
(1991) 06 GUJ CK 0035
In the Gujarat High Court
Case No : Sales Tax Reference No. 24 of 1983

State of Gujarat	Vs	APPELLANT
Meghdoot Laminard Ltd.		RESPONDENT

Date of Decision : 27-06-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 6, 8, 8(1), 8(2)
Gujarat Sales Tax Act, 1969 — Section 2, 2(32), 3, 4, 4A

Citation : (1991) 06 GUJ CK 0035

Hon'ble Judges : S.D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—This is a reference u/s 69(1) of the Gujarat Sales Tax Act, 1969 at the instance of the Revenue. The opponent-dealer is a limited company and it is registered as dealer under the provisions of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Gujarat Act") and also under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). The opponent-dealer is engaged in the business of manufacturing and selling laminated sheets. The dealer sells the same in Ahmedabad and also outside the State of Gujarat. The dealer effected inter-State sales to the extent of Rs. 9,49,335 during the accounting year commencing from July 1, 1976 to June 30, 1977. It was assessed to tax at the rate of 10 per cent by the Sales Tax Officer as per his order dated August 24, 1979, under the provisions of section 8(2)(b) of the Central Act.

2. The Assistant Commissioner of Sales Tax (Audit) issued a notice in form 49 and took up the matter in suo motu revision on the ground that the rate of tax collected at 10 per cent should have been enhanced by 6 per cent being the rate of additional tax leviable u/s 4A of the Gujarat Act. The opponent-dealer objected to the notice. After hearing the parties, the Assistant Commissioner held that the Sales Tax Officer had assessed tax on inter-State sales at lower rate. The tax was, therefore, assessed at the rate of 10.6 per cent and the amount of tax calculated came to Rs. 1,00,629.48. Thus an additional demand of Rs. 5,695.98

was raised. This order was passed by the Assistant Commissioner of Sales Tax on December 12, 1979. The dealer preferred revision application before the Gujarat Sales Tax Tribunal. The Tribunal after hearing the parties, as per its judgment and order dated December 10, 1981, allowed the revision application and set aside the order passed by the Assistant Commissioner. The Tribunal restored the order passed by the Sales Tax Officer and also directed that the amount of tax if paid pursuant to the order of the Assistant Commissioner of Sales Tax shall be refunded to the dealer.

3. The Revenue preferred an application before the Tribunal for making reference to this Court. The Tribunal after drawing the statement of case, referred the following question to this Court for its opinion. Our answer to the question is indicated in the column opposite to the question :

Question Answer "Whether, on the facts and in the circumstances In negative. of the case, the Tribunal was right in holding In favour of that the rate for the purpose of section 8(2)(b) the Revenue of the Central Sales Tax Act, 1956, in respect of and against the sale of laminated sheets would be 10 per cent and assessee. not 10.6 per cent inclusive of additional tax ?"

4. Section 3 of the Central Act provides as to when the sale or purchase of goods can be said to have taken place in the course of inter-State trade or commerce. Section 6 of the Central Act imposes charge on all sales effected by the dealer in the course of inter-State trade or commerce during any year. Section 8 provides for the rate at which tax shall be levied. Sections 6 and 8 taken together can be said to be the charging sections. If section 6 alone is on the statute book and section 8 which determines the rate of tax under the Central Act is not there, then there will be nothing to the liability of tax. Therefore, unless both the sections are taken together as part of an integrated scheme, it would not be possible to give attract to the provisions of the Central Act. Section 6 provides that every dealer shall be liable to pay tax under the Central Act on all sales effected by it in the course of inter-State trade or commerce. Thus liability is created on all sales in the course of inter-State trade or commerce. For such tax, rate is determined by section 8 of the Central Sales Tax Act.

5. Analysing the scheme of section 8, the transactions of inter-State sale would fall under the following five categories :

(i) Inter-State sales by a dealer to the Government or to a registered dealer of goods of the description referred to in section 8(3) shall be at 4 per cent provided the conditions prescribed in section 8(4) are satisfied. [See section 8(1)].

(ii) Tax payable by a dealer on his turnover of inter-State sales not falling under sub-section (1) of section 8 and "declared goods" shall be at twice the rate applicable to the sale or purchase of such goods inside the appropriate State. See section 8(2)(a)].

