
(1972) 04 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 9 of 1970

Punjab Khandsari Udyog

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-04-1972

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 11, 14, 2, 21, 22

Citation : (1972) 2 ILR (P&H) 577 : (1973) 30 STC 414

Hon'ble Judges : Prem Chand Jain, J;D.K. Mahajan, J;Bal Raj Tuli, J

Bench : Full Bench

Advocate : M.S. Jain, J.L. Gupta and G.C. Garg, for the Appellant; C.D. Dewan, Additional Advocate-General, for the Respondent

Judgement

D.K. Mahajan, J.—The short question which needs determination in this reference u/s 22 of the Punjab General Sales Tax Act is whether a registered dealer can escape liability to sales tax in respect of purchase of goods used for the manufacture of goods which are tax-free ?

2. We are not setting out the questions referred for the simple reason that, in our opinion, a basic question is involved on the decision of which the questions referred will have to be answered. The basic question is, whether a certificate issued which runs counter to the provisions of the statute, can nullify those provisions and if the dealer acts on the basis of that certificate he can avoid liability for the contravention of the statutory provisions ? The learned counsel for the assessee has placed his reliance on the Letters Patent decision of this court in *The State of Haryana v. Karnal Gur and Khandsari Industries*, Chulkana Road, Samalkha Mandi, District Karnal (L.P.A. No. 313 of 1970), decided on 5th October, 1971 [Printed at page 423 infra]. This decision undoubtedly supports him. We are doubtful if a certificate issued contrary to the provisions of the statute Would lead to the result which necessarily flows from the Letters Patent decision. In our opinion, it will be proper that this reference is heard by a larger Bench.

3. We, therefore, direct that the papers of this case be laid before my Lord the Chief Justice for constituting a larger Bench to hear and dispose of this reference.

4. In pursuance of the abovesaid order of reference, the reference came on for hearing before the Full Bench:

JUDGMENT

Bal Raj Tuli, J.

5. This reference came up for hearing before my learned brethren, Mahajan and Jain, JJ., on 9th February, 1972, when the learned counsel for the petitioner relied on a Division Bench judgment of this court in *The State of Haryana and Anr. v. Karnal Gur and Khandsari Industries*, Chulkana Road, Samalkha Mandi, District Karnal, (L. P. A. No. 313 of 1970) decided on 5th October, 1971 [Printed at p. 423 *infra*]. Since the correctness of that decision "was doubted, the matter was directed to be heard by a Full Bench and that is how this reference has been placed before this Bench for decision.

6. The petitioner, M/s. Punjab Khandsari Udyog, Sonapat, is registered as a dealer under the Punjab General Sales Tax Act (hereinafter referred to as "the Act") and it carried on the business of manufacture and sale of khandsari during the year 1965-66. A certificate of registration was issued to the petitioner by the assessing authority on 21st April, 1965, certifying that the petitioner had been registered as a dealer under the Act; its business was "manufacture of khandsari" ", and the sales of gur, shakkar and khand and some other goods to it (a) for purposes of manufacture and (b) for resale, would be free of tax. On the basis of this certificate the petitioner purchased gur for the manufacture of khandsari without paying any sales tax thereon.

7. The assessment of the petitioner under the Act for the year 1965-66 was made by the Assessing Authority, Rohtak, by order dated 18th May, 1968, in which it was stated that the petitioner had been manufacturing khandsari "which is tax-free goods after purchasing gur against registration certificate. He is, therefore, liable to pay tax under second proviso to Section 5(2)(a)(ii) of the Act." The assessing authority was of the opinion that Section 7 of the Act read with Section 5(2)(a)(ii) clearly lays down that "a dealer is entitled to make purchases of goods on the strength of registration certificate for manufacture of goods other than tax-free goods". After setting out the relevant provisions of Sections 5 and 7, it was held that since the petitioner had purchased gur for the manufacture of khandsari-tax-free goods-it was liable to pay sales tax under the second proviso to Section 5(2)(a)(ii) of the Act. The value of gur which was purchased by the petitioner against its registration certificate and was used in the manufacture of khandsari was determined as Rs. 5,00,741.00 on which sales tax at 6 per cent, amounting to Rs. 30,044.46 was assessed. Against the order of assessment, the petitioner filed an appeal in which it was held that the petitioner could not purchase gur for the manufacture of khandsari without paying sales tax thereon, but since it manufactured both khandsari (tax-free goods) and molasses

