Commissioner, Sales Tax, U.P.

Vs

M/S. Agra Belting Works, Agra

Civil Appeal No. 1134 (NT) of 1987

(CJI R. S. Pathak, B. C. Ray, Ranganath Misra JJ)

29.04.1987

JUDGMENT

RANGANATH MISRA, J.

1. (for himself and Pathak, C.J.) - Special leave granted.

2. Delay of six days is condoned.

3. The short question for consideration in this appeal at the instance of the revenue is whether the High Court was justified in holding that in the absence of a notification withdrawing type earlier notification dated November 25, 1958 made in exercise of power vested under Section 4 of the U.P. Sales Tax Act, 1948, sales tax would not be exigible in terms of the notification dated December 1, 1973 issued under Section 3-A of that Act.

4. The notification of 1958 exempted 'cotton fabrics of all varieties from sales tax. It is not disputed that under it sale of patta, the goods in question on being treated as cotton fabric was exempted from sales tax. The notification of 1973 made under Section 3-A of the Act prescribed sales tax of seven per cent on the sale of beltings of all kinds. There is no dispute not that patta is a kind of belting material.

5. Section 3 of the Action contains the charging provision and prescribes a uniform rate of tax on sales. Section 3-A empowers that State Government to modify the rate of tax by notification. The notification of 1973 in fact prescribes a rate of tax by notification. The notification of 1973 in fact prescribes a rate of tax higher than provided by Section 3. In 1958, under the notification referred to above, patta as an item of cotton fabric stood exempted from tax liability. The High Court has referred to some of its earlier decisions and has concluded thus :

> Thus the consistent view of this court throughout has been that by issuing a separate notification under Section 3-A, the earlier exemption granted under Section 4 of the Act cannot be negatived. If the State wanted to tax 'beltings of all kinds', it has to amend the general notification issued under Section 4 by deleting cotton fabric belts from the notification issued under Section 4 of Act.

6. As has been pointed out above, Section 3 is the charging provision; Section 3-A authorises variation of the rate of tax and Section 4 provides for exemption from tax. All the three sections are part of the taxing scheme incorporated in the Act and the power both under Section 3-A as also under Section 4 is exercisable by the State Government only. When after a notification under

Section 4 granting exemption from liability, a subsequent notification under Section 3-A prescribes the rate of tax, it is beyond doubt that the intention is to withdraw the exemption and make the sale liable to tax at the rate prescribed in the notification. As the power both for the grant of exemption and the variation of the rate of tax vests in the State Government and it is not the requirement of the statute that a notification of recall of exemption is a condition precedent to imposing tax at any prescribed rate by a valid notification under Section 3-A, we see no force in the contention of the assessee which has been upheld by the High Court. In fact, the second notification can easily be treated as a combined notification - both for withdrawal of exemption and also for providing higher tax. When power for both the operations vests in the State and the intention to levy the tax is clear we see no justification for not giving effect to the second notification. We would like to point out that the exemption was in regard to a class of goods and while the exemption continues, a specific item has now been notified under Section 3-A of the Act.

7. The appeal is allowed. The order of the Tribunal which has been affirmed by the High Court is set aside and the assessment is restored. Parties are directed to bear their respective costs throughout.

B. C. RAY J.

(dissenting) - I have had the privilege of going through the judgment rendered by my learned brother but I am unable to concur with the reasonings recorded by my learned brother in his judgment so far as it relates to the scope and effect of the notification dated December 1, 1973 made under Section 3-A of the U.P. Sales Tax Act, 1948 by providing for imposition of sales tax on "beltings of all kinds" for the reasons given hereunder :

9. Under Section 4 of the U.P. Sales Tax Act, 1948 the government issued to notifications No. S.T. 4486/x dated December 14, 1957 and No. 4064/x-960(4)/58 dated November 25, 1958 whereby "cotton fabrics of all kinds" were exempted from the imposition of sales tax under the Act. Thereafter on December 1, 1973 a notification was issued by the government under Section 3-A of the said Act which introduces in the Schedule in item No. 8 "beltings of all kinds" for imposition of sales tax. The sole question arising in this appeal is whether beltings of all kinds are exigible to sales tax by virtue of the notification dated December 1, 1973 even though they fall within "cotton fabrics of all kinds" which are exempted from tax by virtue of the notification dated December 14, 1957 and November 25, 1958. Similar question arose in the case of Porritts & Spencer (Asia) Ltd. v. State of Haryana ((1978) 42 STC 433 : (SC) : (1979) 1 SCC 82 : 1979 SCC 300 : 1979 Tax LR 1692) before this Court for consideration. It was held by this Court that the words "all varieties of cotton, woolen or silken textiles ..." in item 30 of Schedule B to the Punjab General Sales Tax Act must be interpreted according to its popular sense, meaning "that sense which people conversant with the subject matter with which the statute is dealing would attribute to it". This Court further observed : [SCC pp. 85-86, SCC (Tax) p. 41, para 5]

Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn-and weaving would mean binding or putting together by some some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls : it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear in it character as a textile. It may be used for making wearing apparel, or is may be used as a covering or bedsheet or it may be used as tapestry or upholster or as duster for cleaning or as towel for drying the body. A textile may have diverse use and it is not the use

which determines its character as textile.

