

The Commissioner Sales Tax U. P.

Vs.

M/S. Suraj Prasad Gouri Shankar

Civil Appeals Nos. 2086 and 2087(NT) of 1969

(K. S. Hegde, P. Jagmohan Reddy, H. R. Khanna JJ)

04.10.1972

JUDGMENT

HEDGE. J. –

1. These appeals by special leave arise from the decision of the Allahabad High Court in Sales-tax Reference No. 297 of 1967 on its file. In that case the High Court was considering a reference under Section 11(1) of the U.P. Sales-tax Act, 1948 (hereinafter to be referred to as the Act). The question referred for the opinion of the High Court was :

"Whether on the facts and in the circumstances of the case, the assessee acting as Commission Agent was liable to pay Sales-tax in the years 1960-61 and 1961-62 on the turnover of Khandsari sugar manufactured by his principals ?"

The assessee was carrying on the business of commission agency in Varanasi. He is also a dealer in Oilseeds and Kirana. In this case we are only concerned with his dealings in Khandsari sugar. In respect of the assessment years in question a dispute arose between him and the Sales Tax Officer as to his liability to pay tax on the turnover relating to Khandsari sugar sold by him as Commission Agent, on behalf of his principals who manufactured sugar in U.P. At this stage it may also be noted that the Khandsari Sugar with which we are concerned in this case was not subjected to any additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

2. The assessee's contention was that in view of the Notification No. S.T. 1365/X - 990-1956, dated April 1, 1960, the turnover relating to Khandsari sugar manufactured in the State was liable to tax as from April 1, 1960, only at the point of sale by the manufacturer and that he not being a manufacturer was not liable to pay any sales tax. On the other hand it was contended on behalf of the Department that in view of Section 3 of the Act the assessee was liable to pay sales tax in respect of his dealings in Khandsari sugar.

3. It is not disputed that put for the Notification referred to earlier the assessee would have been liable to pay sales tax in respect of his turnover relating to sale of Khandsari sugar in view of Section 3 of the Act. The only question that calls for an answer is whether in view of the Notification referred to earlier he is not liable to pay the tax in question. The Notification so far as it is material for our purpose reads thus :

'In exercise of the powers conferred by Section 3-A of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), as amended from time to time the Governor of Uttar Pradesh is

pleased to -

(i) Supersede, with effect from April 1, 1960, all the previous notifications so far as they relate to the goods mentioned in column 2 of the Schedule hereto and the rates of sales-tax given in such notifications, and

Declare that, with effect from April 1, 1960, the turnover in respect of the goods mentioned in column 2 of the Schedule thereto shall be liable to tax only at the point of sale specified in column 4 thereof and under the circumstances specified in column 3 thereof.

(ii) The Governor is further pleased to declare that as from April 1, 1960, the rate of tax in respect of the turnover of individual goods mentioned in the aforesaid column 2 shall be as mentioned against each goods in column 5 of the Schedule hereto :

#	Sl. Name of goods	Circumstances	Rate of tax	No. which to be taxed	Point of sale
1	2	3	4	5	
					* * * * *40
	Khandsari sugar	on (a) If imported from (a) Sale by 2 paise which additional outside Uttar importer. per excise duty is not Pradesh. rupee. leviabie under the Additional Duties (b) If manufactured in (b) Sale by do. of Excise (Goods of Uttar Pradesh. manufacturer. Special Importance) Act, 1957 or if leviabie it has specifically been exempted from such levy.			

4. Khandsari sugar with which we are concerned in this case was manufactured in U.P. That being so we are in agreement with the High Court that only the sales by the manufacturers are liable to be brought to tax under the Notification. The Notification referred to earlier, in our opinion, takes the present case outside the scope of Section 3 of the Act. The sales effected by the Commission Agent in view of that Notification must be considered as sales by the manufacturer himself. Consequently it is only the manufacturer that could have been taxed in respect of the turnover relating to those sales and not the Commission Agent.

5. Mr. Karkhanis, the learned counsel for the appellant, relied on certain decisions rendered by some of the High Courts, namely, Irri Veera Raju, v. The Commercial Tax Officer, Tadepalligudem, ((1967) 20 STC 501 (AP)) Ramalakshmana and Co. v. State of Madras ((1968) 21 STC 35 (Mad)) and Commissioner of Sales Tax v. Ganga Ram Ghurey Lal. ((1971) 27 STC 109 (All)) None of those decisions have any bearing on the point in issue in this case. If at all, the ratio of the decision in Irri Veera Raju's case (supra), runs counter to the arguments advanced on behalf of the appellant.

6. We see no substance in these appeals. These appeals are accordingly dismissed with costs. One hearing fee.

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