Rajasthan Commercial Corporation and Another

Vs

Sales Tax Commissioner And Others

Writ Petition Nos. 3835 of 1978 and 451 of 1979

(V. Khalid, G. L. Oza JJ)

19.09.1986

JUDGMENT

KHALID, J. -

1. The petitioners are the same in these two petitions. They deal in bright-bars. These are declared goods within the meaning of the provisions of the Bengal Finance (Sales Tax) Act, 1941 as extended to Delhi, for short the State Act. They were assessed to sales tax under the said Act for the Assessment years 1973-74 and 1974-75. These two writ petitions are filed to quash the assessment orders for two years in question, on the ground that the assessment made under Section 5(2)(a)(ii) of the State Act is bad since it is inconsistent with the provisions of Section 15(a) of the Central Sales Tax Act, 1956, (for short the Central Act) and violative of Article 286(3) of the Constitution of India.

2. The petitioners have come straight to this Court by way of these writ petitions without exhausting the statutory remedies available to them. These petitions need not detain us long. An identical challenge fell for consideration before this Court in the case reported in Govind Saran Ganga Saran v. CST [AIR 1985 SC 1041 : 1985 Supp SCC 205 : 1985 SCC (Tax) 447]. The challenge was upheld as assessment order in that case was set aside.

3. The ratio of the decision is this. Section 15(a) of the Central Act provides that every sales tax law of State shall be subject to the restriction and condition that the tax payable under that law, on any declared goods, shall not exceed 3 per cent of the sale or purchase price thereof and that such tax shall not be levied at more than one stage. Section 5(2)(a)(ii) of the State Act, referred above, does not contain any guideline as to the stage at which sales tax has to be laid (sic levied) upon a declared goods inside the State. It is the omission in this section of this important prerequisite of Section 15 of the Central Act that persuaded this Court to set aside the assessment in the case referred above. The State Act, as applied to the Union Territory of Delhi, was amended by Parliament in 1959 and Section 5(A) was inserted empowering the Chief Commissioner to specify, by notification in the official Gazette, the point in the series of sales by successive dealers at which any goods or class of goods can be taxed. This Court observed that no notification was brought to its notice.

4. We follow the principles laid down in the above decision and hold that, in the absence of any notification, the assessment orders challenged in these petitions have to be quashed. We do so.

5. However, we would like to make it clear that the quashing of the assessment orders by us does not necessarily mean that the petitioners have been absolved of the liability to pay any sales tax. In the counter-affidavit filed by the revenue, the stand taken is that the revenue is entitled to assess the

petitioners in the absence of evidence made available to it by the assesses of the fact that the assessees had suffered tax over the goods in question at an earlier stage. The revenue states that the attack here is in a vacuum since the assess has not shown whether he has suffered any injury. There is some force in this defence. Hence, while quashing the assessment orders, we leave open freedom to the assessing authority to re-assess the petitioners for the years in question, after ascertaining whether the petitioners have suffered liability by was of sales tax for the goods in question at any one stage. If they have been assessed before, they will not be assessed further. If they have not been assessed, assessment can be made making it clear in the assessment order that the goods in question will not suffer any assessment further within the State. With these observations we allow these petitions and direct the Assessing Authority to proceed in accordance with the direction contained in this judgment.

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