(2004) 11 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Panipat Co-Operative Sugar Mills Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 42(2)

Citation : (2008) 11 VST 628

Hon'ble Judges : M.M. Aggarwal, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is a petition by the dealer u/s 42(2) of the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act") for directing the Sales Tax Tribunal, Haryana (for short, "the Tribunal") to draw up a statement of case and refer the following questions of law for the opinion of this court:

(i) Whether on the facts and circumstances of the case, the applicant is liable to purchase tax under the general enactment of the Punjab General Sales Tax Act or the Haryana General Sales Tax Act, 1973 while he is paying tax on his purchases of sugarcane under the special enactment known as the Punjab Sugarcane (Regulation of Supply and Purchase) Act, 1953 as applicable to the State of Haryana?

(ii) Whether the special enactment would prevail over the general enactment?

(iii) Whether the State Legislature has the competence to impose two taxes on the same commodity and on the same event, i.e., purchase?

2. The petitioner is a limited company engaged in the manufacturing of sugar. It is a registered dealer under the 1973 Act. By an order dated March 24, 1976 Assessing Authority, Panipat, made assessment for the year 1972-73 and created demand of Rs. 27,760.57 against the petitioner. By invoking suo motu power of review vested in him u/s 40 of the 1973 Act Joint Excise and Taxation

Commissioner (Appeals), Ambala, passed order dated March 15, 1984 vide which he held that the petitioner is liable to pay tax on the entire quantity of sugarcane purchased during the relevant year. Accordingly, he created additional tax liability of Rs. 14,57,939.

3. The appeal filed by the petitioner against the order of Joint Excise and Taxation Commissioner (Appeals), Ambala, was dismissed by the Tribunal vide order dated March 9, 2000. The review application filed by the petitioner u/s 41 of the 1973 Act and reference application filed u/s 41(1) of the said Act were also dismissed by the Tribunal.

4. We have heard learned Counsel for the parties and perused the record. It is an undisputed position that the petitioner had paid purchase tax on the sugarcane under the Punjab Sugarcane (Regulation of Supply and Purchase) Act, 1953 (for short, "the 1953 Act"), as applicable to the State of Haryana. It had pleaded before the revisional authority, i.e., Joint Excise and Taxation Commissioner (Appeals), Ambala, that no tax is leviable under the 1973 Act, but the latter rejected the same and created additional demand under the 1973 Act.

5. Shri Akshay Bhan relied on the judgment of the Supreme Court in Gobind Sugar Mills Limited v. State of Bihar [1999] 115 STC 358 and argued that the Tribunal may be directed to refer the questions sought for by the petitioner because in view of that judgment, the petitioner cannot be subjected to tax under the 1973 Act on the sugarcane purchased after paying purchase tax under the 1953 Act.

6. Shri Jaswant Singh, learned Senior Deputy Advocate-General fairly stated that question No. 1 sought by the petitioner would require consideration by this court.

7. We have carefully gone through the orders passed by the Joint Excise and Taxation Commissioner (Appeals) and the Tribunal, as also the judgment of the Supreme Court in Gobind Sugar Mill''s case [1999] 115 STC 358 and are convinced that the following question of law would require determination by this court:

Whether on the facts and circumstances of the case, the applicant is liable to purchase tax under the general enactment of the Punjab General Sales Tax Act, 1948 or Haryana General Sales Tax Act, while he is paying tax on his purchases of Sugarcane under the special enactment known as the Punjab Sugarcane (Regulation of Supply and Purchase) Act, 1953 as applicable to the State of Haryana?

Hence, the petition is allowed and the Tribunal is directed to draw up a statement of case and refer the aforementioned question to this court.

