
(2001) 03 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 78 of 2001

Shri Ganesh Cotton Traders

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana General Sales Tax Act, 1973 — Section 39(1), 39(2)
Haryana General Sales Tax Rules, 1975 — Rule 24A

Citation : (2002) 127 STC 313

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; Jaswant Singh, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This petition is directed against the order, annexure P3, dated May 28, 1999 passed by the Sales Tax Tribunal, Haryana (for short, "the Tribunal") dismissing the appeals filed by the petitioner against the orders passed by the Joint Excise and Taxation Commissioner (Appeals), Rohtak, rejecting its prayer for grant of rebate on the entire quantity of the raw material, i.e., cotton seeds used for manufacturing the oil.

2. The petitioner is registered as a dealer under the Haryana General Sales Tax Act, 1973 (for short, "the Act"). It is engaged in the manufacture of oil from cotton seeds purchased after paying tax at the first stage of sale. By an order dated March 16, 1998 the, Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Sirsa finalised the assessment for the assessment year 1993-94 and allowed proportionate rebate under Rule 24-A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") instead of granting full rebate on the tax paid on the cotton seeds. The appeals filed by the petitioner u/s 39(1) and (2) of the Act against the order of assessment were dismissed by the

Joint Excise and Taxation Commissioner (Appeals), Rohtak and the Tribunal vide orders dated October 14, 1998 and May 28, 1999. Reference application filed by the petitioner u/s 42 of the Act was also dismissed by the Tribunal vide its order dated June 22, 2000.

3. The petitioner has averred that the order passed by the Tribunal is contrary to the law laid down by the Supreme Court in Commissioner of Sales Tax, Bombay v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220 and its own order dated June 22, 2000 passed in S.T.M. Nos. 10-11 of 1999-2000 (Jyoti Luxman Roller Flour Mills P. Ltd., Rohtak v. State of Haryana). It has further averred that "khal" is a by-product obtained in the process of manufacturing oil from cotton seeds and, therefore, it is entitled to full rebate on the tax paid on the cotton seeds.

4. In the written statement filed on behalf of the respondents, reliance has been placed on Rule 24-A of the Rules and entry 34 of Schedule "B" in support of their case that the petitioner is not entitled to full rebate on the tax paid on cotton seeds used in the manufacture of oil.

5. Shri B.K. Jhingan argued that the order passed by the Tribunal should be declared as vitiated by an error of law because it is based on a misreading of the decision of the Supreme Court in Commissioner of Sales Tax v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220. He also referred to the order passed by the Tribunal in the case of Jyoti Luxman Roller Flour Mills and submitted that after having accepted the applicability of the ratio of the Supreme Court's decision in a similar case, the Tribunal could not have denied relief to the petitioner.

6. Shri Jaswant Singh, Deputy Advocate-General, Haryana, conceded that the order passed by the Tribunal in the case of Jyoti Luxman Roller Flour Mills is mainly based on the decision of the Supreme Court in the case of Bharat Petroleum Corporation Ltd. [1992] 85 STC 220 and that there is no difference between the case of the petitioner and that of Jyoti Luxman Roller Flour Mills. He however, tried to defend the order passed by the Tribunal by arguing that "khal" cannot be treated as a by-product of oil manufactured by the petitioner from cotton seeds. Learned counsel submitted that Rule 24-A of the Rules does not entitle the petitioner to claim full rebate on the tax paid cotton seeds because "khal" manufactured by the petitioner is a tax-free item.

