

M/S Jamana Flour & Oil Mill (P) Ltd.

Vs

State of Bihar

Civil Appeal No. 103 of 1975

(CJI R. S. Pathak, Ranganath Misra JJ)

16.04.1987

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal is by special leave. Challenge herein is to the decision of the Patna High Court rendered on a reference under Section 33(1) of the Bihar Sales Tax Act, 1959. The following question was referred to the High Court for its opinion, by the Commercial Taxes Tribunal of Bihar :

Whether in the facts and circumstances of the case, the direction of the Tribunal to ascertain the price of the containers (gunny bags) of wheat products sold for an all-inclusive price under the provisions of the Roller Mills Wheat Products (Price Control) Order, 1964, for taxing the same at a higher rate of 4 1/2 per cent is legally valid ?

For the year 1964-65, the assessee, a registered dealer, under the Bihar Sales Tax Act returned a gross turnover of Rs. 53,39,981 which was accepted by the assessing officer. He determined the taxable turnover at Rs. 52,79,962 representing sale of wheat products taxable at 2 per cent. He found that the dealer had sold gunny bags in which wheat products had been packed and determined its turnover at Rs. 1,37,150 and assessed the same at 4 1/2 per cent.

2. The First Appellate Authority on assessee's appeal held :

The learned Assessing Officer was not justified in adding back the price of container in the gross turnover. What he should have done is to tax a portion of the taxable turnover at a different rate or in other words out of the turnover taxable under the Bihar Sales Tax Act, the price of bags calculated at the rate of Rs. 0.70 paise per hundred kilogram should have been deducted and taxed @ 4 1/2 per cent. The remaining was to be taxed @ 2 per cent.

3. The dealer filed a revision before the Tribunal and contended that the demand of sales tax payable at different rates on the calculated turnover of gunny bags was not at all warranted as no price had been charged for the containers. The Tribunal found :

(1) The dealer transferred the property in the gunny bags, the packing material, to the purchasers for price.

(2) The price of the gunny bags was included in the consolidated rates of price charged by the dealer.

(3) There was an implied agreement for the sale of gunny bags between the dealer and the different purchasers to whom the wheat products were supplied.

(4) The transfer of gunny bags was impliedly covered by the contract of sale with regard to the wheat products.

On these findings the Tribunal held :

We hold that the learned lower courts were justified in levying tax at a different rate on the turnover on account of sale of gunny bags in which the wheat products were sold.

It further found :

The learned Deputy Commissioner has given a direction for determination of the turnover on account of sale of gunny bags. On being asked the applicant accepted that the accounts maintained by him would reveal the exact number of gunny bags used in the transaction of sale under consideration as also the price of the same. Hence we direct in modification of the orders passed by the learned Deputy Commissioner in this behalf that the learned Assessing Officer should ascertain from the accounts, the turnover on account of sale of gunny bags as container of wheat products during the period under consideration and assess tax thereon at the prescribed rate of 4 1/2 per cent. The balance turnover shall be assessed at 2 per cent.

4. Reliance was placed on the provisions of Clause 3 of the Roller Mills Wheat Products (Price Control) Order, 1964. That clause provides :

3. Maximum ex-mill prices of wheat products. - No owner or other person in charge of a roller mill shall sell, or offer for sale, ex-mill any of the wheat products specified in column 1 of Schedule II to this Order -

#(a) \* \* \*##

(b) In the State of Maharashtra (excluding Greater Bombay) and in any other State [not being a State specified in sub-clause (a)], to which this Order applies, at a price exceeding the price specified against the Clause 3 thereof.

Explanation. - The prices referred to in this clause are :

(i) Exclusive of :

#(a) \* \* \*(b) \* \* \*##

(ii) for net weight (inclusive of the cost of the bag), but where wheat products are sold in cloth bags in quantities of 40 kgs. net, 20 kgs. net and 10 kgs. net, a sum of 70 nP., 37 nP. and 19 nP. respectively, towards the cost of the cloth bag may be charged in addition to the said prices.

5. In our view, the Tribunal rightly came to the conclusion that there was implied agreement of sale of the gunny bags. Admittedly gunny bags are a different commodity and sale thereof is assessable to tax at 4 1/2 per cent. It is not disputed that appellant bought gunny bags for packing wheat products for the purpose of sale. The Control Order contemplates a net weight which means that the weight of the bag is included in the price to be charged by dealer. Under the explanation when packing is done in cloth bags, a higher rate is admissible. The scheme clearly suggests that the price of gunny bags is inclusive and where cloth bag is used, a higher price over and above what has been provided for ordinary containers is permitted.

6. This Court in *Commissioner of Taxes v. Prabhat Marketing Co. Ltd.* ((1967) 19 STC 84, 86 (SC) : AIR 1967 SC 602 : (1967) 1 SCR 961), has held :

In *Hyderabad Deccan Cigarette Factory v. State of Andhra Pradesh* ((1966) 17 STC 624 (SC)), it was held by this Court that in a case of this description what the Sales Tax Authorities had to do was to ask and answer the question whether the parties, having regard to the circumstances of the case, intended to sell or buy the packing materials or whether the subject matter of the contracts of sale was only an exempted article (here exigible to tax at radical rate), and packing materials did not form part of the bargain at all, but were used by the sellers as a convenient and cheap vehicle of transport.

In that decision it was further pointed out that the question as to whether there was an agreement to sell packing material was a pure question of fact depending upon the circumstances found in each case. The Tribunal and the High Court have recorded a clear finding that there was an implied contract for sale of the gunny bags along with the products contained therein.

7. In this Court, the assessee filed an affidavit and produced a communication purporting to be of the Regional Director (Food), Eastern Region, Government of India, dated July 23, 1957. This not being the part of the record and the affidavit having been filed at a belated stage has got to be rejected.

8. There is no scope to dispute the assessability of sales tax on the turnover of gunny bags. This appeal fails and is dismissed. Parties are directed to bear their own costs.

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