

(2000) 07 P&H CK 0154
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8725 of 2000

Veerumal Monga and Sons

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-07-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 15, 5(3)

Constitution of India, 1950 — Article 226

Haryana General Sales Tax Act, 1973 — Section 41

Citation : (2001) 123 STC 158

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India for quashing of the order dated May 15, 2000, passed by the Sales Tax Tribunal, Haryana (for short, "the Tribunal") u/s 41 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the State Act") vide which the Tribunal reviewed its order dated August 16, 1999 and restored the order of assessment passed by the Excise and Taxation Officer-cum-Assessing Authority, Sirsa (hereafter described as "the Assessing Authority").

2. The facts which have bearing on the decision of this petition are that after hearing the representative of the petitioner, the Assessing Authority passed order dated August 3, 1998 (annexure P1) in respect of the assessment year 1996-97 holding the petitioner is liable to pay sales tax on the paddy purchased from within the State of Haryana, notwithstanding the fact that the rice manufactured out of it had been indirectly exported out of India. The appeal filed by the petitioner was dismissed by the Joint Excise and Taxation Commissioner (Appeals), Rohtak, but the second appeal filed by it was allowed by the Tribunal vide order, annexure P4, dated August 16, 1999. The department sought review

of that order by filing an application u/s 41 of the State Act which has been granted by the impugned order.

3. Shri K.L. Goyal argued that the impugned order should be declared void and quashed because the Tribunal has exceeded the jurisdiction vested in it u/s 41 of the State Act. Learned counsel argued that while deciding an application filed by the State u/s 41 of the State Act, the Tribunal could not have acted as a court of appeal. He read out the two orders passed by the Tribunal to show that the review petition has been entertained by the succeeding member of the Tribunal without even recording a finding that the order dated August 16, 1999 suffers from any legal infirmity. In support of his argument, learned counsel relied upon the following decisions :

(1) Sow Chandra Kante and Another Vs. Sheikh Habib, .

(2) Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, .

(3) F.G. Davidson Vs. Mohanlal Sindhi, .

4. He further argued that the levy of tax on the paddy purchased by the petitioner from within the State of Haryana is illegal because after milling the paddy, the rice was sold to the direct exporter and in view of Section 5(3) read with Section 15(ca) of the Central Sales Tax Act, 1956 (for short, the "Central Act"), no tax can be levied on such transaction under the State Act.

5. Section 41(1) of the State Act, which provides for review of an order made under the said Act, reads as under :

41(1). An Assessing Authority or any person considering himself aggrieved by an order of the Tribunal or any officer above the rank of an Excise and Taxation Officer under this Act and who, from the discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when such order was made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason desires to obtain a review of the order made against the State or him, may apply for a review of such order to the Tribunal or such officer, as the case may be."

6. An analysis of the above quoted provision shows that the review of an order passed by the Tribunal or any officer above the rank of the Excise and Taxation Officer can be sought in one of the following eventualities :

(i) discovery of new matter or evidence which was not within the knowledge of the review petitioner or which could not be produced by him at the time of passing of the order under review despite the exercise of due diligence ;

(ii) on account of some mistake or error apparent on the face of record ; or

(iii) any other sufficient reason.

7. In the light of the above, we have to decide whether the order dated May 15,

2000 is ultra vires to the power vested in the Tribunal u/s 41 of the State Act. It cannot be doubted that while exercising the power u/s 41, the Tribunal cannot act as a court of appeal and cannot review the earlier decision simply because it feels that a different view is possible, but in the facts of this case, we are convinced that the impugned order cannot be invalidated on the ground that the Tribunal has exceeded the jurisdiction vested in it u/s 41. A perusal of the record shows that while dismissing the first appeal filed by the petitioner, the Joint Excise and Taxation Commissioner (Appeals), Rohtak had recorded cogent reasons for upholding the order of assessment. He referred to the nature of the transaction leading to the export of rice milled by the petitioner and proceeded to observe as under :

"DE purchases rice from RM for selling the same to FB. There is privity of contract between RM and DE for the sale of rice by RM to DE for the purpose of export of rice out of India to FB but there is no privity of contract between RM and FB direct. The sale of rice by RM and purchase by DE are the last sale and purchase preceding the sale and purchase in the course of export of rice out of India. According to Section 5(3), the sale of rice by RM and purchase by DE are also deemed to be in the course of export of rice out of India.

This can be explained with the help of a diagram as under :

____Paddy____ Rice_____ Rice____ | Rice | | Direct | |Foreign| |Miller| |
exporter| |buyer_| Purchase Sale Purchase Sale Purchase

Section 4(2) Section 5(3) Section 5(1)

Purchase inside Sale or purchase in Sale or purchase in the State. the course of indirect the course of direct export out of India. export out of India.