(taxable goods), it was liable to pay tax on the purchase value of the gur to the extent of the manufacture of khandsari out of it, which was 38 per cent, only, the molasses accounting for the remaining 62 per cent. The petitioner was thus held liable to pay sales tax on Rs. 1,71,296.00, which represented 38 per cent, of the purchase value of the gur determined as Rs. 4,50,780.53 instead of Rs. 50,074.00. On this amount sales tax at 6 per cent, amounting to Rs. 10,277.76 was levied. The order of assessment was accordingly modified and the appeal was accepted in part on 19th July, 1968. The Excise and Taxation Commissioner, Haryana, suo motu took action u/s 21(1) of the Act and issued notice to the petitioner to show cause why the order of the appellate authority should not be revised. After hearing the petitioner, the Excise and Taxation Commissioner decided that the tax should be levied not on 38 per cent, of the purchase value of the gur, but on the market value of 38 quintals of khandsari out of every 100 quintals of gur purchased and, setting aside the order of the appellate authority, remanded the case to the assessing authority for fresh assessment on the basis indicated by him. This order was passed on 9th May, 1969, and against that order the petitioner filed an appeal before the Sales Tax Tribunal, Haryana. The Tribunal set aside the order of the Excise and Taxation Commissioner and restored the original order passed by the assessing authority holding the petitioner liable to tax on the purchase value of the entire quantity of gur purchased free of tax. The assessing authority was directed to recalculate the tax on that basis. This order was passed on 23rd July, 1969, and feeling aggrieved, the petitioner filed an application u/s 22(1) of the Act for referring to this court certain questions of law mentioned in the application. The learned Sales Tax Tribunal accepted that application by order dated 28th November, 1969, and referred the following questions to this court for decision:

(1) Whether in the circumstances and on the facts of the case, the provisions of the second proviso to Section 5(2)(a)(ii) of the Act were rightly invoked to tax purchase value of gur (Rs. 4,50,780.53) ?

(2) Whether having regard to the admitted fact that 100 quintals of gur yielded 38 quintals of khandsari and 62 quintals of molasses, tax under the provisions of the second proviso to Section 5(2)(a)(ii) of the Act can be levied only on 38 per cent, of the purchase value of the gur purchased on the strength of the registration certificate and consumed in the process of manufacturing khandsari?

8. That reference came up for hearing before Mahajan and Sandhawalia, JJ., on 8th January, 1970, and it was returned to the Tribunal for drawing up a proper statement of the case for reference to this court. Consequently, the Tribunal submitted a fresh statement of the case on 10th August, 1970.

9. Before us the learned counsel for the petitioner sought to argue that khandsari is not tax-free goods as it is not "sugar" within the meaning of entry 62 in Schedule B" to the Act and there was thus no misuse of the registration certificate. But before the departmental authorities, it was the common case of both the parties that khandsari was included in the term "sugar" and was exempt

from the payment of sales tax and no tax was levied on the sale turnover of khandsari. There is, therefore, no scope for the argument that khandsari is taxable goods and not tax-free goods, and there was no misuse of the registration certificate by the petitioner.

10. Section 5(2)(a)(ii) of the Act, as was in force in 1965-66, read as under:

5. (2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a) his turnover during that period on-

(i) the sale of goods declared tax-free u/s 6 ;

(ii) sales to a registered dealer of goods other than sales of goods liable to tax at the first stage under Sub-section (1-A) declared by him in a prescribed form as being intended for resale in the State of Punjab or sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods, other than goods declared tax-free u/s 6, for sale in Punjab and on sales to a registered dealer of containers or other materials for the packing of such goods:

Provided that in case of such sales, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form, obtained from the prescribed authority, is furnished by the dealer who sells the goods:

Provided further that when such goods are used by the dealer to whom these are sold for purposes other than those for which these were sold to him, he shall be liable to pay tax on the purchase thereof at such rate, not exceeding the rate of tax leviable on the sale of such goods, as the State Government may by notification direct in respect of a class of dealers specified in such notification, notwithstanding that such purchase is not covered by Clause (ff) of Section 2.

