
(1972) 10 AHC CK 0028
In the Allahabad High Court
Case No : Writ No. 3312 of 1972

Raj Kumar Sharwan Kumar	Vs	APPELLANT
The State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 09-10-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 14, 226

Citation : (1973) 32 STC 501

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Bhartji Agarwal and R.R. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—The petitioner is a partnership firm and is carrying on the business of the manufacture and sale of edible oil at Lucknow. The oil is extracted from oil-seeds purchased by the petitioner through commission agents and other dealers. First purchases of oil-seeds are liable to purchase tax u/s 3-D of the U.P. Sales Tax Act at the rate of 3 per cent. However, the petitioner was assessed to purchase tax at the concessional rate of 2 per cent by reason of a notification issued u/s 4-B of the Act. Section 3-F provides for additional tax on turnover exceeding Rs. 2 lacs. For the assessment year 1970-71, the petitioner was assessed to purchase tax on the turnover of purchases of oil-seeds at the rate of 2 per cent and to additional tax of Rs. 4,082.17 at the rate of 1/4 per cent u/s 3-F by an assessment order dated 10th May, 1972. The petitioner has challenged the levy of additional tax in this petition under Article 226 of the Constitution.

2. The contention of the learned counsel for the petitioner is that oilseeds are goods of special importance in inter-State trade or commerce within the meaning of Section 14 of the Central Sales Tax Act, 1956 and by virtue of Section 15 of

that Act no State law can impose a tax on the sale or purchase of such goods at a rate exceeding 3 per cent. The rate of tax prescribed by Notification No. ST-1375/X-902(63)-50 dated 1st April, 1968, issued u/s 3-D(1) of the Act is 3 per cent so that no further tax by way of additional tax can be imposed on the turnover of oil-seeds. The alternative argument is that additional tax u/s 3-F is not leviable in cases covered by Section 4-B of the Act.

3. It is true that oil-seeds are one of the commodities mentioned in Section 14 of the Central Sales Tax Act and, as such, the levy of tax on the turnover of oil-seeds is subject to the restrictions contained in Section 15 of the Central Sales Tax Act so that the total tax on oil-seeds cannot exceed 3 per cent, which was the rate prescribed u/s 15 of the Central Sales Tax Act at the material time. But in the case of the petitioner, the rate of tax u/s 3-D(1) has been reduced to 2 per cent by a Notation No. ST-16/X-902(63)-50 dated 18th February, 1969, issued u/s 4-B of the U.P. Sales Tax Act. Section 4-B provides for special relief to certain manufacturers. The material portion of this provision is as under:

4-B. Special relief to certain manufacturers.-(1) Notwithstanding anything contained in Sections 3, 3-A, 3-AA. and 3-D-

(a) where any goods liable to tax u/s 3-D are purchased by a dealer who is liable to tax on the turnover of his first purchases under that section and the dealer holds a recognition certificate issued under Sub-section (2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate or be exempt from tax, as may be notified in the Gazette by the State Government in that behalf

(b)...

(2) A dealer, who requires any goods referred to in Sub-section (1) for use as raw material for the purposes of manufacture in the State of Uttar Pradesh of any notified goods and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, may apply within such period and in such form and manner, as may be prescribed, to the assessing authority for the grant of a recognition certificate in respect thereof and if the applicant satisfies such requirements and conditions as may be prescribed, the assessing authority shall grant to the dealer in respect of such goods a recognition certificate in such form and subject to such conditions as may be prescribed.

Explanation. For the purposes of this Sub-section-

(a)...

(b) "notified goods" means such goods as may, from time to time, be notified in the Gazette by the State Government in that behalf.

