State of Madras

Vs

M/s. Swastik Tobacco Factory, Vedaranyam

Civil Appeals Nos. 90 and 91 of 1965

(K. Subha Rao, J.C. Shah, S.M. Sikri JJ)

14.12.1965

JUDGMENT

SUBBA RAO, J. -

These appeals, by special leave, raise the question of the true construction of the provisions of r. 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, hereinafter referred to as the Rules.

The facts are not in dispute and they may be briefly stated. The respondent, Messrs. Swastik Tobacco Factory, is a dealer in tobacco. It purchased raw tobacco; by processing it in a prescribed manner, converted it into chewing tobacco and sold it as such in small paper packets. The said process has been described by a Division Bench of the Madras High Court in Bell Mark Tobacco Co. v. Government of Madras ((1961) 12 S.T.C. 126, 132.) thus :

> "Taking, however, the cumulative effect of the various processes to which the assessee subjected the tobacco before he sold it, it is clear that what was eventually sold by the assessee was a manufactured product, manufactured from the tobacco that the assessee had purchased. Soaking in jaggery water is not the only process to be considered. The addition of flavouring essences and shredding of the tobacco should establish that what the assessee sold was a product substantially different from what he had purchased."

for the purpose of these appeals, it was not disputed that the respondent purchased raw tobacco, converted it by a manufacturing process into chewing tobacco and sold it in small paper packets. The respondent paid excise duty in respect of the raw tobacco purchased by it. For the assessment years 1955-56 and 1956-57, the Assistant-cum- Deputy Commercial Tax Officer assessed the respondent to sales tax on the turnover of Rs. 10,67,923-10-9 and Rs. 7,71,661-11-0 respectively. The respondent claimed that the excise duty paid by it to the Central Government in respect of the raw tobacco should be deducted from the turnover ascertained by the said Officer. But his contention was rejected. On appeal, the order of the said Officer was confirmed by the Appellate Assistant Commissioner of Commercial Taxes. On a further appeal to the Sales Tax Appellate Tribunal, the assessee, in addition to the question of deduction, raised an additional ground that the entire turnover of the sales on chewing tobacco was not liable to be assessed. The Tribunal set aside the order of Appellate Assistant Commissioner. The state carried the matter in two revisions to the High Court of Madras. A Division Bench of the said High Court agreed with the view expressed by the Tribunal and dismissed the revisions. Hence the present appeals.

Mr. A. V. Rangam, learned counsel for the State, argued that the raw tobacco was converted by a manufacturing process into the chewing tobacco, a different commodity and that, therefore, under r. 5(1) of the Rules, as excise duty was paid only in respect of raw tobacco and not chewing tobacco, the said duty was not deductible from the turnover of the assessee. He did not contest the correctness of the decision of the High Court on the question of the taxability of the chewing tobacco under s. 5(vii) of the Act.

Mr. T. A. Ramachandran, learned counsel for the respondent, contended that the said rule was couched in a comprehensive language so as to take in excise duty paid on raw tobacco converted by a manufacturing process into chewing tobacco. The relevant rule reads thus :

> "Rule 5. (1) The tax or taxes under section 3 or 5 or 5A or the notification or notifications under section 6(1) shall be levied on the net turnover of the dealers.
>
> In determining the net turnover the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer :
>
> (i) the excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him;....."

Both the advocates argued, on the basis of the factual position, that packets of chewing tobacco were goods different from tobacco from which the said goods were manufactured. While the learned counsel for the said State laid emphasis on the words "goods sold by him", the learned counsel for the respondent relied upon the expression "in respect of" preceding the said words. If, instead of the expression "in respect of", the word "on" were there, the intention of the rule would be manifest and the answer to the question raised would be obvious. The excise duty paid by the respondent was only on raw tobacco and not on the goods sold by it and, therefore, the said duty was not deductible thereunder. So far there is no dispute. But it was said that the expression "in respect of" made all the difference. The words "in respect of", it was said, meant "attributable" and, therefore, the argument proceeded, the excise duty paid on the tobacco, though it was not paid on the goods sold by the respondent, was attributable to the said goods sold.