10. It was also held that the textile has only one meaning namely a woven fabric and that is the meaning which it bears in ordinary parlance. The court therefore held that dryer felts are textiles as these were made of yarn and the process employed was that of weaving according to warp and woof pattern. It therefore falls within the meaning of textiles and so exempted from tax.

11. Similar question arose in the case of State of Tamil Nadu v. Navinchandra & Co. ((1981) 48 STC 118 (Mad) where exemption was claimed on the basis of a notification under Section 4 of the Tamil Nadu General Sales Tax Act, 1959 in respect of hair belting and cotton belting as falling within item No. 4 of the Third Schedule of the said Act. This item No. 4 reads as follows :

> All varieties of textiles (other than durries, carpets, druggets and pure silk cloth) made wholly or partly of cotton, staple fibre, rayon, artificial silk or wool including handkerchiefs, towels, napkins, duster, cotton velvets and velveteen, tapes, niwars and laces and hosiery cloth in lengths.

It was held that textiles having a wider meaning that fabrics cotton belting and hair belting were included in the expression cotton fabrics and as such they are exempted from taxation falling within item No. 4 of the Their Schedule as it stood prior to its amendment.

12. It is pertinent to mention in this connection that in the case of Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan ((1980) 4 SCC 71 : 1980 SCC (Tax) 348) the question arose whether rayon tyre cord fabric manufactured by the appellate company included within item No. 18 inserted in the Schedule by the Rajasthan Taxation Laws (Amendment) Act, 1964 and rayon or artificial silk fabrics extended to exemption under Section 4(1) of the Rajasthan Sales Tax Act which provides for exemption of sales tax of goods specified in the Schedule. It has been held that the product falls within the exempted item rayon or artificial silk fabrics in item No. 18 of the Schedule inserted by Section 4 of the said Act. This judgment was rendered by this Court to which one of us was a party.

13. In the instant case the question arising for consideration is whether patta covered by "cotton fabrics of all varieties" is exigible to sales tax under the notification dated December 1, 1973 namely "beltings of all kinds". In view of the decisions referred to here in before cotton beltings fall within the textiles of all varieties as notified under Section 4 of the said Act being exempt from the imposition of sales tax. The question that falls for consideration is what is the effect of the notification issued under Section 3-A of the said Act on December 1, 1973 mentioned in the Schedule "beltings of all kinds". There is no dispute nor any challenge that these beltings are cotton beltings falling within cotton fabrics of all kinds and as there is a general exemption granted by the notification issued in 1957 and 1958 exempting 'cotton fabrics of all kind', it is not possible to hold in any view of the matter that it will be exigible to sales tax on the basis of the notification dated December 1, 1973 under Section 3-A of the said Act, by the government.

14. The next question for consideration is what is the effect of a notification under Section 3-A including an item in the Schedule for imposition of sales tax though there is a general exemption from sales tax under Section 4 of the Sales Tax Act. It has been held in the case of CST v. M/s. Dayal Singh Kulfi Wala, Lucknow (1980 UPTC 360 (All HC, Luck Bench) as follows :

> A fiscal statute like the one before me has to interpreted strictly. If there is any ambiguity or doubt, it should be resolved in favour of the subject. There is no equity

> about tax. The taxing liability must be express and absolute. In the present case, the specification of the goods for purposes of Section 3-A(2) is one thing, but whether or not such goods would be exempt from tax is the power conferred upon the State Government under Section 4 of the Act. So long the exemption continues, the dealer can certainly urge and with justification that the mere specification of goods under Section 3-A or declaring the point of sales at such turnover liable to tax would not take away the exemption from payment of tax which the goods enjoyed by virtue of the exercise of power by the State Government under Section 4 of the Act. The operating fields of the two sections, namely Section 3-A and 4 are distinct and separate. Section 3-A by itself cannot override the power under Section 4. On the other hand, if certain goods have been classified for purposes of Section 3-A and the point of tax has also been declared by the State Government, if such goods had been exempted from sales tax, the Department cannot contend that the exemption should not be construed in favour of the assessee.

In this case the question arose whether the general exemption granted under Section 4 of the Act in respect of milk products is sufficient to exempt kulfi and lassi in respect of which a separate notification was issued under Section 3-A for imposition of tax.

15. A similar question also arose in the case of CST v. Rita Ice Cream Co., Gorakhpur (1981 UPTC 1239 (DB) (All HC) and it was held that so long as the general exemption under Section 4 continues a particular item notified under Section 3-A of Sales Tax Act cannot be taxed.

16. On a conspectus of all these decisions aforesaid, the only irresistible inference follows that so long as the general exemption granted under Section 4 with regard to cotton fabrics of all kinds continues no sales tax can be imposed on beltings of all kinds which fall within the cotton fabrics of all kinds and the general exemption under Section 4 will prevail over the notification made under Section 3-A of the Sales Tax Act. I am unable to subscribe to the view that since the notification under Section 3-A of the U.P. Sales Tax Act has been made subsequent to the notification issued under Section 4 of the said Act, the subsequent notification under Section 3-A will prevail over the general exemption granted under Section 4 of the said Act. In may considered opinion the reasonings and conclusions arrived at by the High Court are unexceptionable.

17. The appeal is accordingly dismissed and the judgment and order of the High Court of Allahabad is hereby affirmed.

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