

State of Madras

v.

Bell Mark Tobacco Company

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE VAIDYNATHIER
RAMASWAMI HON'BLE JUSTICE V. BHARGAVA

Civil Appeal No. 1071 To 1077 Of 1965 | 04-10-1966

SHAH, J.

1. Messrs Bell Mark Tobacco Company - respondents in this appeal - are dealers in tobacco and tobacco products. They were assessed to sales tax by the Deputy Commercial Tax Officer, Pudukkottai, on their turnover in the years 1955-56, 1956-57 and 1957-58 from sales of "chewing tobacco". Their appeals to the Commercial Tax Officer and the Sales Tax Tribunal, Madras, were dismissed. The respondents then approached the High Court of Madras in exercise of its revisional jurisdiction and raised three principal contentions :

(1) that they were not liable to pay sales tax on their turnover from the sales of packets of chewing tobacco prepared by them;

(2) that the cost of packing material was not liable to be included in computing the taxable turnover; and

(3) that they were entitled to rebate of the excise duty paid by them on the raw tobacco from which the chewing tobacco was prepared.

2. The High Court held that in computing the taxable turnover of the respondents, the turnover from the sales of "chewing tobacco" was liable to be included and the cost of packing material could not be excluded from the taxable turnover of the respondents. But in the view of the High Court, the respondents were entitled to rebate of excise duty paid by them on raw tobacco

from which chewing tobacco was manufactured. Contentions Nos. (1) and (2) were therefore decided in favour of the State and the third against them. With certificate granted by the High Court, these appeals have been preferred by the State.

3. Whether a dealer who pays excise duty on raw tobacco purchased by him is entitled to rebate of that duty in the computation of taxable turnover from the sale of chewing tobacco manufactured out of that raw tobacco was recently considered by this Court in *The State of Madras v. Swasthik Tobacco Factory* ([1966] 17 S.T.C. 316). It was held by this Court that the expression "in respect of the goods" rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, means "on the goods", and therefore only the excise duty paid on the goods sold by the dealer is deductible. In *Swasthik Tobacco Factory's case* ((1966] 17 S.T.C. 316), the dealer purchased raw tobacco and converted it by a manufacturing process into chewing tobacco and sold it in small packets. His claim in computing the taxable turnover for rebate in respect of excise duty paid on raw tobacco used in manufacturing "chewing tobacco" was disallowed. This decision is prima facie determinative of the only question which is raised in these appeals by the State. But counsel for the respondents contended that chewing tobacco is the same commodity as raw tobacco, and therefore excise duty paid on raw tobacco is an admissible deduction. Counsel said that in *Swasthik Tobacco Factory's case* ([1966] 17 S.T.C. 316), it was conceded by counsel that "chewing tobacco" was a manufactured product, and the Court decided the case on the footing of that concession, whereas in the present case there is no such concession made. The Sales Tax Tribunal has set out the process of preparation of chewing tobacco. Raw tobacco is purchased under a transport permit issued by the Central Excise Department and is warehoused in different lots. Jaggery water or plain water is sprinkled on the bundles of tobacco and tobacco is allowed to ferment for about 40 days. Heat is thereby generated and "the tobacco gets well processed". Stalks of tobacco are broken and removed, and sand and dust are removed. After payment of excise duty the bundles of tobacco are brought to the premises of the factory, where chewing tobacco is prepared. "Jaggery juice" is sprinkled on tobacco, and it is then cut into thin strips by shearing machines. The resulting tobacco is called "nice" tobacco. This "nice" tobacco is allowed to dry for some days. Then "flavouring essences" are sprinkled on it and it is then packed in special wrappers. The packets are known as "chewing tobacco" packets. A large number of workmen are employed to carry out these several processes.

In the view of the High Court the cumulative effect of the various processes, such as soaking in jaggery water, "shredding of tobacco" and addition of "flavouring essences" to which tobacco was subjected before it was sold, amounted to a manufacturing process and the product sold was a manufactured product from raw tobacco purchased by the respondents. We are in complete agreement with the view of the High Court on this part of the case.

4. Rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, in so far as it is material provides :

"The tax or taxes under section 3 or 5 or the notification or notifications under section 6(1) shall be levied on the net turnover of a dealer. In determining the net turnover the amounts specified in clauses (a) to (1) 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."

It is clear on the terms of the rule that if the dealer has paid excise duty in respect of the goods sold by him, that excise duty is liable to be deducted in the computation of the net turnover of the dealer. But if the excise duty has been paid in respect of another commodity, it is not liable to be deducted. We have pointed out that chewing tobacco is not raw tobacco, and the respondents paid excise duty to the Central Government only in respect of raw tobacco. They do not claim to have paid excise duty in respect of "chewing tobacco". Excise duty paid in respect of raw tobacco is not therefore liable to be excluded in the computation of the taxable turnover of the respondents, since the excise duty paid in respect of raw tobacco used in the manufacture of chewing tobacco is not duty paid in respect of the goods sold by the respondents within the meaning of rule 5(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

5. Counsel for the respondents contended that under section 5 of the Madras General Sales Tax Act, 1939, also the respondents were entitled to get rebate in respect of excise duty paid by them on raw tobacco. He submitted that the provisions of section 5 of the Act were not brought to the notice of this Court

when Swasthik Tobacco Factory's case ([1966] 17 S.T.C. 316) was decided and therefore the judgment in that case cannot be regarded as decisive of the right of the respondents in this case to claim deduction in respect of excise duty paid by them on raw tobacco. In our judgment this argument proceeds upon a misconception of the true meaning of section 5 of the Act. The material part of section 5 on which reliance is placed is as follows :-"Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees -

(vii) the sale of cigars and cheroots at less than two annas per cigar or cheroot and bidis, snuff, chewing tobacco or any other product manufactured from tobacco, shall be liable to tax under section 3, sub-section (2) only at the point of the first sale effected in the State of Madras by a dealer who is not exempt from taxation under section 3, sub-section (3), but at the rate of six pies for every rupee on his turnover;

(viii) raw tobacco, whether cured or uncured, shall be liable to tax under section 3, sub-section (2) only at the point of the first purchase effected in the State of Madras by a dealer who is not exempt from taxation under section 3, sub-section (3), but at the rate of six pies for every rupee on his turnover :

Provided that when a dealer who has paid tax in respect of his turnover relating to goods included in clause (vii) has also paid the tax on the purchase of raw tobacco used in the manufacture of such goods under clause (viii) he shall be entitled to rebate to the extent of tax paid in respect of the tax on raw tobacco so used."

"Chewing tobacco" is, for reasons already set out, manufactured from raw tobacco. It is common ground that the respondents were charged to tax in respect of the first sale effected by them in the State of Madras and they are not exempt from taxation under section 3, sub-section (3). But it was urged that the expression "tax" in the proviso includes "excise duty". The Madras General Sales Tax Act deals with the levy of sales tax and section 5 provides for the rates of sales tax and the point at which tax is to be levied. The proviso could obviously not refer to tax other than the sales tax with which the whole Act, and especially the provisions of section 5, deals. It is intended to provide by the

proviso that in the computation of taxable turnover of a dealer in respect of any goods included in clause (vii) the dealer is entitled to the rebate to the extent of sales tax paid by him on the raw tobacco used in the manufacture of those goods. The contentions raised by counsel must be rejected, and following the judgment of this Court in Swasthik Tobacco Factory's case ([1966] 17 S.T.C. 316), the appeals filed by the State must be allowed. There will be no order as to costs in these appeals. We may observe that we express no opinion on the question as to the liability of the cost of packing material being included in the computation of taxable turnover of the respondents. We are informed at the Bar that the respondents have obtained certificates from the High Court for leave to appeal on that question which was decided against them. If and when those appeals are filed, the question will be dealt with in those appeals.

6. Appeals allowed.