

M/S. Hindustan Sugar Mills

Vs

State of Rajasthan and Others

Review Petition No. 83 of 1979

(P.N. Bhagwati, V.D. Tulzapurkar JJ)

31.08.1979

### JUDGMENT

This application for review is directed against certain observations made by this Court in the course of the judgment in Civil Appeal No. 1122 of 1976 ((1978) 4 SCC 271 : 1978 SCC (Tax) 225). The question which arose in that appeal was whether, in sales of cement effected by the appellant under the Cement Control Order, 1967, the amount of freight formed part of the "sale price" so as to be exigible to sales tax under the Central Sales Tax Act, 1956 and the Rajasthan Sales Tax Act, 1954. This Court held that having regard to the terms of Cement Control Order, 1967, the amount of freight formed part of the "sale price" and was liable to be included in the turnover for the purpose of taxability under both the Central and the State Acts. However, it was stated before us by the learned counsel appearing on behalf of the appellant in the course of the arguments that the appellant had entered into a large number of transactions of sale of cement with the Central Government through the Director General of Supplies and Disposals and when the appellant claimed to recover the amount of sales tax in respect of these transactions from the Central Government on the basis that freight was part of "sale price", the Director General of Supplies and Disposals pointed out to the appellant that the Law Department of the Government of India had advised them that freight was not part of "sale price" within the meaning of the definition of that term and hence no sales tax would be payable by the appellant on the amount of freight and the appellant was, therefore, not justified in claiming to recover the amount of sales tax from the Central Government, and in view of this statement made on behalf of the Central Government, the appellant did not press its claim to recover the amount of sales tax on the freight component of the price from the Central Government. We got the impression that having regard to the opinion of the Law Department of the Government of India, no clause was introduced in the contract with the Director General of Supplies and Disposals providing for reimbursement of the amount of sales tax to the appellant in case the appellant was liable to pay the same under the Central Sales Tax Act, 1956 and the Rajasthan Sales Tax Act, 1954. We thought that in the absence of any such clause in the contract, there would be no legal liability on the Central Government to pay to the appellant the amount of sales tax on the freight component of the price in respect of transactions of sale of cement entered into by the appellant with the Director General of Supplies and Disposals, and that is why we observed in the judgment "it is true and we are aware that there is no legal liability on the Central Government to do so but it must be remembered that we are living in a democratic society governed by the rule of law and every government which claims to be inspired by ethical and moral values must do what is fair and just to the citizen, regardless of legal technicalities. We hope and trust that the Central Government will not seek to defeat the legitimate claim of the assessee for reimbursement of sales tax on the amount of freight by adopting a legalistic attitude." These observations were made on the assumption that there was no legal liability on the Central

Government to reimburse the appellant in respect of the amount of sales tax on the freight component of the price, and we, therefore, wanted to impress on the Central Government that even if there was no such legal liability, the Central Government must pay up the amount of sales tax on the freight components of the price and do what is fair and just to the citizen. But now we find from the application for review that there is, in fact, Clause 8(1) in the Rate Contract with the Director General of Supplies and Disposals which provides that sales tax, if legally leviable, will be paid in addition to the price given in Clause 4 of the Rate Contract". This clause clearly stipulates that whatever is the amount of sales tax legally leviable from the appellant would be reimbursed by the Central Government to the appellant. The Central Government is plainly under a liability to pay to the appellant the amount of sales tax in respect of freight component of the price since that is held to chargeable to the appellant both under the Central Sales Tax Act, 1956 and the Rajasthan Sales Tax Act, 1954. The assumption on which we made the above observations has been shown to unfounded and these observations must, therefore, stand deleted from the judgment, in so far as they relate to contracts with the Director General of Supplies and Disposals which contained Clause 8(1) or any other similar clause providing for payment by the Central Government of the amount of sales tax legally leviable from the appellant. Where there is such a clause, the Central Government is bound to pay the amount of sales tax on the freight component of the price and we hope and trust that the Central Government will honour its legal obligation and not drive the appellant to file a suit for recovery of the amount of such sales tax. We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting to any legal technicalities, for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and just to the citizen, and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand.

We accordingly allow the application for review to the extent mentioned above. There will be no order as to costs.

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