(2002) 07 GUJ CK 0118

In the Gujarat High Court

Case No : Special Civil Application No. 6272 of 1987

Sonecha Brothers APPELLANT

Vs

Sales Tax Officer and Others RESPONDENT

Date of Decision : 15-07-2002

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 19B, 19B(1)
Gujarat Sales Tax Rules, 1970 — Rule 11

Citation : (2002) 128 STC 395

Hon'ble Judges : M.S. Shah, J;K.A. Puj, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Sudhir Mehta, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India seeking from this Court a declaration that Section 47(4A) of the Gujarat Sales Tax Act, 1969 is ultra vires the Constitution being violative of Articles 14, 19(1)(g), 265 and 300A of the Constitution and consequently the order, annexure A/2 and the notice of demand in pursuance thereto are ultra vires, without jurisdiction and are liable to be set aside. The petitioner has further sought a declaration that the order at annexure A/2 is also liable to be set aside and quashed being apparently illegal, contrary to the provisions of Section 19B of the Gujarat Sales Tax Act, 1969, mala fide prejudicial and unconstitutional. The petitioner has further prayed for a writ of prohibition restraining respondent No. 1 from recovering from the petitioner any tax, penalty and/or interest in terms of order at annexure A/2 and the notice of demand in pursuant thereto.

2. As far as the challenge to the constitutional validity of Section 47(4A) of the Act is concerned, it is submitted by Mr. R.D. Pathak, learned advocate appearing for the petitioner, that he is not pressing the said prayer in this petition.

In view of the above statement, we are not inclined to examine the said challenge in this petition.

3. The petitioner has challenged the order of assessment dated October 19, 1987 in the matter of assessment for S.Y. 2040 covering the period from November 5, 1983 to October 24, 1984 passed by respondent No. 1 u/s 41(6) of the Act and raising the demand to the tune of Rs. 1,01,185 consisting of additional dues by way of tax to the tune of Rs. 58,848.40 and interest u/s 47(4A) of the Act to the tune of Rs. 42,336.60.

4. The facts giving rise to the present petition are that during S.Y. 2040, the petitioner had made total sales to the tune of Rs. 1,39,09,327 and purchases to the tune of Rs. 3,44,779. Out of the total sales, the petitioner had made sales of groundnuts to the tune of Rs. 1,27,03,301 to various oil-millers without charging any tax from them as they gave certificates in form No. 24-B as contemplated under Rule 24(9B) of the Gujarat Sales Tax Rules, 1970 certifying to the effect that the groundnuts have been purchased by them from the petitioner and the said purchases have been entered into their respective books of accounts and further that their certificates of registration were in force on the respective dates of purchases. The sales against declarations in form 24-B were exempted from tax by virtue of provisions of Section 19(B)(1)(i). The petitioner''s case was that on such sales of groundnuts against declarations in form 24-B, the petitioner could not have recovered any tax being prohibited by Section 56 of the Act. In these circumstances, the said oil-millers have been liable to purchase tax on their purchases by virtue of Section 19(B)(1)(ii). The petitioner has further stated that out of the aforesaid sales against declarations in form 24-B, the petitioner has sold groundnuts to the tune of Rs. 14,37,896 to one Jalaram Trading Co. of Jamnagar, holding registration certificate No. 70109433 dated September 17, 1983 issued by the Sales Tax Officer having jurisdiction over its case.

5. During the course of assessment proceedings of the petitioner for the relevant period, somewhere in October, 1987, respondent No. 1 proposed to disallow the sales made by the petitioner to Jalaram Trading Co. of Jamnagar against declaration in form 24-B on the ground that such registration was not in force during the period of assessment of the petitioner. The petitioner, therefore, made an inquiry with the buyer itself and the petitioner was told that its Sales Tax Officer has illegally cancelled its registration certificate from 5th November, 1983 on the ground that it had discontinued its business and that against the said decision of the Sales Tax Officer, the buyer had filed civil suits against the State of Gujarat in the civil court at Jamnagar and the court had granted injunctions from time to time against the sales tax authorities directing them not (sic) to treat the buyer as duly registered under the Act and such injunctions were operative up to the first week of December, 1985. The petitioner also made an inquiry with the Sales Tax Department but no proper reply was given to it. However, the Sales Tax Officer, Division-3, Enforcement Branch, Jamnagar, on

oral inquiry, informed the petitioner that the sales tax registration of the buyer was cancelled from November 5, 1985 and the intimation to that effect was placed on the notice board. The petitioner, therefore, raised an objection against the proposed levy of tax on the sales of groundnuts made by the petitioner to the said buyer against declaration in form 24-B. Respondent No. 1 has, however, not considered the objection raised by the petitioner and passed order of assessment on October 19, 1987 against the petitioner disallowing the claim of exemption to the petitioner in respect of sales made to the said buyer and raising the demand of Rs. 1,01,185 as stated above.

6. The petitioner has further drawn our attention to the notice dated April 9, 1985 and October 7, 1985 produced at annexure A/3 from which it becomes clear that the buyer was a dealer registered under the Act at least up to Vad Amas of Adhik Shravan of S.Y. 2041 inasmuch as the liability to submit return under the provisions of the Act was only on the registered dealer and annexure A/3 has been issued to the buyer by the Sales Tax Officer on the basis that it was a dealer registered under the Act during that period.