The objects of the concession is presumably to avoid payment of tax on tax in respect of the same goods. If excise duty was paid by a dealer on certain goods, it would be deducted from the gross turnover of the dealer in regard to the said goods, as otherwise, in effect, sales-tax would have to be paid on the amount paid towards excise duty. This concession could have no relevance if the goods subjected to excise duty were different from the goods sold. Raw tobacco, when converted by a process of manufacture into chewing tobacco, becomes a different marketable product. There will be no comparison between the raw tobacco and the chewing tobacco in the matter of demand or even price. Duty on raw tobacco may have some effect on the cost of manufactured product, but it cannot be possibly be said that the said duty is paid in respect of the manufactured product. Rule 5(1)(i) of the Rules, therefore, permits deduction from the gross turnover of the dealer only the excise duty paid by him in respect of the same goods sold by him.

Learned counsel for the respondent cited some English decisions in support of his contention that the expression "in respect of the goods" was very wide and that it took in the raw material out of which the goods were made.

The House of Lords in Inland Revenue Commissioners v. Courts & Co., in the context of payment of estate duty, construed the words "in respect of" in s. 5(2) of the Finance Act, 1894 (57 & 58 Vict. c. 30) and observed that the phrase denoted some imprecise kind of nexus between the property and the estate duty. The House of Lords in Asher v. Seaford Court Estates Ltd. (L.R. (1950) A.C. 508.) in construing the provisions of s. 2, sub-s. (3) of Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), held that the expression "in respect of" must be read as equivalent to "attributable". The Privy Council in Bicber, Ltd. v. Commissioners of Income-tax ((1962) 3 All. E.R. 294.) observed that the said words could mean more than "consisting of" or "namely".

It is not necessary to refer to other decisions. It may be accepted that the said expression received a wide interpretation, having regard to the object of the provisions and the setting in which the said words appeared. On the other hand, Indian tax laws use the expression" in respect of" as synonymous with the expression "on" : see Art. 288 of the Constitution of India; s. 3 of the Indian Income-tax Act, 1922; ss. 3(2) and 3(5), Second Proviso, of the Madras General Sales Tax Act, 1939; s. 3(1A) of the Central Excise and salt Act, 1944; and ss. 9 of the Kerala Sales Tax Act. We should not be understood to have construed the said provisions, but only have referred to them to state the legislative practice. Consistent with the said practice, r. 5(1)(i) of the rules uses the same expression. When the said rule says "excise duty paid in respect of the goods", the excise duty referred to is the excise duty paid under s. 3(1), read with the Schedule, of the Central Excise and Salt Act, 1944 (1 of 1944). Under the said section, read with the Schedule, excise duty is levied on the goods described in the Schedule. Therefore, when r. 5(1)(i) of the Rules refers to the duty paid in respect of the goods to the Central Government, it necessarily refers to the duty paid on the goods mentioned in the Schedule. As the duty exempted from the gross turnover is the duty so paid under the Central Act, read with the Schedule, the expression "in respect of" in the context can only mean excise duty paid on goods. In our view, the expression "in respect of the goods" in r. 5(1)(i) of the Rules means only "on the goods". Even if the word "attributable" is substituted for the words "in respect of", the result will not be different, for the duty paid shall be attributable to the goods. If it was paid on the raw material it can be attributable only to the raw material and not to the goods. We, therefore, hold that only excise duty paid on the goods sold by the assessee is deductible from the gross turnover under r. (5)(i) of the Rules.

We cannot, therefore, agree with the construction of r. (5)(i) of the Rules accepted by the High Court.

No other question was raised before us. In the result, we modify the order of the High Court accordingly. In the circumstances, we direct the parties to bear their respective costs.

Order modified.

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