

M/S. Advance Bricks Co.

Vs

Assessing Authority, Rohtak and Another

Civil Appeal No. 2375 (NT) of 1987

22.09.1987

ORDER

1. Special leave granted.

2. The appellant is a registered dealer under the Haryana General Sales Tax Act, 1973 ('Act' for short) and is also a licensee under the Haryana Control of Brick Supply Order, 1972 ('Order' for short). In respect of assessment of Sales Tax for the accounting period 1981-82, it claimed deduction of a sum of Rs. 1,49,600.92 out of the gross turnover on the ground that it had purchased sun-dried bricks from one Sardool Singh, a registered dealer on payment of sales tax under the Act and that amount represented the sale price of such tax-paid bricks. The claim was rejected by the authorities under the Act. In the writ petition before the High Court the claim was rejected on the ground that raw bricks (i.e. unburnt bricks) did not come within the purview of the notification of May 5, 1973, issued by the State Government in exercise of power vested under Section 18 of the Act prescribing levy of tax at the first point in respect of the named goods of which brick was one.

3. Two questions have been placed for our consideration : (i) whether as a fact the appellant has paid sales tax on the purchase of sun-baked bricks from the seller as claimed and the appropriate declaration has been produced in the assessment proceedings, and (ii) whether bricks used in the notification of 1973 covered sub-dried bricks.

4. So far as the first question is concerned it is one of fact and both parties have agreed that we may direct the Taxing Officer to hear parties and come to his conclusion afresh. That situation would arise if we accept the contention of the assessee on the other score. We shall, therefore, proceed to examine the correctness of the other contention.

5. The term 'Brick' has not been defined in the Act. The High Court has adopted the definition given in the order, where it has been defined as 'piece of burnt clay having geometrical shape fixed in the kiln'. It is not disputed that the order has nothing to do with the Act. In the absence of a statutory definition of the term 'Brick', the common parlance meaning of the word as found in dictionaries has to be accepted. (See Lilavati Bai case [Lilavati Bai v. State of Bombay, 1957 SCR 721 : AIR 1957 SC 521] and Gulraj Singh case [Gulraj Singh v. Mota Singh, (1964) 7 SCR 205 : AIR 1965 SC 608]). Counsel for the appellant also relied upon the decisions of this Court in the cases of Dy. Commissioner, Sales Tax v. PIO Food Packers [(1980) 3 SCR 1271 : 1980 Supp SCC 174 : 1980 SCC (Tax) 319 : AIR 1980 SC 1227] and Indian Carbon Ltd. v. Superintendent of Taxes, Gauhati [(1972) 1 SCR 316 : (1971) 3 SCC 612 : AIR 1972 SC 154] in support of his submissions. According to Collins English Dictionary 'brick' means 'a rectangular block of clay mixed with sand and fired in a kiln or baked by the sun, used in building construction. New Webster's Dictionary carries the meaning of the word as : 'a block of clay usually rectangular, hardened by the sun or by burning in a kiln and used for building, paving etc.' According to the Oxford English Dictionary

'brick' means 'a substance formed of clay, kneaded, moulded, and hardened by baking with fire, or in warm countries and ancient times by drying in the sun'. Encyclopaedia Britannica indicates that 'after the bricks are formed, they must be dried to remove as much free water as possible. Drying, apart from sub-drying, is done in drier kiln with controlled draft and humidity'.

6. We have on record the Schedule of Rates of the Haryana Public Works Department of the contemporaneous time which shows that while the rate per thousand of sun-dried bricks was Rs. 15, oven-burnt bricks of that quantity of the first class cost Rs. 75 - five times more. The sun-dried bricks, though a form of brick are not indeed the same as burnt bricks. As seen above though they have many things common with baked bricks, they are not a complete substitute thereof. A customer in the market would not ordinarily be prepared to accept the sun-dried bricks to meet his requirement of bricks for house construction. As was rightly pointed out by appellant's counsel sun-dried brick is goods of an intermediate stage.

