

M/S. Industrial Cables (I) Ltd. and Another

Vs

Assessing Authority and Others

Writ Petitions Nos. 4320-21 of 1978

(O. Chinnappa Reddy, G. L. Oza JJ)

11.11.1986

JUDGMENT

CHINNAPPA REDDY, J. :-

1. These two writ petitions are by the same petitioners and raise the same question. The question is whether they are entitled to claim exemption from the levy of sales tax under Section 8 (2-A) of the Central Sales Tax Act as it stood in 1978. This provision was, at that time, as follows :

(2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or in sub-section (1) or sub-section (2) of this section, if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover insofar as the turnover or any part thereof relates to the sale of such goods shall be nil, or, as the case may be, shall be calculated at the lower rate.

Explanation. - For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that laws it is exempt only in specified circumstances or under specified condition or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

Section 5 (2) of the Punjab General Sales Tax Act to the extent relevant was as follows :

Ed. : It however seems that the version quoted below is what it was prior to amendment by Act 61 to 1972 and 25 of 1975. The provision as in 1978 actually provided as follows :

(2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover insofar as the turnover or any part thereof relates to the sale of any goods, the sale, or as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil nor, as the case may be, shall be calculated at the lower rate.

Explanation. - For the purposes of this sub-section on a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

5. Rate of Tax. - (2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom -

(a) his turnover during the period on -

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy;

The petitioners manufacture and sell power cables and aluminium conductors. The sales fall within the languages of Section 5 (2) (a) (iv) of the Punjab Sales Tax Act and the question is whether, thereby, they attract Section 8 (2-A) of Central Sales Tax Act and are exempt from the levy of sales tax under the Central Sales Tax Act. The question turns on whether the present sales are sales of any goods by a dealer exempt from tax generally under the sales tax laws of the appropriate State. The explanation of Section 8 (2-A) of the Central Sales Tax Act expressly provides that a sale of goods shall not be exempt from tax generally of the appropriate State, if under that law it is exempt only in specified circumstances or under specified conditions etc. The exemption granted by the State law in the present case is to "sales to any undertaking supplying electrical energy to the public... of goods for use by it for generation or distribution of such energy". The exemption, it is seen, is only to sales of goods which satisfy two conditions, first, the sales should be to an undertaking supplying electrical energy to the public under a licence and second the sale should be for use by the undertaking in the generation or distribution of electrical energy. By no stretch of imagination can it be said that here was any exemption from tax generally. This may be so said even without recourse to the explanation. The explanation only puts the matter beyond all controversy. The identical question came up for consideration in *Indian Aluminium Cables Ltd. v. State of Haryana* and the question was decided against the assessee therein. The learned counsel for the appellants made a brave attempt to distinguish that case on the ground that Section 8 (2-A) of the Central Act which was considered in that case was the amended provision and that case could not, therefore, be relied upon. That, in the parlance of lawyers, is a distinction without difference, since we find no pertinent difference between Section 8 (2-A) amended and unamended insofar as it relates to the present controversy. The learned counsel however invited our attention to the decision of the Allahabad High Court in *Hindustan Safety Glass Works (P) Ltd. v. State of U. P.* and submitted that this decision supported him and that it was not disapproved by this Court in *Indian Aluminium Cables Ltd. v. State of Haryana* that we can say is that this Court in *Indian Aluminium Cables Ltd. v. State of Haryana* expressed no opinion on the correctness or otherwise of the *Safety Glass Works* case. The decision of this Court in *Indian Aluminium Cables Ltd. v. State of Haryana* is directly on point an we see (sic no) reason to depart from the view taken there. The petitions are dismissed.

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