, and because of the judgment in the case of The State of Gujarat Vs. Wood Polymer Ltd., which was in connection with an entry which did not contain the words "which shall not take place outside the State of Gujarat". The Tribunal, however, reduced the penalty to only half of what was levied by the sales tax authority on the ground that there might be some scope of misunderstanding on the part of the dealer. We do not think that there is any scope for reducing the penalty in view of the language of section 45(5) and section 45(6) of the Act.

The question No. 3, therefore, will have to be answered in the negative.

14. The result is that questions Nos. 1 and 3 are answered in the negative, and in favour of the Revenue; question No. 2 is not pressed.

15. There will be no order as to costs in the circumstances of the case.

16. Reference answered accordingly.