11. Section 7 of the Act provides for the registration of dealers according to which, no dealer liable to pay tax under the Act can carry on business as a dealer unless he has been registered and possesses a registration certificate. Rule 26 of the Punjab General Sales Tax Rules, 1949, relates to the matter mentioned in Section 5(2)(a)(ii) of the Act and read as under in 1965-66 :

A dealer, who wishes to deduct from his gross turnover the amount in respect of a sale on the ground that he is entitled to make such deduction under the provisions of Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act, shall, on demand, produce in respect of such a sale the copy of the relevant cash memo or bill, according as the sale is a cash sale or a sale on credit, and a declaration in writing in Form S. T. XXII by the purchasing dealer or by his agent, that the goods in question are intended for resale in the State of Punjab or such goods are specified in his certificate of registration for use by him in the

manufacture in the State of Punjab of any goods for sale.

12. Form S. T. XXII mentioned in Rule 26 as prescribed was in the following terms:

FORM S. T. XXII

Declaration to be furnished by a registered dealer purchasing goods from another registered dealer.

(See Rules 26 and 27-A of the Punjab General Sales Tax Rules, 1949.)

I...holder of registration certificate No. ... hereby declare that I have purchased the goods hereinafter mentioned for the purpose of :

(1) use in the manufacture in the State of Punjab of any goods for sale;

(2) resale in the State of Punjab ; or

(3) sale in the course of inter-State trade or commerce ; or

(4) sale in the course of export out of the territory of India ;

and the goods so purchased for the purpose mentioned at (1) above are duly specified in my aforesaid registration certificate.

Description of goods Quantity Price Number and date Full signature of cash
memo or of the selling bill issued by the dealer. selling registered dealer.

Full signature and complete address of the dealer or his authorised agent.

Place...

Date..."

13. Section 5(2)(a)(ii) of the Act was amended by the Punjab General Sales Tax (Amendment) Act, 1963 (Punjab Act No. 2 of 1963), so as to insert the words "other than goods declared tax-free u/s 6", which were previously not there. That Act came into force with effect from 23rd March, 1963, but it appears that the Assessing Authority, Rohtak, who issued the certificate of registration to the petitioner on 21st April, 1965, was not aware of the amendment made by Punjab Act 2 of 1963, and that is why by this certificate of registration the petitioner was permitted to purchase free of tax gur, shakkar and khand and some other goods for the manufacture of khandsari, which was not permissible under the amended Sub-clause (ii) of Clause (a) of Sub-section (2) of Section 5 of the Act. Either the assessing authority did not consider khandsari to be sugar and, therefore, tax-free under entry No. 62 in Schedule B to the Act or the amendment was not to his knowledge. Rule 26 and Form S. T. XXII were also not amended to give effect to this amendment till the Punjab Government issued notification dated October

