
(1977) 07 AHC CK 0016

In the Allahabad High Court

Case No : Sales Tax Reference No's. 412 and 413 of 1976

Poysha Industrial Co. Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 19-07-1977

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 8, 9

Citation : (1977) 40 STC 455

Hon'ble Judges : D.M. Chandrashekhar, C.J; R.M. Sahai, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.M. Sahai, J.—u/s 11 of the U. P. Sales Tax Act, 1948 (hereinafter referred to as the Act), the Judge (Revisions), Sales Tax, Meerut, has, at the instance of the assessee, who is common in both these references, referred to this court the following two questions of law:

(1) Whether, on the facts and circumstances of the case, the turnover of the assessee was exempt from tax generally in view of Notification No. ST-2409/X-902(15)-68 dated 28th May, 1969, as amended by Notification No. ST-6996/X-902(15)-68 dated 27th August, 1969, for U. P. sales and so also for inter-State sales u/s 8(2A) of the Central Sales Tax Act ?

(2) Whether, on the facts and circumstances of the case, the amendment of notification referred to in question No. (1) by Section 31(3)(a) of U. P. Act No. 38 of 1975 [section 30(3) of U. P. Ordinance No. 12 of 1975] narrowed it down to exemption for intra-State sales alone as held by the Additional Judge (Revisions), Sales Tax, Meerut ?

2. The facts of these two cases have been set out in the orders of reference. Suffice it to state, that the assessee is a manufacturer of tin containers in Ghaziabad, Uttar Pradesh.

3. Notification No. ST-2409/X-902(15)-68 dated 28th May, 1969, issued under the U. P. Sales Tax Act read as follows :

The turnover, with effect from the date of publication of this notification in the Gazette, be exempted from the payment of sales tax in respect of sanitary cans manufactured by M/s. Poysha Industrial Co. Ltd., Ghaziabad, during a period of three years.

4. The above notification was amended by Notification No. ST-6996/X-902(15)-68 dated 27th August, 1969, by substituting for the words "sanitary cans", the words "open top sanitary cans and lithographed/ plain general line tin containers.

5. By Clause 30(3) of U. P. Ordinance No. 12 of 1975, the above notification was further amended by substituting for the words "the turnover in respect of", the words "the turnover of sales made within the State by the manufacturing dealer in respect of".

6. U. P. Ordinance No. 12 of 1975 was substituted by U. P. Act No. 38 of 1975. Section 31(3) of U. P. Act No. 38 of 1975 corresponds to Clause 30(3) of the Ordinance.

7. The assessee in these two references claimed that the tin containers manufactured by it and sold in the course of inter-State trade in the assessment years 1969-70 and 1970-71 were not liable to tax under the Central Sales Tax Act since such sales within the State of U. P. has been exempted from State sales tax under the aforesaid notification dated 28th May, 1969. Its claim was rejected by the Judge (Revisions), who took the view that in view of the amendment of the notification by U. P. Act No. 38 of 1975, the assessee's sales of tin containers were not exempted generally, but were exempted only when such sales were made within the State and that, hence, the inter-State sales of such tin containers did not attract the exemption u/s 8(2A) of the Central Sales Tax Act.

8. Shri Ashok Gupta, the learned counsel for the assessee, contended that the view taken by the Judge (Revisions), Sales Tax, was clearly erroneous. His argument was as follows : The State Legislature can enact law providing for levy of sales tax on intra-State sales and purchases only and can also provide for granting exemption from State sales tax on intra-State sales and purchases only. Hence, the exemption granted to the assessee in the present case in respect of its sales of tin containers within the State should be regarded as a general exemption of tin containers under the State Sales Tax Act. Consequently, u/s 8(2A) of the Central Sales Tax Act, the assessee's inter-State sales of tin containers were entitled to the exemption from Central sales tax.

9. The learned standing counsel, who appeared for the State of U. P., argued in support of the view taken by the Judge (Revisions), Sales Tax.