(iii) Tax payable relating to inter-State sales of other goods (other than declared goods) and not falling under sub-section (1) of section 8 shall be at ten per cent or at the rate applicable for sales inside the appropriate State, whichever is higher. [See section 8(2)(b)].

(iv) Notwithstanding anything contained in section 8(1) or section 8(2)(b), if the goods are sold inter-State, the sale or purchase of which is under the general sales tax law of the State exempt from tax generally or subject to a rate generally at a rate lower than 4 per cent it shall be either exempt from tax or the tax under the Central Sales Tax Act shall be levied at the lower rate as it is obtained in the State. [See section 8(2A)].

(v) Notwithstanding anything contained in section 8(1) to 8(4) of the Act, the State Government, may in public interest and subject to such conditions as may be specified by it, exempt any person from payment of tax regarding the inter-State sales, or levy a rate lower than that specified in section 8(1) or (2). [See section 8(5)].

6. In the instant case it is an undisputed position that the transactions in question related to the sales of goods in the course of inter-State trade or commerce and that the provisions of section 8(2)(b) of the Central Act are attracted. The controversy is as regards the rate of tax applicable to the sale or purchase of goods inside the State. As per entry 62 of Schedule II, Part A, to the Gujarat Act, as it stood at the relevant time, the article in question, laminated sheets, was chargeable to tax at ten paise in the rupee, i.e., at the rate of 10 per cent. As provided u/s 4A of the Gujarat Act, additional tax at the rate of six paise in the rupee was also attracted. It is contended that for determining the rate applicable to the sale or purchase of the goods during the course of inter-State trade or commerce, one has to look at the appropriate entry in the Schedule and the rate of tax prescribed and mentioned in the opposite column. On the other hand, the contention of the Revenue is that over and above the rate of tax mentioned in the opposite column in the entry, the provisions of section 4A of the Gujarat Act which imposes additional tax should also be taken into consideration.

7. By section 4A of the Gujarat Act, an additional tax on the sale and purchase of goods liable to tax at the rate of six paise in the rupee on the sales tax, general sales tax or purchase tax or any two or more of them, as the case may be, is imposed and the same is payable by the dealer. At the relevant time section 4A read as follows :

"4A. (1) There shall be levied and collected from every dealer liable to pay tax u/s 3 or u/s 4, an additional tax on the sale or purchase of goods liable to tax under this Act, at the rate of six paise in the rupee on the sales tax, general sales tax or purchase tax or on any two or more of them, as the case may be, payable by such dealer :

Provided that in respect of the sale or purchase of any of the declared goods, the tax plus the additional tax shall not exceed four per cent of the sale or purchase

price thereof.

(2) Except as provided in sub-section (1) the provisions of this Act and the Rules made thereunder shall, so far as may be, apply in relation to the additional tax payable under sub-section (1), as they apply in relation to the tax payable by a dealer under this Act."

Later on with effect from January 5, 1981, a sub-section has been added in section 4A which reads as follows :

"4A(3)(a) Notwithstanding any judgment, decree or order of any court, Tribunal or other authority, no additional tax levied under sub-section (1) shall be or shall be deemed ever to have been, construed as partaking of the character of sales tax, general sales tax or, as the case may be, purchase tax, on which it is levied; and

(b) for the avoidance of any doubt it is hereby declared that the additional tax shall be and shall be deemed always to have been distinct from sales tax, general sales tax or, as the case may be, purchase tax."

Together with the aforesaid amendment, definition of "tax" occurring in section 2(32) has also been amended. Prior to January 5, 1981, the definition of tax read as follows :

"2(32) "tax" means a sales tax, general sales tax, or purchase tax, payable under this Act."

With effect from January 5, 1981, the expression "does not include additional tax" has been added and the definition of "tax" reads as follows :

""tax" means a sales tax, general sales tax, or purchase tax, payable under this Act, but does not include additional tax."

Simultaneously, the definition of "additional tax" has been inserted by introducing clause (1A) in section 2 which reads as follows :

"2(1A) "additional tax" means the additional tax levied u/s 4A."

