

State of Punjab and Others

Vs

M/S Seth Ganpat Ram Cotton Ginning And Pressing Factory and Others

Civil Appeal No. 1346 of 1974

(CJI R. S. Pathak, M. H. Kania JJ)

27.04.1989.

ORDER

PATHAK, C.J. –

1. These appeals arise out of writ petitions filed in the High Court of Punjab and Haryana challenging assessments made under the Punjab General Sales Tax Act.
2. The facts obtaining in these appeals are materially similar, and therefore the facts set forth in State of Punjab v. Aryavarta Industries (Civil Appeal Nos. 409 to 467 of 1975), which was treated as the leading case in the High Court need alone be stated.
3. The respondent Messrs Aryavarta Industries Private Ltd. carries on business in the State of Punjab at Abohar in the district of Ferozepur. The business consists of purchasing unginning cotton, and after ginning it selling the ginned cotton. The respondent also purchases cotton as a commission agent for other principles. Under the Punjab General Sales Tax Act purchase tax is payable on the purchase of cotton, which is one of the goods specified in Schedule 'C' to the Act. Purchase tax became leviable with effect from April 1, 1960, and the tax was imposed at the point of first purchase by a dealer. Deductions were allowed in accordance with Section 5(2) of the Act. The levy of purchase tax on cotton was challenged in appeal before this Court in Bhawani Cotton mills Ltd. v. State of Punjab ((1967) 20 STC 290 : AIR 1967 SC 1616 : (1967) 3 SCR 577), and this Court observed that the provisions of the Punjab Act levying purchase tax on declared goods specified in Schedule 'C' violated Section 15(a) of the Central Sales Tax Act, 1956, inasmuch as the stage at which the purchase tax was levied was neither defined nor ascertainable, and there was a possibility of tax being levied at more than one stage. The Punjab Act was amended by the Punjab General Sales Tax (Amendment and Validation) Act, 1967, and Section 5(3) now provided that in respect of declared goods tax was to be levied at one stage and that stage would be - (i) in the case of goods liable to sales tax, the stage of sale of such goods by the last dealer liable to pay tax under the Punjab Act; (ii) in the case of goods liable to purchase tax, the stage of purchase of such goods by the last dealer liable to pay tax under the Punjab Act. It provides further that the taxable turnover of any dealer for any period would not include his turnover during the period on any sale or purchase of declared goods at any stage other than either of the two stages referred to earlier.
4. For the assessment year 1966-67 the respondent filed his returns under the Punjab Act as it stood before its amendment in 1967. In the returns, the total purchase of unginning cotton were shown and the total sales of ginned cotton and cotton seeds were claimed as deductions from the gross turnover under Section 5(2)(a)(vi) of the Act on the ground that the purchase tax under the unamended Act was to be imposed on the first purchaser of the goods mentioned in Schedule 'C' to the Act. It was

contended that such a dealer could claim deductions under Section 5(2)(a) of the Punjab Act, and he was entitled to a deduction in respect of the purchase value of ginned cotton and cotton seeds sold to a registered dealer within six months. After the amendment, the stage of levy of purchase tax now rested at the last purchase by a dealer liable to pay tax under the Act, and if a dealer purchased cotton and sold it to a registered dealer, he was not liable to pay any purchase tax on the cotton purchased by him.

5. The assessing authority made an assessment under the Punjab Act and allowed a deduction with regard to the purchase price of the ginned cotton sold by the respondents to registered dealers out of the gross purchase turnover. It imposed purchase tax on the remainder, which was represented by cotton seeds and ginned or unginned cotton still in the possession of the respondents and undisposed of. The assessing authority relied on the decision of this Court in *State of Punjab v. Chandu Lal Kishori Lal* ((1969) 1 SCC 695 : (1970) 25 STC 52) where it was said that cotton, whether ginned or unginned, was treated as a single commodity or a single specie of declared goods for the purpose of Section 5(2)(a) of the Central Sales Tax and therefore liable to tax not exceeding two per cent of the sale or purchase price and at not more than one stage. It was also observed that the sale of cotton seeds could not be treated as a sale of declared goods for the purpose of Section 15(a) or (b) of the Central Act, that cotton seeds emerged upon a manufacturing process applied to the unginned cotton whereby the cotton and the seeds are separately, and that the seeds to separated could not be identified as part of the cotton itself. This Court took the view that the assessing authority was right in holding that the turnover of cotton seeds could not be deducted when sold to registered dealers.

6. The respondents filed writ petitions in the High Court and the learned Single Judge of the High Court allowed the writ petitions and quashed the assessment orders. Letters Patent appeals filed by the State of Punjab were dismissed by the Division Bench of the High Court. The Division Bench observed that after the sale to the registered dealers, no part of the unginned or the ginned cotton remained with the respondents, and therefore the respondents could not be said to be the last purchasers of cotton and liable to pay tax under the Punjab Act. It was observed that the retention of the cotton seeds, a by-product from the unginned cotton obtained by processing it into ginned cotton, did not constitute a retention of any part of the cotton, unginned or ginned. Consequently, no tax was attracted in the hands of the respondents in relation to the turnover of cotton, the respondents not being the last purchasers.

7. The question before us is whether the entire turnover of cotton was entitled to deduction under Section 5(2)(a)(vi) of the Punjab Act. We think that the entire purchase price of the cotton can be claimed as a deduction, because no part of the cotton after ginning was retained by the respondents. The entire ginned cotton was sold by the respondents to the registered dealers. The retention of the cotton seeds can make no difference. The assessing authority is not entitled to take into account cotton seeds for the purpose of computing the deduction to which the assessee is entitled.

8. In the result, the appeals fail and are dismissed with costs.

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