10. Under entry No. 54 of List II of the Seventh Schedule to the Constitution, the State Legislature can enact law providing for levy of sales tax only on sales or

purchases within the State and not inter-State sales and purchases of goods. It follows that by or under an enactment of the State Legislature, exemption from State sales tax can be granted only in respect of sales and purchases that take place within the State and such exemption cannot be granted in respect of inter-State sales and purchases of goods. When under the U. P. Sales Tax Act, sales of tin containers by the assessee within the State of U. P. are exempt, such exemption should, in our opinion, be regarded as a general exemption of all sales of tin containers by the assessee in Uttar Pradesh and not as exemption under any specified conditions or any specified circumstances. Though U. P. Ordinance No. 12 of 1975 and U. P. Act No. 38 of 1975 substituted the words, "the turnover of sales made within the State by the manufacturing dealer in respect of", for the words "the turnover in respect of", in the notification granting exemption to the assessee, such substitution of the words has not rendered the exemption any the less a general exemption from State sales tax on all sales made by the assessee in the State of Uttar Pradesh. We are unable to agree with the contrary view taken by the Judge (Revisions), Sales Tax.

11. Even so, the learned standing counsel contended that the exemption granted to the assessee under the aforesaid notification in regard to the turnover of sales of tin containers, cannot be regarded as exemption from State sales tax generally on sales or purchases of tin containers. He maintained that the exemption was granted only in respect of sales effected by the assessee in the State of Uttar Pradesh and not on sales of tin containers effected by any other dealer or person in Uttar Pradesh. In other words, the contention of the learned standing counsel was that since the exemption was limited to the sales by the applicant-assessee and did not extend to the sales of the same commodity by other dealers or persons, such exemption cannot be said to be a general exemption, but an exemption in specified conditions or specified circumstances for the purpose of Section 8(2A) of the Central Sales Tax Act. He maintained the findings recorded by the Judge (Revisions) that the goods which were manufactured by the assessee were unclassified items and, therefore, were not exempt from tax generally. He referred to Sections 6 and 8 of the Central Sales Tax Act and urged that the principle laid down by this court in *Hindustan Safety Glass Works (P.) Ltd. v. State of Uttar Pradesh* 1974 U.P.T.C. 502 was not applicable to the facts of the present cases. He contended that the goods, which were exempted from payment of tax in that case, were taxable at single point and that once a notification was issued granting exemption to the manufacturer, it might be a case of the turnover of goods being exempted from tax generally but where, on the admitted facts, only one of the points in the series of sales had been exempted it could not be considered to be a case of general exemption. He relied on *Indian Aluminium Cables Ltd. Vs. State of Haryana*, *State of Andhra Pradesh v. Associated Tanners* [1975] 36 S.T.C. 32 and *Commissioner of Sales Tax, U. P. v. Arjunmal Yoganath, Moradabad* 1971 U.P.T.C. 22.

12. Section 6(1 A) of the Central Sales Tax Act reads as under:

...

(1 A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

13. A perusal of the section makes it clear that the turnover of inter-State sale shall not be exempt, merely because the goods are not liable under the State law. In other words, non-taxability of goods under the State law is no more a ground for claiming it to be non-taxable under the Central Sales Tax Act. The liability of the assessee therefore regarding inter-State sale cannot be disputed.

14. Sub-section (2A) of Section 8 of the Central Sales Tax Act, as it stood in the relevant assessment years, namely, 1969-70 and 1970-71, read as follows:

Notwithstanding anything contained in Sub-section (1) or Sub-section (2), if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two per cent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purposes of this sub-section, a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

15. It substituted proviso to Section 8(1), as it originally stood. It relates to collection of tax but unequivocally declares that a dealer shall not be liable to pay tax on his turnover of purchase or sale if sale or purchase of such goods is exempt from "tax generally" in the appropriate State. It is in the nature of an exception to Section 6(1A). The assessee, a dealer, can by virtue of the exception carved out by Section 8(2A) can still claim that no tax can be calculated on his turnover provided it is established that the goods in which he has carried on inter-State trade were such that the turnover of those goods was exempt from tax generally under the State Act.

16. In *Commissioner of Sales Tax v. Kapoor Dori Niwar and Co.* [1968] 1 22 S.T.C. 152, the turnover of dealer was exempt by virtue of notification issued by the State Government. The exemption did not extend to unregistered dealer. It was held by the Madhya Pradesh High Court:

During the period of exemption, the sales of niwar by a registered dealer were exempted from tax "generally", that is to say, universally and without any

limitation. That being so, these sales are exempt from tax under the Central Sales Tax Act as provided by the substantive part of Sub-section (2A) of Section 8 of the Act.

