State of Punjab and Others

Vs

Guru Nanak Flour and Oil Mills

State of Punjab and Others

Vs

M/S. Behari Lal Ashu Ram

State of Punjab and Others

Vs

M/S. Meva Ram Ram Lal

Civil Appeals Nos. 1678 to 1680 of 1969

(C.A. Vaidialingam, P. Jagmohan Reddy, K.K. Mathew JJ)

05.11.1971

JUDGMENT

VAIDIALINGAM, J. -

1. These three appeals by the State of Punjab, by special leave, relate to the validity of levy of sales tax on oil seeds and edible oils under the Punjab General Tax Act, 1948 (Punjab Act, XLVI of 1948) (hereinafter to be referred as the Act).

2. In all these appeals the assessee respondents challenged before the High Court either the orders of assessment proposed to be passed by the assessing authority or declining to grant refund of sales-tax already collected during the relevant assessment years.

3. In Civil Appeal No. 1678 of 1969, the respondents is a partnership firm carrying on business in foodgrains, pulses, flour, cotton and oil seeds, besides extracting oil from sarson (mustard), toria, etc. at Nabha. The firm is a registered dealer under the Act. In respect of the years 1961-62 and 1962-63, according to the Department, the assessee has not paid the full tax as required by Section 10(4) of the Act, and hence proceedings were initiated for recovery of the same. The respondent filed Civil Writ No. 214 of 1965 in the Punjab High Court to issue appropriate directions to the assessing authority, not to assess the firm to sales-tax in respect of the purchase of oil seeds and sales of edible oils made by the firm during the years 1961-62 and 1962-63. According to the assessee the notification issued by the State Government No. 3483-E and T-54/723 (CH), dated August 5, 1954, by which edible oils produced in ghanis had been made liable to payment of sales-tax, is invalid as held by the Division Bench of the High Court in its decision reported in Ganga Ram Suraj Parkash v. The State of Punjab. [(1963) 14 STC 476]. The High Court declined to grant certificate of fitness and the special leave application filed by the State before this Court was also dismissed on January 27, 1964. The decision in Ganga Ram Suraj Parkash (supra), having become

final, it was pleaded by the firm that no assessment can be made against it in respect of sales of edible oils.

4. In its counter affidavit, the State accepted as correct, the averment regarding the decision of the Punjab High Court in Ganga Ram Suraj Parkash (supra), and also the further averment that special leave was not granted to the State by this Court, to appeal against that judgment. However, the State pleaded that the Punjab High Court had taken a similar view in another decision relating to the firm of M/s. Sansari Mal Puran Chand of Jullundur and that against the said decision, special leave had been granted by this Court and the appeal of the State was pending. The State also controverted that allegation that the notification challenged by the respondents, was illegal.

5. Before the learned Single Judge, counsel for the assessee and the State agreed that the point regarding the notification is concluded against the State by the decision of the High Court in Ganga Ram Suraj Parkash (supra), and that in consequence the writ petition will have to be allowed. By other, dated September 6, 1967, the learned Judge allowed the writ petition and prohibited the sales-tax authority from taking any further proceedings. The Court also directed the said authority to refund any tax that may have been paid on edible oils. Letters Patent Appeal No. 205 of 1968, filed by the State, was dismissed, in limine by the Division Bench on July, 18, 1968.

6. In Civil Appeal No. 1679 of 1969, the respondents is again a registered dealer at Jullundur dealing in sales of edible oils produced from sarson, toria, tilli and molasses. The firm was assessed to sales-tax for the years 1958-59 to 1960-61 on July 15, 1961. The firm disputed its liability to pay sales-tax on edible oils; and challenging the notification, referred to above, filed Civil Writ No. 2863 of 1965 to give directions to the assessing authority to refund the amount collected from it. The same averments regarding the validity of the notification based upon the decision of the High Court were made in the writ petition. The State took the same stand, as in Civil Writ No. 214 of 1965, and relied on the pendency of the appeal in this Court. As there was again an agreement between the parties regarding the nature of the order to be passed, the learned Single Judge, on September 6, 1967, passed an order similar to the one passed in Civil Writ No. 214 of 1965. Latter Patent Appeal No. 206 of 1968, filed by the State was dismissed in limine.