8. In view of the amendment of the provisions of section 4A and the definition of "tax" and insertion of definition of "additional tax", it is argued that while determining the rate of tax applicable in the State, the amount of additional tax cannot be taken into consideration. It is contended that the additional tax is excluded from the definition of "tax". Therefore, while computing the rate of tax, additional tax has got to be excluded. This argument cannot be accepted for the simple reason that on account of the exclusion of additional tax from the definition of "tax", the additional tax does not cease to be a tax on sale and purchase of goods in the State. If one looks at the definition of "additional tax", it is evident that it is a tax levied u/s 4A of the Gujarat Act. Section 4A(1) provides that additional tax is on the sale or purchase of goods. Thus even after the amendment, additional tax does not cease to be a commodity tax and a tax on

sale and purchase of goods.

9. By amendment all that has been done is that a legal fiction is created. As per the dictionary meaning of the term "additional", it should mean something forming part of the original. It is in the nature of surcharge or something which is added adjunct or annexed to the original (see Black's Law Dictionary). Therefore, additional tax would and should mean an indivisible part of the original tax on which it is added. However, by legal fiction, that which is indivisible has been divided or separated. The portion of the tax which is added and which is called additional tax is given a separate identity of its own. This is clear from the provisions of section 4A(3)(b). The Legislature has declared that additional tax shall be and shall be deemed always to have been distinct from sales tax, general sales tax or as the case may be, purchase tax. Even if one were to give the fullest possible effect of legal fiction created by inserting subsection (3) in section 4A of the Gujarat Act, it cannot be said that the character of additional tax, i.e., a tax on sale and purchase of goods, has been changed. Even when it has been given a separate status and assigned a distinct personality of its own, it remains a tax on commodity and tax on sale and purchase of goods.

10. If one were to hold that additional tax has ceased to be a tax on sale and purchase of goods, it would run counter to the provisions of section 4A(1) of the Gujarat Act. Section 4A(1) specifically states that it is an additional tax on sale and purchase of goods. Moreover, if one were to hold that it has ceased to be a tax on sale and purchase of goods it cannot be taken within the purview of entry 54 of List II of the Seventh Schedule to the Constitution. (Entry 54 relates to tax on the sale or purchase of goods other than newspapers.)

11. Here reference may be made to a decision of the Supreme Court in the case of *S. Kodar v. State of Kerala* reported in [1974] 34 STC 73 and in the case of *Ashok Service Centre v. State of Orissa* reported in [1983] 53 STC 1. In the case of *S. Kodar* [1974] 34 STC 73 (SC), the question arose as regards the legislative competence of the Tamil Nadu Government to enact the law by which additional sales tax was imposed. Negating the contention, the Supreme Court, inter alia, observed as follows :

"The object of the Act, as is clear from its provisions, is to increase the tax on the sale or purchase of goods imposed by the Tamil Nadu General Sales Tax Act, 1959, and the fact that the quantum of the additional tax is determined with reference to the sales tax imposed would not alter its character."

Same view is taken by the Supreme Court in a subsequent decision in the case of *S. Kodar Vs. State of Kerala*, and also in the case of *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, .

12. Similarly in the instant case also it could never be argued that prior to the amendment of section 4A of the Gujarat Act, additional tax was not a tax on sale and purchase of goods. As indicated hereinabove, even after giving the fullest

possible effect to the legal fiction created by the Legislature, it cannot be said that the character of the additional tax is changed on account of the amendment. If the tax remains a tax on sale and purchase of goods, it has got to be included while calculating the rate of tax applicable in the State.

13. The Tribunal was swayed by the amendment in section 4A of the Gujarat Act. On account of this amendment the Tribunal held that the rate of tax applicable to the sale of goods inside the appropriate State would not include additional tax because from the definition of "tax", additional tax was specifically excluded. However, this reasoning is not correct. As shown hereinabove, additional tax is also a tax under the Gujarat Act and it is a tax on sale and purchase of goods. For the reasons indicated hereinabove, it has got to be included while computing the rate of tax applicable to the sale and purchase of the goods inside the State in relation to the inter-State sale transactions. The Tribunal has further stated that the additional tax was a rate of tax applicable to the amount of tax payable by the dealer on its transaction of sales and purchases. By the aforesaid observations, it has sought to be conveyed that it is a tax payable by the dealer on the transactions of sale and purchase and, therefore, it is a tax on tax.

