
(2004) 01 KL CK 0011
In the High Court Of Kerala
Case No : W.A. No. 898 of 2003

Sales Tax Officer

APPELLANT

Vs

Louis Dreyfuss India (P) Ltd.

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Sales Tax Act — Section 17

Citation : (2004) 1 ILR (Ker) 571 : (2004) 1 KLT 1011 : (2007) 8 VST 579

Hon'ble Judges : N.K. Sodhi, Acting C.J.; K.K. Denesan, J

Bench : Division Bench

Advocate : Raju Joseph, Spl. Government Pleader, for the Appellant; Joseph Vellappally Joseph Kodianthara and Thomas Vellappally, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, Ag. C.J.

1. The short question that arises for consideration in this Writ Appeal directed against the judgment dated December 18, 2002 passed by a learned Single Judge in O.P. No. 35879 of 2002 is whether in the facts and circumstances of the case it was proper of this Court to entertain a petition under Article 226 of the Constitution against a notice issued by the assessing authority calling upon the dealer to show cause why assessment be not made under the Kerala General Sales Tax Act, 1963 (for short "the Act") and the Central Sales Tax Act, 1956 (for short "the CST Act") and quash the same. The facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

2. Louis Dreyfuss India (P) Ltd., (hereinafter referred to as "the Company") is a Private Limited Company with its registered office at Mumbai. It is engaged inter alia in the trade of import and sale of various agricultural and other commodities including sugar. The Company has a branch office in the State of Kerala and is a registered, dealer both under the Act and under the CST Act. The assessment year in question is 1999-2000. The Company filed its annual returns declaring a

total turnover of Rs. 16,47,55,675/- and the taxable turnover shown therein was nil. It is averred that the entire sales of the Company during the year 1999-2000 comprised of imported sugar, which was exempt from tax under Entry 56 of Schedule-III of the Act during the relevant time. On a scrutiny of the return, the Sales Tax Officer, II Circle, Mattancherry issued a notice dated 18.10.2000 to the Company u/s 19 of the Act. It was stated in the notice that "the claim of exemption cannot be allowed as sugar as per Entry 56 of IIIrd Schedule of the KGST Act and white sugar imported and sold by you were not one and the same. White sugar imported and sold by Louis Dreyfuss India (P) Ltd. is taxable under KGST and CST Act. It is therefore proposed to complete the assessment as under." The Company gave a detailed reply to this notice, a copy of which is Ext.P4 with the Writ Petition. It then transpired that the notice had been issued u/s 19 whereas it should have been u/s 17(3) of the Act. Thereafter another notice dated 9.11.2000 was issued u/s 17(3) of the Act informing the Company that the white sugar imported by it was taxable under the Act and the CST Act and therefore it was proposed to complete the assessment in the manner stated in the notice. The Company was given 7 days time to file its objections and the hearing was fixed on 23.11.2001 giving an opportunity to the company to be present through its representatives. The Company gave a detailed reply to this notice. It was stated in the reply that the sugar imported by the Company was covered under sub heading Nos. 1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985 and therefore the sugar imported by it stood exempted under Entry 56 of the IIIrd Schedule to the Act. A copy of the bill of entry was attached along with the reply to show that the consignment had been cleared by the Customs authorities under sub-heading Nos. 1701.11 of the Customs Tariff heading 17.01, the corresponding sub heading for the Central Excise Tariff Act being 1701.39. According to the Company, the Customs authorities settled the classification of the commodity after due inspection and it was thus clear that the sugar imported by the Company fell under sub heading 1701.39 of the Central Excise Tariff Act. Thereafter the Assessing Officer gave yet another notice dated 3.10.2002 u/s 17(4) read with Section 17(3) of the Act and informed the Company that he proposed to finalise the assessment as referred to therein. A copy of this notice is Ext.P8 with the Writ Petition. The Company filed a reply to this notice as well taking the same plea that the sugar imported by it was exempt under Entry 56 of the IIIrd Schedule to the Act. Before the Assessing Officer could pass a final assessment order the Company filed O.P.35879 of 2002 in this Court, which came up for admission before a learned Single Judge on 29.11.2002. In response to the advance copy given by the Company to the Department, the Government Pleader appeared before the learned Single Judge on 29.11.2002 and accepted notice. The case was finally heard and disposed of on 18th December, 2002. It was contended on behalf of the Department that the Writ Petition against the notices issued u/s 17 of the Act was not maintainable and that the Company should appear before the assessing authority and establish its claim for exemption by producing relevant material to substantiate its pleas. It was also urged on behalf of the Department that the

sugar imported by the petitioner did not fall under Entry 56 of the III-Schedule to the Act and therefore it was not exempt from tax. After hearing the learned counsel for the parties, the learned Single Judge examined the merits of the contentions advanced before it and came to the conclusion that the sugar imported by the Company answered the description in Entry 56 of the IIIrd Schedule to the Act and therefore was exempt from tax. The learned Single Judge also observed that there was nothing more for the Company to prove its claim for exemption after it had produced the copies of the bill of entry showing that the sugar imported by the Company was covered under the subheading Nos. 1701.39 of the Schedule to the Central Excise Tariff Act, 1985. In view of these findings the learned Single Judge allowed the Writ Petition and quashed the notices Ext.P2, P5 and P8 with the Writ Petition. As regards the objection that this Court should not interfere with the impugned notices and allow the Assessing Officer to complete the assessment in accordance with law, the learned Single Judge observed that the Assessing Officer had already made up his mind and recorded a finding in the impugned notices that the Company was not entitled to the exemption as claimed and therefore filing a reply and allowing the Assessing Officer to complete the assessment was a mere empty formality. It is against this order of the learned Single Judge that the present appeal has been filed u/s 5 of the Kerala High Court Act.