7. In Civil Appeal No. 1680 of 1969, the respondents is again a partnership firm and a registered dealer carrying on business of extracting oils from sarson and other oil seeds at Hoshiarpur. The firm was assessed to sales-tax for the years 1960-61 to 1962-63 on August 16, 1963. The firm disputed its liability to sales tax on edible oils; and challenging the notification issued by the State Government, referred to above, filed Civil Writ No. 565 of 1965 in High Court for similar reliefs as made in the connected petitions. The State contested this writ petition also on the same grounds as referred to above. In view of the agreement between the parties, the High Court again passed on September 6, 1967, an order, similar to the one passed in Civil Writ No. 214 of 1965. Latter Patent Appeal No. 207 of 1968 filed by the State was dismissed in limine.

8. At this stage it may be mentioned that though in the writ petition, as originally filed, an attack was made only on the notification, dated August 5, 1954, regarding sales-tax on edible oils, the assessee filed applications before the High Court for amending the writ petitions by making certain further allegations. In these applications, the firms challenged the levy of purchase tax, under the Act, on purchases of oil seeds on the ground that such levy is opposed to the provisions of the Central Sales Tax Act, 1956 (Act No. 74 of 1956) (hereinafter to be referred as the Central Act), in view of the decision that had been given by this Court in Bhawani Cotton Mills Ltd. v. State of Punjab and Another, [(1967) 3 SCR 577] holding that levy of sales-tax under the Act, as it stood on

April 1, 1960, in respect of declared goods, is illegal and invalid. In fact, the decision of this Court is referred to in the applications filed for amending the writ petitions. Therefore, the assessees added a further prayer that the assessment orders passed or orders proposed to be made are illegal and void, both on the ground that they are in conflict with the decision in Ganga Ram Suraj Parkash case (supra) and also the decision of this Court in Bhawani Cotton Mills Ltd. case (supra).

9. The applications for amendment were allowed by the High Court. But as the High Court was allowing the writ petitions, by consent of parties, in view of the decision in Ganga Ram Suraj Parkash case (supra), neither the learned Single Judge nor the Latter Patent Bench have adverted to the fresh aspects referred to in the amendment applications. The Latter Patent Bench declined to grant certificate of fitness in all these matters and that is why the State has come up to this Court by special leave.

10. Two questions arise for consideration in these appeals :

(1) whether the Notification No. 3483-E and T-54/723 (CH), dated August 5, 1954, issued by the State Government is valid; and

(2) whether the assessment orders are in conflict with the decision of this court in Bhawani Cotton Mills Ltd. (supra).

11. Regarding the first point the position arises as follows : Original entry relating to edible oils, exempted from sales tax, which was Item 57, in Schedule B of the Act, was as follows :

> "57. Edible oils produced from sarson, toria and till ghanis but not in hydrogenated from e.g., vagetable, ghee, vanaspati, etc."

12. In this entry, edible oils produced in whatever manner were exempt from tax. But by the notification, dated August 5, 1954, the original entry was deleted and in its place the following Entry 57 in Schedule B of the Act was substituted :

> "57. Edible oils produced from sarson, toria and till indigenous kohlus worked by animal or human agency when sold by the owners of such kohlus only."

13. From the substituted entry it will be seen that edible oils produced by mechanical process will not be eligible for exemption from sales tax. It is this notification that was challenged in Ganga Ram Suraj Parkash (supra), before the High Court on several grounds. The High Court in Ganga Ram Suraj Parkash (supra), held that the notification was invalid. In this connection, the High Court has also relied on the provisions of the Act, as it originally stood, as well as to the provisions of the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 (Central Act, 52 of 952). This Act, 52 of 1952, was repealed by Section 6 of the Central Act on December 21, 1956. The repealing section came into force on January 5, 1957. The High Court has also referred to the unamended Article 286(3) of the Constitution. Based upon these provisions, the High Court held that the notification was invalid and therefore the substitution of the new Entry 57, cannot hit the assessees.

