(2014) 06 GUJ CK 0023

In the Gujarat High Court

Case No : Special Civil Application Nos. 7093 to 7098 of 2014

State of Gujarat — APPELLANT

Vs

Mahalaxmi Sugar Candy Works — RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 73 VST 440

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Jaymin Gandhi, Government Pleader, Advocate for the Appellant

Judgement

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Mukesh R. Shah, J.—As common question of law and facts arise in this group of petitions, they are heard together and disposed of by this common judgment and order. In all these petitions, the respective petitioner-State of Gujarat through the Commissioner of Commercial Tax has challenged the legality and validity of the common impugned judgment and order passed in Revision Application Nos. 15 to 18 of 2008, by which the learned Tribunal, relying upon its earlier decision in the matter of M/s. Virumal Santumal passed in Revision Application Nos. 16 and 17 of 2009, holding that patasa, harada and sakaria are different forms of sugar, and therefore, they are required to be assessed, as if, they are sugar or fall in the category and entry of sugar and consequently the Tribunal has set aside the orders passed by the assessing officer, holding that these sales are not at par with the sale of sugar, and therefore, such sales are exempted from payment of income-tax.

2. Heard, Shri Jaymin Gandhi, learned Additional Government Pleader, appearing on behalf of the respective petitioners. At the outset, it is required to be noted that the judgment and order passed by the learned Tribunal in the matter of M/s. Virumal Santumal passed in Revision Application Nos. 16 and 17 of 2009, was carried further before this court, by filing Special Civil Application Nos. 591 and

592 of 2014 and by a detailed judgment and order State of Gujarat Vs. Virumal Santumal, , the Division Bench of this court has dismissed the aforesaid Special Civil Applications and confirmed the view taken by the learned Tribunal in Revision Application Nos. 16 and 17 of 2009. The Division Bench of this court observed as under at paras 27 and 28 (pages 417 and 418 in 72 VST):

"27. By virtue of such provisions, contained in the Schedules to the GST Act, it clearly emerges that the case of the respondent is covered in entry 86 of Schedule I of the GST Act. The fact that by virtue of decision in case of Sakarwala Brothers [1967] 19 STC 24 (SC), such items are considered as sugar for the purpose of sugar covered under subheading Nos. 1701.10, 1701.20, 1701.31 and 1701.39 of the schedule to the Central Excise Tariff Act, 1985, there is no dispute possible in fact, not seriously raised. Such sub-headings defined the term ''sugar'' in the same manner as it was done under item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944. It was in this context interpreting the term ''sugar'' defined in expansive manner, it was held that patasa, harada, sakaria and alchidana which contained more than 90 per cent, sucrose are sugar for the purpose of the said entry. If this is clear, the goods can be ejected out of entry 86 only if conditions subject to which exemption is to be granted, are not satisfied. The condition is when levy and collection of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, is not exempted on account of any exemption or drawback granted under that Act. If this condition is satisfied, it would not be open for the petitioner to deny the benefit of exemption to the respondent in terms of entry 86 of Schedule I to the GST Act. In the present case, it is not even the case of the petitioner that levy and collection of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, is exempted. The respondent had pointed out before the Tribunal that his vendors pay full additional duty at the point of clearance of goods. State Government however, raised a curious contention, namely, that such duty must be paid by the respondent. We do not see any such warrant in condition contained in entry 86. Condition in plain terms is that levy and collection of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, should not be exempted on account of any exemption or drawback. When admittedly, the additional levy of duty is not exempted nor is the case of the petitioner that any drawback is granted, entry 86 would certainly apply. Such condition nowhere provides that such additional duty must be borne by the dealer. Additional duty of excise would be payable on manufacture of goods and would therefore, be paid by the manufacturer, in the present case the suppliers from whom the respondent-dealer would be purchasing such goods.

28. The decision of the Supreme Court in case of Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, was rendered in vastly different situation. It was a case where under the notification, exemption from payment of sales tax was available provided that the dealer furnished the proof to the satisfaction of the assessing officer that additional duty leviable under the

Additional Duties of Excise (Goods of Special Importance) Act, 1957 had been paid. It was thus an additional condition and an onus was cast on dealer claiming exemption to demonstrate that not only the additional duty was not exempt, same was actually paid. It was in this background that the Supreme Court rendered its decision. Only condition of entry 86 is that additional levy and collection of additional duty of excise should not be exempt. There is no additional onus cast on the dealer to establish that the same was actually paid."

In view of the above and in view of the fact that the judgment and order passed by the learned Tribunal in Revision Application Nos. 16 and 17 of 2009, which has been relied upon by the learned Tribunal, while passing the impugned judgment and order, which has been confirmed by the Division Bench of this court by dismissing Special Civil Application Nos. 591 and 592 of 2014 State of Gujarat Vs. Virumal Santumal, , the present special civil applications also deserve to be dismissed and are Dismissed, accordingly. No order as to costs.

