(2001) 11 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 8024 of 1996

Tetra Pak India Ltd. APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 05-11-2001

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

Citation : (2002) 126 STC 165

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

Bench : Division Bench

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

Judgement

M.S. Shah, J.—In this petition under Article 226 of the Constitution, the petitioner-company has prayed for a direction to the Sales Tax Officer (3), City Division-2, Vadodara, to follow the decision dated June 26, 1995 of the Gujarat Sales Tax Tribunal, Ahmedabad, in Second Appeal Nos, 238 and 239 of 1988 (annexure A/1) and to refund to the petitioner the amount of sales tax with interest thereon. The petitioner has also prayed for a direction to the Assistant Commissioner of Sales Tax (Appeals 7), Range-4, Vadodara, to decide the petitioner''s appeal for the financial years 1983-84 to 1991-92 (both inclusive).

2. Mr. R.D. Pathak, learned counsel for the petitioner, has submitted that the Tribunal has already held in the aforesaid judgment dated June 26, 1995 that good''s in question sold by the petitioner fall within item No. 12(iv) of Schedule II, Part A of the Gujarat Sales Tax Act, and, therefore, the respondents are required to follow the said decision in respect of all the relevant financial years. The learned counsel has placed strong reliance on the decision of the apex Court in Union of India and others Vs. Kamlakshi Finance Corporation Ltd., and also on the decision of this Court in Air Conditioning Specialists Pvt. Ltd. Vs. Union of India and Others, .

3. On the other hand, Mr. S.N. Shelat, learned Advocate General with Mr. U.R.

Bhatt, learned A.G.P., have submitted that when this Court has granted the Reference Applications being Sales Tax Application Nos. 1 and 2 of 1999 and has directed the Tribunal to refer the 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'', in entry 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 entry 13 of Schedule III of the Act", the matter is at large before this Court and therefore there is no need to give any direction to the respondents on the basis of the judgment of the Tribunal at annexure A1.

4. Having heard the learned counsel for the parties, we are of the view that when the judgment of the Tribunal was rendered as far back as on June 26, 1995 and the respondents themselves did not move the Tribunal u/s 69(1) of the Act for making a reference to this Court for two years and thereafter also no effective steps seem to have been taken by the department for getting Sales Tax Applications Nos. 1 and 2 of 1999 heard expeditiously, there does not appear to be any justification why this Court should not require the respondents to follow the decision of the Tribunal in Second Appeal Nos. 238 and 239 of 1988 for the relevant financial years under consideration. It is true that this Court has allowed the aforesaid reference applications under Sub-section (2) of Section 69 of the Act. However, in the facts and circumstances of the case including the fact that the assessee is a Central Government undertaking and more particularly in view of the fact that it is the assessee which has moved this Court by filing the present petition for requiring the respondents to implement the judgment of the Tribunal there cannot be any question of granting any stay against the operation of the judgment of the Tribunal in so far as the petitioner-assessee''s case is concerned.

5. Hence, it is directed that the respondents shall follow the decision dated June 26, 1995 of the Gujarat Sales Tax Tribunal in Second Appeal Nos. 238 and 239 of 1988 at annexure A1 and implement the same within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier. This shall, of course, be without prejudice to the rights and contentions of the respondents in the references which would be made by the Tribunal to this Court pursuant to the order passed today in Sales Tax Applications Nos. 1 and 2 of 1999 and also without prejudice to the power of the respondents to require the petitioners to furnish adequate security for the grant of refund pursuant to the orders of the Tribunal.

The appellate authority, respondent No. 2, shall hear and decide the petitioner''s pending appeals for the relevant financial years, i.e., 1983-84 to 1991-92 (both inclusive) within six months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

6. The petition is accordingly disposed of in terms of the aforesaid directions.

Rule is made absolute to the aforesaid extent with no order as to costs.

