

State of Punjab and Others

Vs

M/S. Mulakh Raj Nand Lal

Civil Appeal No. 751 of 1975

(V.D. Tulzapurkar, E.S. Venkataramiah, A.N. Sen JJ)

17.03.1981

JUDGMENT

TULZAPURKAR, J. –

1. After hearing the counsel for the appellant we are satisfied that there is no substance in this appeal.
2. The respondent-assessee, a registered dealer, deals in vegetable ghee - an item on which sales tax is leviable at the first stage of sale under notification dated March 30, 1966 as provided in Section 5(1-A) of the Punjab General Sales Tax Act, 1948. Admittedly, the first stage of sale in respect of the goods in question was at the time when the manufacturer (Amritsar Sugar Mills Co. Ltd.) sold the goods to two unregistered dealers (M/s. Rallia Ram Gurbax Rai, Taran Tarn and M/s. Krishan Lal Brij Mohan, Amritsar). These unregistered firms in their turn sold the same goods to the respondent-assessee who in due course sold the goods to consumers and the question for determination is whether respondent-assessee is liable to pay sales tax on the sale of these goods to his consumers and the answer to the question depends on the proper interpretation of Section 5(1-A) and the proviso thereto of the Act.
3. In our view, the interpretation put by the Division Bench of the High Court on Section 5(1-A) and the proviso thereto seems to be quite correct. The dominant intention of Section 5(1-A) is to impose the levy of a single point tax on the first stage of the sale of the goods specified in the notification issued thereunder. The charging provision is to be found in Section 5(1-A) while the proviso merely provides that subsequent sales will be exempt provided the dealer effecting such subsequent sales furnishes documents (certificate) mentioned therein. It is not possible to accept the contention on behalf of the State Government that the respondent-assessee having purchased goods from two unregistered dealers is not entitled to have his sales to his consumers exempted from sales tax. Admittedly, the manufacturer, himself a registered dealer, when he sold the goods to the unregistered dealers had issued the necessary certificates and had undertaken the liability to pay sales tax on the sales effected by him - such sales being the sales at the first stage under clause (b) of the Notification dated March 30, 1966. The respondent-assessee had produced the certificates to support his claim that he was not liable to pay any sales tax on the sales effected by him of the very goods to his consumers, the same being claimed as subsequent sales effected by him. In our view, the Division Bench of the High Court rightly held that the respondent's sales to his consumer being subsequent sales would not suffer any sales tax. It is difficult to accept the contention that the phrase "registered dealer from whom the goods were purchased" occurring at the end of the proviso should be construed so as to prevent assessee's sales being regarded as subsequent sales simply because his purchases were not from immediate registered dealer but were from two unregistered dealers who

had purchased from the registered dealers. The words in that phrase are not "registered dealer from whom he (the dealer effecting the subsequent sales) had purchased the goods". The words as they are have been rightly construed by the Division Bench of the High Court to mean a registered dealer "from whom the goods were (originally purchased" or "from whom the goods were purchased (at the first stage)". Such construction is in consonance with the dominant intention of legislature to impose a levy on the sale at the first stage.

4. Looking at the case from the angle of the notification date March 30, 1966 also it is clear to us that under that notification the intention was to levy sales tax at the first stage of the sale of specified goods and the notification has gone on to describe three situations in which what should be regarded as a sale at the first stage as required by the Explanation to Section 5(1-A). Admittedly the instant case falls under the situation described in clause (b) of the Notification which alone will be taxable and, therefore, the subsequent sales effected by the respondent-assessee to his consumers would be outside the pale of taxing liability under the Act.

5. The appeal is accordingly dismissed with costs.

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