7. From the aforesaid facts, it was vehemently argued by Mr. Pathak that the registration certificate of the buyer was in force at least up to the first week of December, 1985 because of the various stay orders granted by the civil court at Jamnagar in the civil suit filed by the buyer against the Sales Tax Department and hence the petitioner was not liable to any tax, interest or penalty on such sales to registered dealer.

8. The respondents have appeared pursuant to the rule issued by this Court and an affidavit in reply was filed as late as on April 4, 2002. It was pointed out by Mr. Sudhir Mehta, learned Assistant Government Pleader appearing for the respondents that the said firm Jalaram Trading Co., was granted registration on October 29, 1983 w.e.f. September 17, 1983 and in the application for registration, names of four persons were shown as partners of Jalaram Trading Co. A letter dated December 3, 1983 was received from Shri Kiritkumar Shantilal Sutaria, one of the persons whose name was shown as a partner enclosing a copy of dissolution deed showing that the partnership of Jalaram Trading Co. had been dissolved w.e.f. November 4, 1985 and that the business of the firm had been taken over by Shri Bhayabhai Zaverbhai one of the other partners named in the aforesaid application for registration and that he had entered into partnership with two other persons w.e.f. November 4, 1983. Upon receipt of the said letter, the Sales Tax Officer issued the aforesaid notice dated December 23, 1983 calling upon the said Jalaram Trading Co., to show cause why its registration should not be cancelled. After giving adequate opportunity of hearing to the said Jalaram Trading Co., the Sales Tax Officer by his order dated January 27, 1984 cancelled the registration of Jalaram Trading Co. w.e.f. November 5, 1983. Mr. Mehta has further submitted that with regard to the letter dated December 19, 1985 addressed by the Sales Tax Officer (Enforcement), Jamnagar, to the Assistant Commissioner of Sales Tax (Enforcement), Rajkot, the date November

5, 1985 mentioned therein was a typographical mistake and the said typographical mistake was rectified by the Assistant Commissioner of Sales Tax (Enforcement), Rajkot, by his letter dated December 3, 1986 to the Sales Tax Officer, Jamnagar intimating that the date "November 5, 1983" should be read in place of "November 5, 1985". On the basis of this, it was argued by Mr. Mehta that registration was already cancelled on November 5, 1983 and hence the petitioner was rightly held to be liable to be taxed on the sales so made to the unregistered dealer.

9. We have considered the rival submissions made by the respective parties. However, the stand taken by the respondent-authorities does not seem to us to be just and proper. The respondent No. 1, in para 5 of his affidavit-in-reply has made categorical statement that the position which emerges in the light of the several suits filed in the Court of Civil Judge (S.D.) at Jamnagar and the interim and final orders passed therein is that there was an order directing that status quo as on December 27, 1984 (before office hours) be maintained on the question of registration of Jalaram Trading Co., meaning thereby, in effect, that the State Government and the sales tax authorities were injuncted from acting upon the order dated January 27, 1984 cancelling registration of the said firm and that such injunction continued till February 25, 1985. In this view of the matter, it can hardly be believed that the registration was cancelled with effect from November 3, 1985.

10. This issue can be examined from another angle also. It is nowhere pointed out as to whether the public at large or the parties who were dealing with the said buyer were made aware about the fact that the registration was cancelled on November 5, 1983 as it transpires from the record that the notice placed on the board of the Sales Tax Department indicated the date of November 5, 1985. Simply by virtue of correspondence between the authorities, it cannot be presumed that the said date was known to the other persons.

11. As a matter of fact there is specific rule to that effect, namely, Rule 11 which deals with cancellation of certificate of registration and detailed procedure is prescribed in the said rule, which reads as under :

"Rule 11. Cancellation of certificate of registration.--(1) An application for cancellation of registration under Sub-section (7) of Section 29 or Sub-section (5) of Section 30 shall be made to the registering authority in form 3.

(2) If the registering authority is satisfied that the application is in order, it shall, by order in writing, cancel the registration with effect from a date fixed in accordance with Sub-rule (3) and shall, by notice placed on the notice board of its office, publish the name, address and registration number of the dealer and the date from which the cancellation takes effect.

(3) ....".

12. Based on this rule, if the notice placed on the Board is taken into

consideration, it can certainly be held that the petitioner amongst others was not aware about the fact that the registration was cancelled w.e.f. November 5, 1983 and if he has acted on the basis of the earlier instructions received from the said buyer that the registration was in force and by virtue of this fact the petitioner''s claim was rejected and demand was raised against it, in that eventuality, the petitioner could not have been held to be liable to tax, penalty or interest on such sales.

13. In this view of the matter, we are of the view that the respondents are not justified in directing the petitioner to pay the tax, penalty and/or interest in respect of the pales made by the petitioner to Jalaram Trading Co. of Jamnagar on the ground that though the registration was cancelled on November 5, 1983, the sales were effected in their favour. We, however, make it clear that this would not preclude the respondent-authorities to recover the said amount from the said Jalaram Trading Co. of Jamnagar on the purchases made by the petitioner (sic) it by virtue of Section 19B(1)(ii) of the Act, if, any case is made out by them in this regard.

14. In view of the above observations made by us, we direct that respondent No. 1 to reframe the assessment considering the sales of groundnuts made to Jalaram Trading Co. against declarations in form No. 24-B and redetermine tax, interest, penalty, if any, payable by the petitioner. The petition is, therefore, allowed and rule is made absolute to the above extent with no order as to costs.