14. The decision of the High Court, in the connected case of M/s. Sansari Mal Puran Chand was dealt with by this Court in its decision in The Punjab State, Chandigarh v. Sansari Mal Puran Chand. [(1968) 1 SCR 337]. This Court, after an elaborate reference to the provisions of the Act, as well as to the Constitution (Sixth Amendment) Act, with effect from September 11, 1956, held that the Act

and the notification issued thereunder effectively imposed tax on sales of edible oils from September 11, 1956 and not before. Accordingly, this Court held that the notification, dated August 5, 1954, issued by the State Government was valid from September 11, 1956, and as such the assessees were liable to pay tax on all sales of edible oils effected by them after September 1, 1956. This Court further held that the dealers were not liable to pay tax on their sales made before September 11, 1956. As there is a very elaborate discussion in the judgment of this Court for upholding the validity of the notification after the date mentioned above, we do not think it necessary to cover the ground over again. Therefore, it must be held that the view of the High Court, in the appeals before us, that the impugned notification is invalid and that the substituted Entry 57 in Schedule B of the Act is not operative, cannot be sustained. There does not appear to have been any controversy that the assessees, before us, are producing edible oils not in the manner referred to under Entry 57 but by a mechanical process. Therefore, it follows that their claim for exemption on the basis of Entry 57, as it existed previously, falls to the ground.

15. As the judgment of the High Court has been exclusively based on its previous decision in Ganga Ram Suraj Parkash (supra), which has been overruled by this Court, it follows that part of the judgment and order of the High Court will have to be set aside.

16. But the matter does not end there. We have to deal with the second point, which has already been set out. The question that arises is whether the assessment orders are in conflict with the decision of this Court in Bhawani Cotton Mills Ltd. (supra). We have already referred to the fact that the assessees were permitted by the High Court to amend their writ petitions by raising an attack on the levy of purchase tax under the Act, as it stood on April 1, 1960, on purchases of oil seeds, on the ground that such levy is opposed to the provisions of the Central Act. That contention has, no doubt, not been considered by the High Court. But in view of the decision of this Court in Bhawani Cotton Mills Ltd. (supra), the contention of the assessees in this regard will have to be accepted. But it is not clear from the assessment orders or the record whether and at what stage the purchase tax has been levied in respect of oil seeds. In fact, it appears from the grounds taken by the State in the special leave petitions that the articles (which will include both oil seeds and edible oils) are declared goods. On this matter, without further materials, it is not possible for us to express any opinion.

17. Even in the applications filed before the High Court for grant of certificate, as also in the grounds raised before this Court, the State has specifically referred to the Ordinances Nos. 1 and 12 of 1967 issued by the Governor of Punjab, in view of the decision of this Court in Bhawani Cotton Mills Ltd. (supra), and also to the Punjab General Sales Tax (Amendment and Validation) Act, 1957 (hereinafter to be referred as the Amendment Act), which replaced the Ordinances. Even in their statement of case, the appellants herein, have referred to the Amendment Act and in particular to the new Section 11-AA incorporated in the Act. On this basis they have raised a contention that the assessing authority will have to exercise his jurisdiction afresh in respect of the orders of assessment already passed regarding declared goods and pass fresh orders in accordance with the provisions of the Act as amended by the Amendment Act.

18. We have elaborately considered in Civil Appeals Nos. 2319 and 2320 of 1968 etc. the changes introduced, regarding the levy of sales tax, on declared goods, by the Amendment Act, and in particular the obligation cast upon the assessing authority to reconsider the orders of assessment, under Section 11-AA. We have delivered judgment in those appeals earlier in the day. Therefore, we do not think it necessary to cover the ground over again. Having due regard to the principles laid down by us in those appeals, the assessing authority is directed to exercise his jurisdiction under

Section 11-AA of the Act, as it now stands, and vary or revise the orders of assessment in all these appeals already made, so as to bring them in conformity with the provisions of the Act, as amended by the Amendment Act. If any assessment has not been completed, it is needless to state that the fresh order of assessment will have to be made by him, in accordance with the principles laid down by us in those decisions, read along with the provisions of the Act, as it now stands, after the amendment, introduced thereunder by the Amendment Act.

19. The appeals are allowed in part and the judgments and orders of the High Court are modified by declaring that the impugned notification is valid and it has effect from September 11, 1956, and sales tax on edible oils can be levied after that date. In other respects the appeals are dismissed, subject to the directions given to the assessing authority in the earlier part of the judgment. Parties will bear their own costs in all these appeals.

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