4. The petitioner holds a recognition certificate u/s 4-B(2) and, as such, is liable to tax at the concessional rate of only 2 per cent on the first purchases of oil-

seeds, which it purchases for the manufacture of oil. The question is as to whether the petitioner is liable to the additional tax u/s 3-F. That provision reads :

3-F. Additional tax on certain dealers.-Every dealer liable to pay tax u/s 3, Section 3-A, Section 3-AA or Section 3-D whose total turnover of sales or of purchases or of both in any assessment year exceeds rupees two lacs shall, in addition to the said tax, pay for that assessment year an additional tax at the rate of twenty-five paise on every hundred rupees of his turnover liable to tax :

Provided that in case of declared goods as defined in the Central Sales Tax Act, 1956 (74 of 1956),-

(a) where the tax payable under the said section equals the maximum amount of tax permissible u/s 15 of that Act, no additional tax shall be payable under this section:

(b) where the additional tax under this section together with the tax payable under the said section would exceed the maximum amount of tax permissible u/s 15 of that Act, the additional tax shall stand reduced to such amount as together with the tax payable as aforesaid, equals the said maximum amount.

5. The scheme underlying Section 3-F is to impose additional tax at the rate of 1/4 per cent on every dealer whose turnover exceeds Rs. 2 lacs. In the case of declared goods, however, the total burden of tax, including the additional tax, is not to exceed the maximum amount of tax permissible u/s 15 of the Central Sales Tax Act. Now in the case of the petitioner, the tax u/s 3-D is at the rate of 2 per cent and the total tax together with the additional tax of 1/4 per cent would not exceed 3 per cent, which is the maximum rate permissible under the Central Sales Tax Act. There is thus no reason why the petitioner should not be liable to additional tax.

6. The contention on behalf of the petitioner, however, is that under Notification No. ST-1375/X-902(63)-50 dated 1st. April, 1968, issued u/s 3-D(1) of the Act, the turnover of first purchases of oilseeds is liable to tax at the rate of 3 per cent and in order to determine as to whether any further tax should or should not be imposed on oilseeds, we should take into consideration the rate prescribed by the aforesaid notification u/s 3-D(1) and not the concessional rate payable by the petitioner u/s 4-B. We find no justification for such a contention. It is true that in the case of a dealer dealing in oilseeds who does not possess a recognition certificate u/s 4-B(2), no additional tax will be leviable as he would be liable to pay purchase tax at the rate of 3 per cent, which is the maximum rate permissible u/s 15 of the Central Sales Tax Act. But we see no reason why the petitioner should not be liable to the additional tax, because in its case the rate of tax on oil-seeds is 2 per cent only.

7. Now coming to the alternative contention, the argument is that no additional tax should be imposed in cases covered by Section 4-B, otherwise the intention of the Legislature to grant concession will be defeated. It is urged that the

intention of the Legislature was to levy a concessional rate of 2 per cent on the first purchases of oil-seeds in the case of dealers who hold recognition certificates u/s 4-B(2) and if additional tax is also imposed, the limit of 2 per cent would be exceeded. Now, a perusal of Section 3-F (sic) shows that the power given to the State Government to grant a concession is only in respect of tax payable under Sections 3, 3-A, 3-AA and 3-D. Section 3-F is an independent charging section and the State Government has not been given the authority to grant concession in respect of the tax leviable under this provision. So long as Section 4-B is not amended so as to include therein Section 3-F also, the State Government has no authority to grant any concession even if it wants to, There is thus no merit in the, alternative contention also.

8. The last argument is that the imposition of additional tax u/s 3-F contravenes Article 14 of the Constitution. It is contended that a dealer who does not hold a recognition certificate would be exempt from payment of additional tax while the dealers holding recognition certificates would be liable to the additional tax. This would result in discrimination. There is a fallacy in this argument. A dealer, who does not hold a recognition certificate, would no doubt not be liable to pay additional tax, but that would be so because the normal rate of tax in his case would be 3 per cent. In the cases of dealers like the petitioner, holding recognition certificates, the rate of tax including the additional tax would still be less than three per cent. Thus the rate of tax at which the petitioner would be assessed together with the additional tax would still be less than the rate of tax payable by a dealer who does not hold a recognition certificate. We fail to see how the petitioner can complain of any discrimination.

9. For the reasons stated above, we dismiss this petition, but in the circumstances we make no order as to costs.