(2001) 11 GUJ CK 0007

In the Gujarat High Court

Case No : Sales Tax Application No''s. 1 and 2 of 1999

State of Gujarat APPELLANT

Vs

Hindustan Packaging Com. Ltd. RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 69(1), 69(2)

Citation : (2002) 126 STC 204

Hon'ble Judges : M.S. Shah, J;D.A. Mehta, J

Bench : Division Bench

Advocate : S.N. Shelat, General and U.R. Bhatt, A.G.P, for the Appellant; R.D. Pathak, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—Leave to amend. Heard Mr. S.N. Shelat, learned Additional Advocate-General with Mr. U.K. Bhatt, learned A.G.P. for the applicant and Mr R.D. Pathak, learned counsel for the respondent-assessee.

2. The learned Advocate-General places the draft amendment for redrafting the question proposed to be referred. The original question which was the subject-matter of Reference Applications Nos. 7 and 8 of 1997 was as under :

"Whether, on the facts and circumstances of the case, the decision of the Gujarat Sales Tax Tribunal dated June 26, 1995 is perverse or not when it held that sales of printed laminated paper rolls along with polythelene strip bobbins are card board boxes and cartons covered by entry No. 12(iv) of the Schedule -II, Part A, to the Gujarat Sales Tax Act, 1969 and is liable to tax accordingly and penalties is removed ?"

3. The Tribunal rejected the reference applications under Subsection (1) of Section 69 of the Gujarat Sales Tax Act, 1969 ("the Act" for brevity) on the ground that the Tribunal''s finding that the goods in question fell within item No. 12(iv) cannot be said to be perverse. The Tribunal had merely followed the

decision of the Supreme Court in Lt. Governor, Delhi v. Ganesh Flour Mills Co. Ltd. [1973] 31 STC 354. Hence, it was not necessary to refer the question suggested by the applicant to this Court.

4. In these reference applications, under Sub-section (2) of Section 69 of the Act, initially the State of Gujarat had prayed that the same question quoted hereinabove be directed to be referred to this Court. Thereafter, the draft amendment was moved in each of these applications with a prayer to direct the Tribunal to refer the following question of law :

"Whether, in the facts and circumstances of the case, the Sales Tax Tribunal was right in law in holding that, the sales of ''printed laminated paper rolls along with polythelene strip bobbins'' fall within the entry ''cardboard boxes and cartons'' falling within entry No. 12(iv), Schedule II, Part-A of the Gujarat Sales Tax Act, 1969, and was also right in law in holding that the said goods did not fall within the entry 13 of Schedule III of the Act ?".

5. It was urged by learned Advocate-General that the question as originally proposed did not correctly bring out the submission on behalf of the State with regard to the applicability of the correct entry so far as the goods in question are concerned and that to determine the real question in controversy, the question as proposed in the draft amendment was required to be referred.

6. On the other hand, Mr. R.D. Pathak, learned counsel for the respondent-assessee, vehemently opposed the prayer for draft amendment and relied on the written objections dated October 29, 2001 in support of his opposition. The learned counsel particularly relied on the decision of the apex Court in Lakshmiratan Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax, Uttar Pradesh, and also on the decision of the Andhra Pradesh High Court in Addl. Commissioner of Income Tax Vs. M.J. Devda, in support of his contention that the High Court while exercising jurisdiction under Sub-section (2) cannot travel beyond the question which was proposed before the Tribunal under Sub-section (1) of Section 69 of the Act. The learned counsel has submitted that the provisions of Section 66 of the Indian Income Tax Act, 1922 and Section 256 of the Income Tax Act, 1961 are in parimateria with the provisions of Section 69 of the Gujarat Sales Tax Act, 1969 and, therefore, the aforesaid decisions rendered under the Income Tax Acts are also applicable to the reference jurisdiction of this Court u/s 69 of the Gujarat Sales Tax Act, 1969.