7. We are satisfied that the High Court went wrong in placing full reliance on the definition of the term 'Brick' in the order and, therefore, the proper perspective of the issue for determination has been lost sight of. For brick making, cleaned clay and sand mixed in desired proportion are put into sized frames and after the extra substance is removed, the raw brick is taken out of the frame and is laid on the field to dry up and become hard. If it is intended to make hard bricks, the same are stacked into a kiln and adequately heated up by fire. There are various methods of burning the bricks. If not burnt, the sun-dried bricks are not hard enough to take good load. Sun-dried bricks are thus an intermediate stage of bricks as understood in common parlance and are goods in the ordinary sense of the term being a commercial commodity.

8. Section 18 of the Act authorises the State Government by notification to direct that in respect of named goods, tax under Section 15 of the Act may be levied at the first stage of sale thereof and on the issue of such a notification, tax on such goods shall be levied accordingly. 'Brick' under the notification is taxed at the first point of sale. The dealer claimed deduction on the basis of the notification by maintaining that he had purchased the bricks from the manufacturer and at that point had paid the tax. Thus a second set of tax in the hands of the dealer was not exigible. The reasoning given by the taxing authorities as also the High Court cannot be sustained. As the counsel for the appellant pointed that 'brick' is a generic term; as per the meaning of the term in common parlance and dictionaries sun-dried bricks are bricks of a class and both varieties of bricks can to a considerable extent be used for the same purpose as substitute of one another. As the term 'Bricks' covers both sub-dried and oven-baked bricks, and there is no definition in the Act, the contention of the appellant that sun-dried bricks are a class of 'brick' to which the notification under Section 18 applies cannot be thrown out as wrong.

9. We have already pointed out that though both the varieties of brick are included in the generic term 'brick', the use to which these are put is not the same. We have also pointed out that there is a considerable difference in the price. Sun-dried bricks are required to undergo a further treatment, namely, the burning process to become bricks proper, when burnt, bricks are sold at a substantially higher price to meet different demands in the market. The appellant after purchasing sun-dried bricks has burnt them and sold the same for higher consideration.

10. Learned counsel for the State rightly contended that if sun-dried brick is accepted as 'brick' within the meaning of the notification, on the basis of the provision for taxing at the first point in regard to sale of bricks, by paying tax on the low consideration of sub-dried bricks, the dealer would escape liability of sales tax on the turnover of baked bricks. Undoubtedly this would be the position.

We accordingly suggested to counsel for the State that this situation should be appropriately met and the interest of the State would be properly protected if the notification in question is changed and so far as brick is concerned, necessary modification is made. Where sun-burnt brick is purchased on payment of sales tax and the purchasing dealer (whose assessment is in issue) burns the same and sells the same for a higher price, sales tax should be leviable on the sale price of such bricks. The amount of sales tax paid when sub-dried bricks were purchased on production of appropriate declaration can be deducted from the total amount of tax. This would not prejudice the revenue of the State nor would it bring about any additional liability unwarranted by law so far as the dealer is concerned. The impugned notification would not serve the purpose indicated and would require amendment. It is up to the State to take the requisite steps.

11. Now what remains for consideration is : whether the appellant would succeed in the claim for deductions. It is disputed by appellant's counsel that the sale price of bricks which had been purchased as sun-dried bricks and sold for the price of Rs. 1,49,600.92 were burnt by the appellant. On the finding that the appellant had further treated the sun-dried bricks and produced goods of added value, we do not think it would be proper to extend the benefit of total exemption for the turnover of sale of bricks from tax. The notification of the State Government is somewhat misleading; it would thus be appropriate to allow set-off of the tax paid at the time of the purchase of the sub-dried bricks out of the tax exigible on the taxable turnover of burnt bricks. While setting aside the judgment of the High Court we would direct that until appropriate amendment to the notification is made, the State should adopt the modality indicated above. In the instant case if it is found that appellant had paid sales tax to Sardool Singh, the amount of tax then paid should be given credit and the balance should be recovered.

12. The appeal is allowed to the extent indicated above. Parties shall bear their respective costs.

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