It is clear from above that purchase of paddy by the appellant (rice-miller) is not in the course of indirect export out of India. The scope of indirect export u/s 5(3) of the Central Act extends only to sale of rice by the rice miller to the direct exporter and no further.

3. Let us now see whether Clause (ca) of Section 15 of the Central Act helps the appellant in any manner. The clause reads :

"(ca) Where a tax on sale or purchase of paddy referred to in Sub-clause (i) of Clause (i) of Section 14 is leviable under that law and the rice procured out of such paddy is exported out of India, then, for the purposes of Sub-section (3) of Section 5, the paddy and rice shall be treated as a single commodity."

It is clear from the language of the clause that it treats purchase of paddy converted into rice in the event of export of such rice out of India as purchase of rice for the purpose of Sub-section (3) of Section 5 only. As we have seen above the scope of Sub-section (3) of Section 5 does not extend to the purchase of paddy by the rice miller who sells rice milled by him to the direct exporter. The sale of rice by such rice miller alone and not purchase of paddy by him is covered

u/s 5(3) of the Central Act. The purchase of paddy from within the State of Haryana is, thus, liable to tax at the hands of the appellant notwithstanding that the rice procured out of the same has been indirectly exported out of India."

8. However, without even advertng to the reasons recorded by the Joint Excise and Taxation Commissioner (Appeals), the Tribunal quashed the levy of purchase tax by observing that in view of Section 15(ca) of the Central Act, such levy is not sustainable in law. The relevant extract of the order passed by the Tribunal reads as under :

"In view of the aforesaid Clause (ca) the argument of the departmental representative does not survive once it is proved that the rice which had been exported was out of the paddy purchased. Since in the present case there is no dispute above this aspect, the levy of purchase tax on paddy is not sustainable in law. The order of the authorities below are set aside and the appeal is accepted as a consequence thereof."

9. In the order passed on the review application filed by the Assessing Authority, the Tribunal considered the respective submissions and then held as under :

"I have considered the matter carefully and have also seen the facts on record and the judgments referred to above by both the parties. It is a matter of record that the respondent has purchased paddy from the dealers of Haryana. It is also a matter of record that he sold rice to the direct exporter. Since the sale occasioning the export was the sale by the exporter to the foreign buyer and not by the present respondent-dealer, the purchase made by the respondent-dealer was not the immediate preceding purchase occasioning export. Hence, the same does not qualify for exemption u/s 5(3) read with Clause (ca) of Section 15 of the Central Sales Tax Act, 1956, in view of [1998] 110 STC 429 (Ker) (Sovereign Spices v. State of Kerala) and [1996] 103 STC 182 (Kar) (Jayalaxmi Industries v. Deputy Commissioner of Commercial Taxes) wherein it has been held that only the last sale or purchase preceding the export sale is deemed to be a sale or purchase in the course of export. In so far as statements of objects and reasons are concerned, these are not admissible as an aid to the construction of a statute and such objects and reasons can be used for the limited purpose of ascertaining the conditions prevailing at time which actuated the sponsorer of the Bill to introduce the same and the extent and urgency of evil which he sought to remedy. These objects and reasons cannot be given a legal shape. Since the respondent-dealer had sold rice to the direct exporter, paddy purchased by him does not qualify exemption as provided u/s 5(3) of the Central Sales Tax Act, 1956. I, therefore, hold that the Tribunal was wrong to allow such deductions. Accordingly, this order of the Tribunal is reviewed and is set aside while the orders of the Assessing Authority are restored."

10. In our opinion, even though while reviewing the order dated August 16, 1999, passed by it, the Tribunal has not used the expressions embodied in Section 41 of the State Act, it is clearly borne out from the impugned order that

the main reason for entertaining the review petition was that the earlier order suffered from a patent misapplication of Section 5(3) read with Section 15(ca) of the Central Act and having examined the entire matter on merits, we are convinced that the impugned order does not suffer from any jurisdictional infirmity or legal error which may justify interference by this Court under Article 226 of the Constitution of India.

11. A brief recapitulation of the facts relating to the nature of transactions entered into between the seller, the petitioner and the purchaser shows that the rice milled out of the paddy bought by the petitioner used to be sold to the third party, who would then export it outside the territory of India. Thus, the transactions involving purchase of paddy by the petitioner did not fall within the ambit of Section 5(3) read with Section 15(ca) of the Central Act, It was not a transaction preceding the sale or purchase of the paddy occasioning export thereof outside India. Therefore, we have no hesitation to hold that the Assessing Authority and the Appellate Authority had rightly held that the petitioner is liable to pay the purchase tax.

12. The decisions relied upon by Shri Goyal on the scope of the power of review vested in the Tribunal do not have any bearing on the facts of this case because, as already mentioned above, the order dated August 16, 1999 passed by the Tribunal suffered from a patent error of law and there existed sufficient reason for its review.

13. For the reasons mentioned above, the writ petition is dismissed.