7. We have carefully considered the submissions of the learned counsel for the parties. It is true that the question of law which this Court is required to consider for the purpose of directing the Tribunal refer to this Court has to be the same question of law which was suggested for reference before the Tribunal under Sub-section (1) of Section 69. However, the expression "question of law" means "the legal controversy". Hence the legal controversy which is sought to be raised u/s 69(2) of the Act must be the same legal controversy which was raised before the Tribunal. It does not mean that the proposed question of law as proposed in the

reference application under Sub-section (1) of Section 69 and the question of law as proposed in the reference application under Sub-section (2) of Section 69 has to be in identical language. As per the settled legal position, the question of law which this Court is required to consider under Sub-section (2) of Section 69 of the Sales Tax Act, and under Sub-section (2) of Section 256 of the Income Tax Act, 1961 is a question of law which arises from the order of the Tribunal. There is no dispute about the fact that the question argued before the Sales Tax Tribunal was whether the goods in question fall within entry No. 12(iv) in Schedule II, Part-A of the Gujarat Sales Tax Act, 1969 or whether the goods fall within the residuary entry. The question of law proposed in the draft amendment correctly brings out the said controversy and, therefore, in our view, the draft amendment moved by the State of Gujarat is required to be granted. Accordingly, the draft amendment in each of these applications is granted.

8. On the merits of the reference applications, the learned Advocate-General submits that the Tribunal based its decision on the judgment of the Supreme Court in Lt. Governor, Delhi v. Ganesh Flour Mills Co. Ltd. [1973] 31 STC 354, but the relevant entry in that case was "containers or materials intended for being used for the packing of goods for sale" whereas in the instant case the relevant entry at the relevant time was as under :

"12. The following articles, that is to say--

(i) to (iiia) ....

(iv) cardboard boxes and cartons ;

(v) ....

and such other packing materials as the State Government may, by a notification in the Official Gazette, specify for the purpose of this entry."

Hence the entries in the two cases are not similar, much less identical. The learned Advocate-General relied on the decisions of the Madhya Pradesh High Court in the case of Flora Paper and Board Mills v. Commissioner of Sales Tax, M.P. [1996] 102 STC 58 and in Sales Tax Commissioner, M.P. v. Jain and Company [1996] 102 Sct 139 and submitted that the entry in the instant case was similar to the entry in the aforesaid two cases before the Madhya Pradesh High Court wherein the view was taken in favour of the Revenue. The learned Advocate-General further submitted that the amendment made in 1993 clearly goes to show that tetrapack materials were not made a part of the packing materials in entry No. 12 as it stood at the relevant time.

The learned Advocate-General also submitted that even after the reference is granted, this Court can redraft the question to bring out the correct controversy between the parties, if the question does arise from the order of the Tribunal. Strong reliance is placed on the decision of the Supreme Court in Salem Co-operative Central Bank Limited Vs. Commissioner of Income Tax, .

9. On the other hand, Mr. R.D. Pathak has submitted that the decision of the Tribunal merely follows the decision of the Supreme Court in Lt. Governor, Delhi v. Ganesh Flour Mills Co. Ltd. [1973] 31 SCT 354, which was a similar case and that, therefore, the reference applications are required to be rejected. Mr. Pathak has further submitted that the tetrapack material was inserted as a separate entry in the year 1993--which amendment was in the nature of clarificatory amendment made by the Legislature and the said amendment fortified the assessee''s contention that tetrapack materials were always to be treated as a part of the packing materials.

10. Since in these applications we are not required to decide the main controversy and all that is required to be seen is whether any question of law arises from the order of the Tribunal, we have perused the aforesaid decisions with the aforesaid limited objective and we do find that the question of law as proposed in the amended reference applications does arise from the order of the Tribunal.

11. Accordingly, these applications are allowed. The Gujarat Sales Tax Tribunal is directed to refer the following question of law to this Court and submit the statement of case in accordance with law :

"Whether, in the facts and circumstances of the case, the Sales Tax Tribunal was right in law in holding that, the sales of ''printed laminated paper rolls along with polythelene strip bobbins'' fall within the entry ''cardboard boxes and cartons'' falling within entry No. 12(iv), Schedule II, Part-A of the Gujarat Sales Tax Act, 1969 and was also right in law in holding that the said goods did not fall within the entry 13 of Schedule III of the Act ?"

12. Rule is made absolute with no order as to costs.