8/10, 1966, so as to substitute the words "use in the manufacture in Punjab of any goods, other than goods declared tax-free u/s 6, for sale in Punjab" for the words "use in the manufacture in the State of Punjab of any goods for sale", in Form S.T. XXII. It has, therefore, to be presumed that the declarations furnished by the petitioner to the selling dealers, while purchasing goods from them on the basis of its registration certificate, were in Form S.T. XXII before its amendment with effect from 10th October, 1966. If, as is argued, the petitioner was not entitled to purchase gur free of tax on the basis of its registration certificate in view of the amended Clause (ii) of Section 5(2)(a) of the Act in 1965-66, the selling dealer equally should have satisfied himself as to whether the petitioner was -entitled to purchase gur for the manufacture of khandsari under the provisions of Section 5(2)(a)(ii) of the Act as amended and in force in 1965-66, irrespective of the entry in its registration certificate. He should have refused to sell gur free of tax to the petitioner for the manufacture of khandsari, which was tax-free goods. The petitioner did not use gur purchased for the manufacture of khandsari on the basis of its certificate of registration and the declarations furnished to the selling dealer(s), for any purpose other than the manufacture of khandsari. It cannot, therefore, be said that under the second proviso to Section 5(2)(a)(ii), set out above, the petitioner could be made liable for the payment of tax on the purchase of gur because he did not use that gur for any purpose other than that for which it was sold to it. It is quite a different matter that the petitioner was not entitled to purchase, free of tax, gur for the manufacture of tax-free goods like khandsari, but it did not use that gur for any other purpose. To repeat, the gur was purchased for the manufacture of khandsari and was used for that very purpose. The second proviso to Section 5(2)(a)(ii) has, therefore, no application and no other provision of the Act has been brought to our notice under which the State can assess the petitioner to tax on the purchase price of gur which was purchased by it for the manufacture of khandsari on the basis of its certificate of registration and declarations in Form S.T. XXII. It is quite manifest that u/s 5(2)(a)(ii), as amended and in force in 1965-66, the selling dealer was not entitled to claim deduction for the sale turnover of gur sold to the petitioner tax-free for the manufacture of khandsari from his gross turnover and, if claimed, the assessing authority should have disallowed it. If the selling dealer has been allowed that deduction, it can be only on the basis that khandsari is not tax-free goods. If that be so, then a different interpretation cannot be placed on khandsari in the hands of the petitioner. On that basis, the petitioner is not liable to pay any tax on the purchase of gur. Looked at from any point of view, the petitioner cannot be made liable for the payment of tax to the State Government on the purchase price of the gur because to the Government the selling dealer is liable to pay tax on his sale turnover of gur and if he defaulted in collecting the tax from the petitioner, he may have a cause of action against the petitioner but not the State Government. The State Government cannot act on behalf of the selling dealer who is himself an assessee, but the assessing authority could disallow any deduction from his sale turnover, if claimed u/s 5(2)(a)(ii) with regard to the sale of gur to the petitioner.

14. This matter was considered by me in *Karnal Gur and Khandsari Industries v. The State of Haryana and Anr.* (Civil Writ No. 1287 of 1968), decided on 10th February, 1970, which is printed as appendix to *Fancy Nets and Fabrics v. The State of Punjab and Anr.* [1971] 28 S.T.C. 433. The petitioner in that case had been issued a certificate of registration on 3rd June, 1965, in which it was stated that the petitioner-firm was a dealer in gur, khandsari, bardana, etc., and manufacturer of khandsari and gur-sheera and was entitled to purchase gur, firewood, sajji and lime for the purpose of manufacture, and gur, etc.; for resale free of tax. On the basis of that certificate, the petitioner-firm purchased gur and other goods, some of which were resold and others were used in the manufacture of khandsari and gur-sheera during the assessment year 1965-66 (from 1st April, 1965, to 31st March, 1966). For that year, the petitioner submitted quarterly returns and paid the tax in accordance with those returns. The assessing authority issued notice to the petitioner-firm for assessment purposes under Sections 11(2) and 14 of the Act calling upon it to appear before him on 20th March, 1968, with particulars regarding the purchase of gur and accounts, etc. The assessing authority was of the view that the petitioner-firm was liable to pay tax on the purchases of gur made by it for the manufacture of khandsari under the second proviso to Section 5(2)(a)(ii) of the Act. The facts of that case were thus identical with the facts of this case and on those facts I observed as under :

It is not the case of the respondents in the written statement nor has the assessing authority stated in the order of assessment that the petitioner-firm purchased gur for some other purpose and used it for the manufacture of khandsari. The registration certificate entitled the petitioner-firm to purchase gur for the manufacture of khandsari and gur-sheera free of tax. It cannot, therefore, be said that the petitioner-firm used gur purchased for the manufacture of khandsari and gur-sheera for any purpose other than that for which it was sold to it. There was thus no misuse of the registration certificate by the petitioner-firm when it purchased gur free of tax for the manufacture of khandsari and gur-sheera on the strength of the registration certificate. The proviso to Section 5(2)(a)(ii) of the Act has thus no applicability to this case. The dealer or dealers, who sold gur to the petitioner-firm on the basis of this registration certificate for the manufacture of khandsari and gur-sheera, may not be entitled to deduct from its/their gross turnover the value of such sales as khandsari is a tax-free goods but the petitioner cannot be held liable to the sales tax department for the payment of sales tax on the purchase of that gur. It was open to the seller to realise it from the purchaser, that is, the petitioner, but it is not open to the department to realise it from the purchaser because, it is, under the Act, payable only by the seller. The levy of sales tax on the amount of Rs. 1,31,522.31 at the rate of 6 per cent, is, therefore, liable to be quashed.