3. We have heard the learned counsel for the parties and are of the view that the objection taken by the appellants before the learned Single Judge that this Court should not interfere with the impugned notices and allow the Assessing Officer to complete the assessment should have been accepted by the learned Single Judge and that he erred in law in quashing the entire proceedings at the threshold without allowing any of the departmental authorities to even examine the contentions by the parties on merits. As is clear from what has been stated hereinabove, the sole question before the learned Single Judge was whether the sugar imported by the Company was exempt from sales tax under Entry 56 of IIIrd Schedule to the Act. In other words, what was required to be examined was whether the sugar imported was covered under the subheading Nos.1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985. Entry 56 as it stood prior to its amendment with effect from 1.4.1999 was as under: -

"56. Sugar covered under sub heading Nos. 1701.20, 1701.31, 1701.39 and 1702.11 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)."

This was amended by the State Legislature with effect from 1.4.1999 by Act"23 of 1999 and the amended provision reads as under: -

"56. Sugar covered under sub heading Nos. 1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985(Central Act of 1986)."

4. A reading of the amended and unamended Clause 56 makes it clear that there were varieties of sugar which were referred to in the clause exempting levy of sales tax prior to 1.4.1999 and after its amendment sugar covered under sub

heading 1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985 alone were entitled to exemption. In other words, after the amendment only two varieties were exempted. The question whether the sugar imported by the petitioner was covered under one sub heading or the other and whether it was entitled to exemption or not were matters for the assessing authority to decide in the light of the relevant facts and circumstances of the case. It is true that the Company took the stand that the Customs authorities had classified the imported sugar under heading 1701.39 of the Schedule to the Central Excise Tariff Act and produced a copy of the bill of entry in support of its contention. But this was a piece of evidence which could at the most support what the Company was contending but by no means could it be conclusive. The Assessing Officer was bound to examine this contention of the Company and would have come to a conclusion one way or the other. If he had found merit in the contention of the Company he would have allowed the claim or else brought the turnover of tax in terms of the Act. In that event, the Company would have had its statutory remedies of appeal and revision. Unfortunately, the learned Single Judge by interfering at the stage of the issuance of the notice to the Company scuttled the entire proceedings and did not allow the assessing authority to make the assessment. In other words, the learned Single Judge did what the assessing authority should have done. The assessing authority did not lack jurisdiction in framing the assessment and therefore in exercise of that jurisdiction it could pass a right order as well as a wrong order. If the Company felt aggrieved it could get adequate redress against the wrongful acts complained of in appeal. Further, appeal is provided to the Tribunal. We are clearly of the view that all these statutory remedies could not be allowed to be bypassed and, therefore, it was not appropriate for the learned Single Judge to have entered into the merits of the controversy at the stage when the Company had been issued a notice u/s 17 of the Act. The Assessing Officer had given time to the Company to file its objections which it did and surely the pleas taken by it would have been considered by the Assessing Officer before a final order of assessment would have been passed. What was stated in the notice was not a finding which the Department had recorded but it was a prima facie view on the basis of which it was proposed to proceed with the assessment and not finalise the same in a summary manner as was sought to be contended by the Company. The question whether the sugar imported by the petitioner fell within the relevant sub heading of the Schedule to the Central Excise Tariff Act so as to entitle it to claim exemption was an issue, which the Assessing Officer had first to decide. The view that we have taken finds support from the observations of the Apex Court in *Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others*, . In *Union of India v. Hindalco Industries* AIR 2003 SCW 2062 their Lordships of the Supreme Court were dealing with a somewhat similar situation and observed as under:

"There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the

Constitution either at the stage of show cause notice or at the stage of assessment, where alternative remedy by way of filing a reply or appeal, as the case may be, is available....."

5. Before concluding, it may be mentioned that when this Writ Appeal came up for hearing on 30th September, 2003, the learned State Counsel appearing for the appellants prayed for an adjournment for three months to enable the assessing authority to take a view on the matter and pass an order considering the reply submitted by the Company. It was understood that the assessing authority would take an independent view without being influenced by the observations and directions issued by the learned Single Judge, but how could that authority do. Learned counsel for the parties have produced before us a copy of the order of assessment dated 2.4.2003 relating to interstate sales passed by the assessing authority during the pendency of the appeal wherein the Assessing Officer observed as under: -

"The above proposal was communicated to the assessee through this office notice dated 12.11.2002. On receipt of the notice the assessee filed O.P. before the Hon"ble High Court to quash the notice and to exempt sugar from tax liability. The Hon"ble High Court directed to complete the assessment granting exemption on the sugar imported and sold by the assessee. In the light of the direction of the Hon"ble High Court the CST assessment for the year 99-2000 is completed withdrawing the proposal and granting exemption to the interstate sale of sugar....."

It is thus clear that the assessing authority has proceeded on the basis that the learned Single Judge had directed him to grant exemption and then complete the assessment, which he has accordingly done.

In the result, the Appeal is allowed, judgment of the learned Single Judge dated 18th December, 2000 set aside and O.P. No. 35879 of 2002 dismissed. The Assessing Officer will now proceed to make the assessment in accordance with law after taking into account all the contentions raised by the Company in its detailed replies to the aforesaid notices and pass a speaking order thereon. Since we have set aside the judgment of the learned Single Judge, the consequential order(s) passed by the Assessing Officer during the pendency of the Writ Appeal is/are also set aside and the assessing authority will proceed to make the assessment in accordance with law de hors the observations/directions issued by the learned Single Judge. There is no order as to costs.