14. However such an interpretation is not correct. Reference to sales tax, general sales tax and purchase tax in section 4A is for the purpose of determining the quantum of tax and not for the purpose of identifying the subject-matter of the tax. Subject-matter of tax is sale or purchase of goods. If one reads the decision of the Supreme Court in the case of *S. Kodar* [1974] 34 STC 73, the fallacy implicit in the reasoning adopted by the Tribunal becomes obvious. Moreover, the State Legislature has no competence to tax a dealer or to impose tax on tax. To say that the additional tax is a tax on dealer or a tax on tax would amount to ignoring the express provisions contained in section 4A(1) of the Gujarat Act. Moreover if such interpretation is accepted, we will have to come to the conclusion that the tax is constitutionally invalid and beyond the legislative competence of the State Legislature. Attempt of the court should be to interpret a legislation so as to make it constitutional. Therefore there is no room for adopting such a construction.

15. It may be noted that the provisions of section 8(2)(b) of the Central Act was required to be enacted by the Parliament pursuant to the recommendation made by the Taxation Enquiry Commission. In the case of *State of Tamil Nadu v. Sitalakshmi Mills Ltd.* reported in [1974] 33 STC 200, the Supreme Court observed as follows :

"The report of the Taxation Enquiry Committee would indicate that the main reason for enacting the provision was to canalize inter-State trade through registered dealers, over whom the appropriate Government has a great deal of control and thus to prevent evasion of tax."

After referring to the recommendation of the Taxation Enquiry Committee, the Supreme Court has further observed as follows :

"In other words, it was to discourage inter-State sales to unregistered dealers that Parliament provided a high rate of tax, namely, 10 per cent. But even that might not serve the purpose if the rate applicable to intra-State sales of such goods was more than 10 per cent. The rate of 10 per cent would then be favourable and they would be at an advantage compared to local consumers. It is because of this that Parliament provided, as a matter of legislative policy, that the rate of tax shall be 10 per cent or the rate applicable to intra-State sales whichever is higher."

Thus the legislative policy underlying the provisions of section 8(2)(b) of the Central Act is that the rate of Central tax will not be less than the rate of local sales tax applicable in the State.

16. In the instant case we are concerned with the goods falling u/s 8(2)(b) of the Central Act. These are the goods which are not covered by the provisions of section 8(1) of the Central Act, meaning thereby, they are not the goods sold to the Government or sold to the registered dealer and which are not specified in section 8(3) of the Central Act. In relation to such goods, the Legislature intended to see that tax on inter-State sales is at 10 per cent or at the rate applicable inside the appropriate State whichever is higher. The legislative policy and the object thereof as stated by the Supreme Court in the case of *International Cotton Corporation (P.) Ltd v. Commercial Tax Officer* [1975] 35 STC 1 is as follows :

"In this connection we are of the view that a clear legislative policy can be found in the provisions of section 8(2)(b) of the Act. The policy of the law in this respect is that in case the rate of local sales tax be less than 10 per cent, in such an event the dealer, if the case does not fall within section 8(1) of the Act, should pay Central sales tax at the rate of 10 per cent. If however, the rate of local sales tax for the goods concerned be more than 10 per cent in that event the policy is that the rate of Central sales tax shall also be the same as that of the local sales tax for the said goods. The object of law thus is that the rate of Central sales tax shall in no event be less than the rate of local sales tax for the goods in question though it may exceed the local rate in case that rate be less than 10 per cent."

17. If this is the object underlying the provisions of section 8(2)(b) of the Central Act, the interpretation which advances or that which is consistent with the object of the Act has to be accepted rather than the one which may frustrate the same. If the interpretation accepted by the Tribunal and canvassed by the learned counsel for the dealer is accepted, the rate of Central sales tax will be lower than the rate of tax on intra-State transactions applicable in the State. This would be clearly against the object of the provision contained in section 8(2)(b) of the Act. Such an interpretation cannot and should not be accepted by the court. In the instant case, as indicated hereinabove, there are no compelling reasons to adopt such an interpretation which is against the object of the Act. On the contrary, the interpretation which we are adopting is consistent with the provisions of the local Act as well as the provisions of the Central Sales Tax Act.