15. Against that judgment an appeal under clause 10 of the Letters Patent (L.P.A. No. 313 of 1970, *The State of Haryana and Anr. v. Karnal Gur and Khandsari Industries*, Chulkana Road, Samalkha Mandi, District Karnal [Printed at p. 423

infra] was filed which was dismissed on 5th October, 1971, by a Division Bench which expressly affirmed the above-quoted observations made by me. My decision was also approved by another Division Bench of this court consisting of Mahajan and Gopal Singh, JJ., in *Fancy Nets and Fabrics v. The State of Punjab and Anr.* [1971] 28 S.T.C. 433. We have not been persuaded to hold that those judgments did not decide the matter correctly and with respect we affirm the same.

16. The learned counsel for the respondents has placed great reliance on a judgment of their Lordships of the Supreme Court in *Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another*, which is quite distinguishable on facts. In that case. *Modi Spinning and Weaving Mills Co. Ltd.* was a registered dealer and on the basis of its registration certificate purchased raw cotton and after ginning it in its ginning mills in Punjab, sent the bales to its weaving mills in Uttar Pradesh for the manufacture of cloth. In computing its taxable turnover, the assessee claimed that the purchases of cotton were free of tax u/s 5(2)(a)(ii) of the Act as there was no condition in the certificate of registration granted to it that the cotton purchased under the certificate should be subjected to manufacture in the State of Punjab. After the grant of the certificate, Section 5(2)(a)(ii) of the Act and Rule 26 of the Punjab General Sales Tax Rules, 1949, had been amended to provide for that condition. On those facts, it was held that the registration certificate was only evidence that the assessee was a registered dealer for purposes of certain commodities to be used in manufacture, one of them being cotton. The old registration certificate, even though it did not contain the words "in the State of Punjab", would stand impliedly modified by the sections, the rule and the form operating together. The assessee had to comply with the Act and the Rules and could not take shelter behind the unamended certificate.

17. In that case, the assessee-company claimed deductions out of its gross turnover u/s 5(2)(a)(ii) of the Act which were disallowed with the following observations :

There are three conditions involved: the first is that they must be for the use of the dealer ; the second is they must be for manufacture in the State of Punjab; and the third is that the manufacture must result in goods for sale. It is not necessary to decide whether the sale should also be in the Punjab for the reason that no sale as required took place. The exemption could only be claimed if the company satisfied all the three conditions. The last condition does not appear to be fulfilled in this case. The words "for sale" show the quality of goods and it is clear the goods that are manufactured in the Punjab must be for sale. According to the section the goods which are the result of manufacture must be for sale and not for use by the manufacturer in some manufacture outside the State resulting in different goods. The goods which the company manufactured in the State of Punjab were bales of ginned cotton and they were admittedly not for sale because they were sent to its spinning and weaving mills in Uttar Pradesh.

The exemption, therefore, could not be claimed in view of the fact that all the requirements of the section were not complied with.

18. In the present case, the petitioner is not claiming any deductions u/s 5(2)(a) (ii) of the Act but is resisting its liability to pay tax which has been levied under the second proviso to Clause (ii) of Section 5(2)(a) of the Act. On the basis of the Supreme Court judgment, all that can be said is that by virtue of the amendment made in Section 5(2)(a)(ii) of the Act by Act 2 of 1963, the petitioner could not purchase free of tax gur for the manufacture of khandsari on the basis of its certificate which had been wrongly issued to it by the assessing authority. In that view of the matter, the selling dealer/dealers should not have sold gur to the petitioner free of tax as he/they were also presumed to know the law as much as the petitioner. The facts of the Fancy Nets and Fabrics case [1971] 28 S.T.C. 433 were similar to the facts of Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another, and while deciding that case the Bench approved of my decision as already stated.

19. For the reasons given above, our answer to question No. (1) is in the negative, that is, in favour of the assessee and against the department. In this view of the matter, question No. (2) does not arise and no answer is, therefore, returned to it. Since the matter was not free from difficulty, we leave the parties to bear their own costs.