
(1974) 05 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2349 of 1973

Suryalal Makand Lal

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 09-05-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 301, 303, 304

Citation : (1975) 36 STC 225

Hon'ble Judges : Satish Chandra, J; R.L. Gulati, J

Bench : Division Bench

Advocate : S.P. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—The petitioner is a partnership-firm and carries on business, amongst other things, in vanaspati. It carries on the business on its own account as well as on commission agency basis for ex-U.P. manufacturers. During the assessment years 1970-71 and 1971-72 its turnover of vanaspati sold on commission basis amounted to Rs. 53,280 and Rs. 2,12,332 respectively.

2. Under a notification issued u/s 3-A of the U. P. Sales Tax Act the turnover of vanaspati is taxable at a single point, the point being the sale by the manufacturer in the case of goods manufactured in U. P. and the sale by the importer in the case of goods imported from outside U. P. The Act, as it stood on the material time, did not contain a definition of the word "importer". Such a definition was given in Rule 2(d-1) of the U. P. Sales Tax Rules. Under Sub-clause (c) of Clause (d-1) an importer means "in a case where the goods are imported into Uttar Pradesh otherwise than as a direct result of a sale, the dealer who makes the first sale after such import". The petitioner was treated as an importer in respect of the turnover of vanaspati sold by him on commission basis and was subjected to tax. The petitioner did not raise any objection before the Sales Tax Officer with regard to its taxability and paid the tax as assessed. The petitioner has, however, stated that when he came to Allahabad in 1973 for legal

consultation he was told by his counsel that Rule 2(d-1) of the U. P. Sales Tax Rules was ultra vires and as such the petitioner had wrongly been assessed to tax under that rule. The petitioner has accordingly filed this petition under Article 226 of the Constitution praying for a writ of certiorari quashing the assessment order on the ground that the petitioner had paid the tax under a mistake of law and, as such, he was entitled to its refund.

3. Sri S. C. Khare, the learned counsel for the petitioner, has urged that a commission agent who sells vanaspati manufactured in Uttar Pradesh is not liable to tax on such sales, but a person like the petitioner, who sells vanaspati of an ex-U. P. dealer as commission agent is subjected to tax. This, according to him, amounts to hostile discrimination and is hit by Article 14 of the Constitution ; and secondly, Rule 2(d-1) offends articles 301 and 304 of the Constitution of India. To support his contention that a commission agent selling goods manufactured in U. P. was not liable to tax, he placed reliance on a decision of this court in Suraj Pd. Gauri Shanker v. Commissioner of Sales Tax 1969 24 S.T.C. 366. That was a case of a commission agent selling khandsari sugar manufactured in U. P. Khandsari sugar also like vanaspati was taxable at single point, at the point of sale by the manufacturer or at the point of sale by the importer. This court held that as khandsari was taxable at the point of sale by the manufacturer in the case of goods manufactured in U. P., it was the manufacturer who alone was liable to tax, even though he had sold the goods not himself but through a commission agent. Here we are not dealing with a case of sale of vanaspati manufactured inside U. P. but with vanaspati manufactured outside U. P. The sale admittedly took place in U. P. and, as such, is liable to tax, Since it cannot be taxed in the hands of the manufacturer, he being a non-resident dealer, by virtue of Rule 2(d-1) a person who effects the first sale in Uttar Pradesh of such goods shall be held to be importer for the purposes of the notification. It is thus clear that a commission agent of a U. P. manufacturer and a commission agent of an ex-U. P. dealer fall in two different categories. The classification is not irrational or arbitrary. Because of the difficulty of imposing tax on a non-resident dealer it was necessary to impose the tax upon a person through whom such sale is made, otherwise such a sale would go untaxed. The petitioner thus cannot complain of hostile discrimination because the commission agent selling goods of U. P. manufacturer falls in a different class. A discrimination arises only if persons similarly situated are treated differently.

4. Article 301 of the Constitution guarantees the freedom of trade, commerce and intercourse throughout the territory of India subject to the other provisions of Part XIII. Article 304 then provides : "Notwithstanding anything in Article 301 or Article 303, the legislature of a State may by law impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced." Thus it is open to a State Legislature to impose tax on goods imported from other States provided such goods manufactured in the State itself are also taxed and the rate of tax on the

imported goods and the goods manufactured inside the State is at par. In other words, if any goods is not subjected to tax in the State, the same goods cannot be subjected to tax if imported from outside the State. Now the sale of vanaspati manufactured in U. P. is not exempt from tax. It will, therefore, be open to the State Government to levy a similar tax on vanaspati imported from outside Uttar Pradesh, without offending articles 301 and 304 of the Constitution. The mere fact that the incidence of tax in the case of vanaspati manufactured inside the State and the vanaspati imported from outside the State is different does not in any way violate Article 304 of the Constitution.

5. The last contention raised by Mr. Khare is that Rule 2(d-1) of the U.P. Sales Tax Rules is ultra vires of the rule-making powers of the State Government conferred upon it u/s 24 of the Act. The argument is that the State Government can make rules to carry out the purposes of the Act and not to supplement the Act. According to him Rule 2(d-1) enlarges the scope of the charging section in so far as it seeks to assess a person as an importer, who, in fact, is not an importer. An importer, according to him, is a person who imports goods on his own account and a commission agent to whom the goods are sent by its principal cannot be said to be an importer. Now it is true that Rule 2(d-1)(c), with which we are concerned, gives an artificial definition of "importer" so as to include a commission agent who sells goods on behalf of its ex-U. P. principal, but such a rule has been made clearly to carry out the purpose of the Act, namely, to levy tax on all sales made inside the State except those specifically exempted. Had such a rule not been made the sale of imported vanaspati by a commission agent would go untaxed. Therefore, it was legitimate for the State Government to provide by a rule as to how such sales will be taxed. That apart, it was not really necessary for the State Government to have enacted Rule 2(d-1) at all. It could have achieved the object by providing in the notification issued u/s 3-A itself that in the case of goods manufactured outside Uttar Pradesh and sold through a commission agent in Uttar Pradesh the tax will be leviable on the commission agent and such a provision in the notification would be perfectly legal because under the explanation to Section 2(c) a commission agent who carries on the business of buying or selling goods or through whom the goods are sold or purchased on behalf of his principal is deemed to be a dealer for the purposes of the Act. Thus it is obvious that the State Government had ample power to levy tax upon persons like the petitioner u/s 3-A of the Act itself. The fact that the State Government, instead of making a suitable provision in the notification issued u/s 3-A, has chosen to frame a rule to achieve the same object, does not affect its jurisdiction to levy tax in cases like the petitioner.

6. For all these reasons we are unable to quash the assessment orders and to grant to the petitioner the refund of the tax which has rightly been levied upon it.

7. The petition fails and is dismissed with costs.