17. In *Hindustan Safety Glass Works (P.) Ltd. v. State of U. P.* 1974 U.P.T.C. 502, the scope of explanation to Section 8(2A) was considered. It was held:

The stipulation in the notification that the turnover of such sales would, for a period of three years, be exempt from payment of sales tax under the Sales Tax Act does not, in our opinion, amount to exempting the turnover of such goods from tax under specified circumstances or specified conditions.

18. Both these decisions were considered by the Supreme Court in *Indian Aluminium Cables Ltd. v. State of Haryana* 1976 U.P.T.C. 632.

19. While considering the *Madhya Pradesh* decision [1968] 22 S.T.C. 152, it was observed :

The exemption granted to sales by a registered dealer under the notification was without any restriction or limitation so far as sales by a registered dealer were concerned. Though the period of exemption was fixed, it was not regarded as a condition imposed in relation to the exemption. It was also contended there that because the exemption was granted to the registered dealers the exemption was granted to a class of dealers and, therefore, it should be construed to be an exemption in specified circumstances or under specified conditions. The court repelled the contention by stating that the exemption was to all registered dealers without any restriction or condition.

20. The observation of the Supreme Court, while considering *Hindustan Safety Glass Works* case 1974 U.P.T.C. 502, was :

The stipulation in the notification in *Hindustan Safety Glass Works* case 1974 U.P.T.C. 502, that the turnover of such sales would for a period of three years be exempt from payment of sales tax did not amount to exempting the turnover of such goods from tax under specified circumstances or specified conditions.

21. We may point out that *Indian Aluminium Cables Ltd.* 1976 U.P.T.C. 632 was decided both by the Supreme Court and the High Court in the light of Section 8(2A), as it stood after the amendment in 1972. The omission of the word "dealer" by the amendment in 1972 is significant. But we are concerned with the unamended definition. The mischief sought to be remedied in 1958 was, as pointed out by us, only this that the mere exemption of goods under the State law did not mean that it was exempt under the Central Act as well. By Section 8(2A) it was confined only to those cases where the sales or purchases of such goods by a dealer enjoyed general exemption under the State law. In other words, it was not general exemption of goods but general exemption from sale or purchase of goods of a dealer in the State which entitled a dealer to claim exemption from calculation under the Central Act.

22. It is not disputed that by virtue of a notification issued u/s 4-A of the Sales Tax Act, the turnover of the assessee was exempt from payment of tax. The effect of the notification is that the turnover of the assessee at the point of manufacture became exempt from tax generally. The question, however, is that by taking into consideration the explanation can it be said that the turnover of the goods was exempt from tax generally when the tin containers manufactured by the assessee remained liable to tax on all other points.

23. Unlike Punjab Act, Sections 4 and 4-A of the U. P. Sales Tax Act are sections dealing with the general exemption. The sale at the point of manufacture by the assessee was declared to be exempt from tax. Is the exemption in specified circumstances or under specified conditions ?

24. In the case, Hindustan Safety Glass Works (P.) Ltd. 1974 U.P.T.C. 502, the assessee was a manufacturer of toughened glass and mirror in its factory at Allahabad. u/s 4-A of the U. P. Sales Tax Act, the Government had issued a notification dated 9th January, 1970, declaring that the turnover in respect of mirrors and toughened glasses manufactured by the assessee therein shall be exempt from payment of sales tax for a period of three years with effect from February, 1969. The assessee therein had claimed that its turnover of inter-State sales in toughened glass were not liable to Central sales tax. This court upheld that claim.

25. The decision of this court in Hindustan Safety Glass Works case 1974 U.P.T.C. 502 was noticed in Indian Aluminium Cables Ltd. v. State of Haryana 1976 U.P.T.C. 632 by the Supreme Court, which observed as follows:

It was held that for purposes of Section 8(2A) of the Central Act, sale of mirrors and toughened glasses manufactured by the company was under no condition and in no circumstance liable to be taxed in the hands of the company. The reasons given were that normally it will be taken that the sale of mirrors and toughened glasses by the company was exempt from tax generally unless it could be shown that such goods belonged to the class specified in the explanation to Section 8(2A) of the Central Act. As the toughened glasses and mirrors manufactured by the company did not fall in such a category the turnover of sales of those goods in the hands of the company was not liable to tax under the Central Act.