18. The learned counsel for the dealer submitted that the definition of "tax" occurring in the Gujarat Act should alone be taken into consideration while computing the rate of tax applicable in the State. It is further submitted that after taking into consideration and after looking at the definition, one has further to look at the appropriate entry in the Schedule and the rate of tax mentioned against such entry. If one were to determine the rate of sales tax, general sales tax and purchase tax only and not the rate of taxes on sale and purchase of goods the argument may have to be accepted. While interpreting the provisions of section 8 and particularly the provisions of section 8(2)(b) of the Central Act, one is required to take into consideration the rate of tax applicable in the appropriate State on sale and purchase of goods. Be it noted that in section 8(2A), it is specifically mentioned that "whether called a tax or fee or by any other name" and this expression indicates that all the taxes on sale and purchase of goods are to be taken into consideration while determining the rate of tax applicable on sale and purchase of goods in relation to the inter-State transactions.

19. Section 6 of the Central Act creates liability to pay tax under the Central Act on all sales. Neither section 6 nor section 8 of the Central Act indicate that any tax by whatever name called is to be excluded while computing the rate applicable in the appropriate State. The only condition is that the tax should be a tax on sale and purchase of goods and that it should be on inter-State transactions. Once these conditions are fulfilled, such tax is required to be taken into consideration while determining the rate of tax. Therefore, the argument that the definition of "tax" as amended alone together with the corresponding Schedule and the entry be taken into consideration cannot be accepted.

20. Similar view is taken by the Andhra Pradesh High Court in the case of Sree Satyanarayana Spinning Mills Ltd. v. Commercial Tax Officer reported in [1988] 68 STC 95. It is true that in that case there was no provision like sub-section (3) of section 4A as it is to be found in the Gujarat Act. However, this distinction does not make any difference as indicated hereinabove.

21. The learned counsel for the dealer relied upon a decision of the Karnataka High Court in the case of State of Karnataka v. P. K. P. Abdul Hakeem & Co. reported in [1985] 59 STC 203. With respect to the learned Judges of the Karnataka High Court, it is not possible to agree with the reasoning adopted by them. The reasons given and the conclusion arrived at by the Karnataka High Court are contrary to the principles laid down by the Supreme Court in the case of S. Kodar [1974] 34 STC 73 and in the case of Ashok Service Centre [1983] 53 STC 1 and in the case of Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, For this reason, we are not inclined to discuss this judgment in detail. Suffice it to say that the decision of the Karnataka High Court is not in consonance with the principles laid down by the Supreme Court. It is observed by the Karnataka High Court that section 6-B of the Karnataka Sales Tax Act does not empower nor does it intend to levy additional tax on inter-State sale.

Be it noted that the Karnataka Sales Tax Act is a local Act. It can never intend nor it can confer power to levy tax on inter-State sales. For determining the rate of Central sales tax on the inter-State sale transactions, one has to refer to section 8. It is not necessary for the Central Legislature to declare that additional tax, if and when levied under the State enactment would also form part of the rate of tax. On interpretation of the provisions of section 8, one has to come to the conclusion that at what rate the tax is to be levied on the inter-State sales. While determining the rate, one has to look at the appropriate provisions of the local Act. With utmost respect, we are not able to persuade ourselves to agree with the view taken by the Karnataka High Court.

22. The learned counsel for the dealer relied upon a decision of the Kerala High Court in the case of Assistant Commissioner (Assessment), Sales Tax v. Janatha Expeller Company reported in [1987] 64 STC 435. It was a case in which goods were subjected to tax as per the special rates under the provisions of section 8(5) of the Central Sales Tax Act. Even in such case, the authorities of the Sales Tax Department insisted that the transactions were exigible to tax under the Kerala Additional Sales Tax Act, 1978. In view of the fact that the goods were liable to tax at the special rate as per the notification issued under the provisions of section 8(5) of the Central Sales Tax Act, the Kerala High Court negated the contention of the Revenue. In view of the aforesaid special facts and circumstances of the case, it was held by the Kerala High Court that tax leviable under the Kerala Additional Sales Tax Act, 1978, was not attracted. In our opinion, this decision is not at all relevant for deciding the controversy at issue.

23. For the aforesaid reasons, we answer the reference accordingly as indicated in para 3 hereinabove with no order as to costs.

24. Reference answered in the negative.