7. We have given serious thought to the respective arguments and perused the record.

8. The facts of the case of Jyoti Luxman Roller Flour Mills were that the petitioner was using tax paid wheat for manufacturing atta, maida, suji and wheat bran. It claimed full rebate/refund of tax on the purchase of wheat against the tax paid on the sale of manufactured goods. The Assessing Authority, Joint Excise and Taxation Commissioner (Appeals) and the Tribunal held that rebate/refund was not admissible to the extent wheat was used for manufacturing tax-free item, i.e., wheat bran. However, while deciding the review petition and reference application by a common order, the Tribunal changed the earlier view and

granted relief to the assessee by relying upon the decision of the Supreme Court in Commissioner of Sales Tax v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220. The relevant extracts of the order dated June 22, 2000 passed by Shri Krishan Mohan are reproduced below :

"The honourable Supreme Court has held that if a relevant and material provision of law was not brought to the notice of the court, the court would be justified to review its order. The counsel for the petitioner, for the question under the State Act, has relied upon the judgment of the honourable Supreme Court reported in Commissioner of Sales Tax v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220 at page 231 which reads as under :

"Turning now to the main question, we are inclined to agree with respondents" counsel that they are entitled to a set-off of the entire tax paid by them on the purchases of sulphuric acid and cotton, respectively. The only condition under the rule is that the goods purchased on payment of tax should have been used in the manufacture of taxable goods for sale. Their concurrent user for the manufacture of another item of goods which may or may not be taxable is immaterial...."

Obviously, the aforesaid judgment of the honourable Supreme Court which was otherwise relied upon by the Tribunal in the impugned order fully supports the case of the petitioner. I, therefore, taking matter suo motu u/s 41(3) of the Haryana General Sales Tax Act, 1973 hold that this case needs re-examination regarding rebate/refund of tax paid on wheat even if concurrently wheat was used in the manufacture of wheat bran which is tax-free commodity.

.....

In view of these detailed observations, I do not find it tenable and proper to refer the aforesaid two questions to the High Court. Instead, I decide these two questions u/s 41(3) of the Haryana General Sales Tax Act, 1973 as these are covered by the judgments of the High Court/honourable Supreme Court and remand this case to the Assessing Authority for fresh decision in view of Commissioner of Sales Tax, Bombay v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220 and in view of the Hindi notification referred to above....."

9. In the present case, the Tribunal rejected an identical claim made by the petitioner by making the following observations :

"I have heard the arguments of both the parties and have gone through the facts on record, judgments relied upon by the appellant and the respondent have been carefully perused.

The Supreme Court judgment reported as Commissioner of Sales Tax, Bombay v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220 makes it abundantly clear that products include by-products as well. Meaning there is no distinction between the two for the purpose of taxation. For this reason, reliance by the counsel upon [1994] 94 STC 98 (P&H) (Jagraon Co-operative Sugar Mills Ltd. v. State of Punjab) cannot be of any use to the appellants.

In support of the contention for total rebate under Rule 24-A the counsel have referred to Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd., . A careful perusal of the judgment clearly reveals that Haryana provisions which were inserted in the form of rules 24A and 24B came much after the aforesaid judgment was delivered by the apex Court. Besides, the counsel could not establish similarity between the provisions interpreted by the honourable apex Court and those contained in Haryana Rules (rules 24A and 24B) as stressed by the departmental representative and are absolutely clear. These will lead to conclude that if tax-paid goods go into manufacture of taxable goods, relief in toto will be admissible. Such relief will not be admissible, if tax-free goods are also produced as a result of the process of manufacture. And in the event of the process resulting into production of taxable and tax-free goods, grant of proportionate relief shall be the most logical conclusion.

That being the legal scenario under the Haryana provisions, the orders of the authorities below applying pro rata basis are fully in accordance with the provisions of law.

The counsel did also assail the use of department instructions by the authorities for the financial year 1993-94. According to him, such instructions can be made use of prospectively, not retrospectively. But this contention cannot hold ground in view of clear law laid down by the Supreme Court of India in the case reported as Manickam and Co. v. State of Tamil Nadu [1977] 39 STC 12. The instructions of the department, I find, are in the nature of an exposition or explanation. Such an exposition in the light of the judgment referred to by the State Representative could be validly made use of for the previous year as well. Retrospectivity would not constitute an obstacle in such matter.