The stipulation in the notification in Hindustan Safety Glass Works case¹, that the turnover of such sales would for a period of three years be exempt from payment of sales tax did not amount to exempting the turnover of such goods from tax under specified circumstances or specified conditions.

26. As the view taken by this court in Hindustan Safety Glass Works case 1974 U.P.T.C. 502 has been noticed by the Supreme Court and was not disapproved by it, the contention of the learned standing counsel that the exemption granted under the aforesaid notification in favour of the assessee-applicant is not a general exemption under the State Sales Tax Act but only an exemption in

specified conditions or specified circumstances and that Sub-section (2A) of Section 8 of the Central Sales Tax Act is not attracted, cannot be accepted.

27. Is the tax levied at specified stage ? The phrase used in the explanation has to be read along with the phrase "sales or purchases, as the case may be, of any goods by a dealer" used in the substantive clause. The exemption is granted on the turnover of a dealer if the sale or purchase of such goods is exempt from tax generally in the State. If the goods by a dealer is exempt from tax generally under the appropriate State the turnover of inter-State sale shall become automatically exempt. That the sale or purchase of the assessee in the State is exempt u/s 4-A by virtue of notification is not disputed. But it is urged that the goods being taxable at multiple point and the notification having granted exemption only at the point of manufacture the tax is leviable at specified stage. We do not see any merit in the submission. The words "specified stages" in the explanation have to be read along with the words "goods of a dealer" used in Section 8(2A). Is the sale or purchase of goods by the dealer taxable at any specified stage in the appropriate State ? The answer is obviously no. The calculation of tax on the turnover of inter-State sale has to be correlated with the taxability or otherwise of sale or purchase of such goods by the dealer under the State Act. If the sale or purchase of the goods by the dealer is exempt from tax generally under the State Act the assessee shall not be liable to pay tax, notwithstanding the taxability on the turnover of inter-State sale. The explanation to the section cannot be read in isolation. It has to be read along with Section 8(2A). If it is read along with Section 8(2A) then the phrase "specified circumstances, conditions and stages" have to be read in relation to the goods, no doubt, but goods of the dealer.

28. In *State of Andhra Pradesh v. Associated Tanners* [1975] 36 S.T.C. 32 at 37, there was no notification granting any general exemption to the goods of the dealer under the State Act. Section 6 of the Act declared that sale or purchase of declared goods are liable to tax at the point of sale or purchase. Tanned hides and skins were included in the schedule. In these circumstances, it was held not to be generally exempt. The difference in the effect of exemption under Sections 6, 8 and 9 of the Act has been highlighted by the Bench :

Section 8 of the State law declares that a dealer who deals in goods specified in the Fourth Schedule shall be exempt from tax under the Act in respect of such goods. Likewise, Section 9 empowers the State Government to notify exemptions and deductions of tax. Thus, the law postulates goods which are exempt from tax or which can be made exempt from tax by a Government notification. Such goods can be broadly categorised as goods which are generally exempt from tax. This is in telling contrast with Section 6 and the Third Schedule. This study of contrast reinforces our inference that goods mentioned in the Third Schedule are not generally exempt from tax.

29. The decision in *Commissioner of Sales Tax v. Arjunmal Yoganath* 1971 U.P.T.C. 22 is also not helpful. It was also a case where neither the Act nor the

notification granted any general exemption.

30. In the light of the foregoing discussion, our answers to the questions referred to us are as follows :

(1) On the facts and in the circumstances of the case, the turnover of the assessee was exempt generally from State sales tax in view of Notification No. ST-2409/X-902(15)-68 dated 28th May, 1969, as amended by Notification No. ST-6996/X-902(15)-68 dated 27th August, 1969 and, consequently, its inter-State sales were also exempt from Central sales tax u/s 8(2A) of the Central Sales Tax Act.

(2) On the facts and in the circumstances of the case, the amendment the aforesaid notification by Clause 30(3) of U. P. Ordinance No. 12 of 1975, which was replaced by Section 31(3)(a) of U. P. Act No. 38 of 1975, did not narrow down the exemption to intra-State sales only.

31. In the circumstances of these cases, we direct the parties to bear their own costs.