.....

In passing, it must be recorded that the present appeals are fully covered by a decision of this Tribunal in STA No. 29-30/1994-95 (Jyoti Luxman Roller Flour Mills case). While recording his rebuttal the learned counsel could not show in a convincing way as to why the aforesaid decision was not applicable to the appeals being defended by him. The respondent-counsel clinches the issue in favour of revenue.

The impugned orders do not call for any interference. Accordingly, appeals are rejected."

10. In our opinion, the two orders passed by the Tribunal are per se contradictory and ex facie discriminatory and, therefore, the only proper course is to quash the impugned order with a direction to the Tribunal to decide the petitioner's appeals afresh keeping in view the decision of the Supreme Court in Commissioner of Sales Tax v. Bharat Petroleum Corporation Ltd. [1992] 85 STC 220, the relevant extract of which is reproduced below :

"Turning now to the main question, we are inclined to agree with respondents"

counsel that they are entitled to a set-off of the entire tax paid by them on the purchases of sulphuric acid and cotton, respectively. The only condition under the rule is that the goods purchased on payment of tax should have been used in the manufacture of taxable goods for sale. Their concurrent user for the manufacture of another item of goods which may or may not be taxable is immaterial though we may point out that in the Bharat Petroleum case, the kerosene was also taxable for nine months in the year and in the case of Phulgaon Cotton Mills, yarn was also manufactured and it was subject to tax. Sri Dholakia contends for an implicit principle of apportionment on the basis of turnovers of various items of goods manufactured and restriction of the quantum of set-off to a proportion based on the turnover of taxable goods to the total turnover. He cited certain decisions under the Income Tax and Sales Tax Acts in support of this contention : The Anglo-French Textile Company Ltd. Vs. Commissioner of Income Tax, Madras, , Tata Iron and Steel Co. Ltd. Vs. The State of Bihar, and Commissioner of Income Tax, Madras Vs. Best and Co., . We do not think these cases are of assistance. The first two cases dealt with the question as to when profits and gains can be said to accrue or arise in a manufacturing business and the third held that when a receipt is a composite one of capital and revenue nature, it is open to the Revenue to apportion the same and bring the latter to tax. These are situations in which the taxable element is severable. Under the rules presently under consideration also, situations are conceivable where such severance is implicit. For instance, suppose the cotton purchased is utilised partly for manufacture of cloth that is taxable and partly for manufacture of cloth that is not taxable or partly for the manufacture of yarn which is taxable and is sold and partly for manufacture of cloth which is not taxable. In these instances, it is clear that only some of the cotton is utilised for the first purpose and some for the second purpose and so only the purchase tax paid in respect of the quantity utilised for the first purpose will be eligible for set-off. But the type of user with which we are concerned is a composite one in which it is not possible to correlate any part of the purchased goods as having gone in for the purpose of manufacture of taxable goods. The position is picturesquely brought out in the case of Bharat Petroleum. The entire sulphuric acid purchased has no doubt been used in the manufacture of kerosene though perhaps not a drop of acid clings to the kerosene manufactured. Equally, the entire sulphuric acid has gone into the composition of the acid sludge. The 3,048.760 M.T. of acid have dissolved the impurities in the crude oil and conglomerated with them to constitute 3,541,485 M.T. of acid sludge. Having regard to the nature of the interactions here, it is incontrovertible that the entire sulphuric acid purchased has gone into the manufacture of the sludge. The rules do not require that the purchased goods must have been used only for the manufacture of taxable goods for sale. In this situation, it is not possible to cut down the quantum of relief clearly outlined in the rule on the basis of some general principle claimed to underlie the provision....."

11. In the result, the writ petition is allowed. Order annexure P3 dated May 28,

1999 passed by the Tribunal is quashed with a direction that the appeal filed by the petitioner shall be heard and decided afresh by passing a speaking order.