

Mukerian Papers Ltd.

Vs

State of Punjab

Civil Appeal Nos. 936(NT), 937, 2339 and 2340 of 1988

(CJI Ranganath Misra, M. N. Venkatachaliah, A. M. Ahmadi JJ)

13.02.1991

JUDGMENT

AHMADI, J. –

1. The assessee-appellant M/s. Mukerian Papers Ltd., is a company engaged in the manufacture of paper at Mukerian in the State of Punjab and is a registered dealer under the Punjab General Sales Tax Act, 1948 ('the Act' hereinafter). The assessee dispatched some part of the manufactured goods outside the State of Punjab for sale on consignment basis. However, the assessee had not paid the taxes on the taxable raw material consumed in the manufacture of such goods. A show cause notice was, therefore, issued by the Assessing Authority under Section 10(6) of the Act for the assessee's failure to pay the taxes along with the return as required by Section 4-B of the Act. Interest on the tax amount which the assessee had failed to pay was also claimed under Section 11-D of the Act. The assessee disputed its liability to pay penalty and interest on the amount of tax withheld on the plea that there was no wilful or intentional default on the part of the assessee to pay the taxes due under Section 4-B of the Act as the assessee was under a bona fide belief that no tax was to be paid on the raw material purchased for the manufacture of paper which was ultimately sent outside the State on consignment basis. This impression, based on the language of the statute, stool confirmed by the subsequent decisions of the Punjab and Haryana High Court in the case of Goodyear India Ltd. (Goodyear India Ltd. v. State of Haryana, (1983) 53 STC 163) and Bata India Ltd. (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226) till those decisions were overruled by the Full Bench decision in Des Raj Push Kumar case (Des Raj Pushp Kumar Gulati v. State of Punjab, (1985) 58 STC 393). The assessee further contended that it had acted on legal advice that it was not liable to pay any purchase tax and, therefore, in the absence of a clear intention to avoid the payment of tax, there could be no question of imposition of penalty and demand for interest. On the other hand it was contended on behalf of the revenue that the two decisions on which the assessee placed reliance were subsequent to the date on which the liability to pay the tax had arisen and hence the assessee could not take shelter under the said two decisions. The submissions made on behalf of the assessee did not find favour with the revenue. The assessee thereupon sought a reference under Section 22(1) of the Act but the Presiding Officer of the Tribunal by its order dated August 12, 1987 rejected the application as he saw no point of law to make a reference to the High Court. Civil Appeal Nos. 936 and 937 of 1988 arise out of the said order of August 12, 1987. In the other two Appeal Nos. 2239 and 2240 of 1988 the appellants have come to this Court directly from the Tribunal's order in appeal without going through the formality of seeking a reference under Section 22(1) of the Act in view of the refection of a similar request by the impugned order of August 12, 1987. This Court granted Special leave to appeal without insisting on the appellant-assessee approaching the High Court in view of the Full Bench decision of that Court in Des Raj case ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781). As the facts are identical and common questions of law arise we have

thought it proper to dispose of all the four appeals by this common judgment.

2. Counsel for the assessee-appellant contended that the main question of law involved in this case is concluded by the decision of this Court in *Goodyear India Ltd. v. State of Haryana* ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781) which was an appeal arising from the High Court's decision in the case of the same assessee reported in *Goodyear India Ltd. (Goodyear India Ltd. v. State of Haryana, (1983) 53 STC 163*) to which reference is made hereinabove. He further pointed out that while deciding the true scope of Section 9 of the Haryana General Sales Tax Act, 1974, which, says counsel, is in pari materia with Section 4-B of our Act, this Court affirmed the High Court's view expressed in *Goodyear India Ltd. ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781)* and *Bata India Ltd. (Bata India Ltd. v. State of Haryana, (1983) 54 STC 226)* to and disapproved the Full Bench view in *Des Raj case (Des Raj Pushp Kumar Gulati v. State of Punjab, (1985) 58 SRC 393)*. Counsel for the revenue, however, placed strong reliance on this Court's decision in *State of Tamil Nadu v. M. K. Kandaswami ((1975) 4 SCC 745 : 1975 SCC (Tax) 40 : (1976) 1 SCR 38)* and submitted that the assessee's case falls within the ratio of the said decision. But counsel for the assessee pointed out that this Court had considered the ratio of *Kandaswami case ((1975) 4 SCC 745 : 1975 SCC (Tax) 40 : (1976) 1 SCR 38)* in the subsequent decision and had pointed out that in that case this Court was not concerned with the actual argument with which it was concerned in the subsequent case and, therefore, the decision in the former case is not an authority for the question of law involved in the subsequent case. In order to appreciate the rival submissions it would, we think, be appropriate to examine the language of Section 4-B of the Act, which reads as under :

"4-B. Levy of purchase tax on certain goods. - Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source and -

(i) uses them within the State in the manufacture of goods specified in Schedule B, or

(ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the State in any manner other than by way of sale in the course of interstate trade or commerce or in the course of export out of the territory of India; or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of interstate trade or commerce or in the course of export out of the territory of India; or

(iv) sends them outside the State other than by way of sale in the course of interstate trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under subsection (1) of Section 5 as the State Government may Direct."

3. We may first read the plain language of the section bearing in mind the contextual setting and the objective of the law. The section seeks to provide for the levy of purchase tax on certain goods. It seeks to levy a tax on the purchase of goods, other than those specified in Schedule B, which are

used in the manufacture of goods specified in Schedule B or in the manufacture of goods, other than those specified in Schedule B and sent outside the State in any manner other than by way of sale in the course of interstate trade or commerce or in the course of export out of Indian territory provided of course no tax is payable on the purchase of such goods under any provision of the Act. Where a dealer purchases raw material other than the goods referred to in Schedule B and uses the said raw material within the State in the manufacture of goods specified in Schedule B, he becomes liable to purchase tax at the rate specified by the State Government not exceeding the maximum fixed under Section 5(1) provided no tax is paid on such goods under any other provision of the Act. However, when the raw material is used within the State in the manufacture of goods other than the one specified in Schedule B and the manufacturer 'sends' the goods so manufactured outside the State in any manner (other than by way of sale in the course of interstate trade or commerce or in the course of export out of India) he becomes liable to pay purchase tax at the rate specified. To attract this provision the revenue must show that (i) the manufacturer is a dealer liable to pay tax under the Act (ii) he has purchased goods other than those specified in Schedule B from any Source (iii) he has used the said goods within the State in the manufacture of any goods other than those specified in Schedule B and (iv) he has sent the goods so manufactured outside the State in any manner other than the one excepted. Before this provision can be involved the above requirements must be strictly proved. The first requirement identifies the tax payer, the second and the third requirements identify the goods liable to tax in the event the fourth requirement of the goods so manufactured being sent outside the State takes place. Thus the liability to pay purchase tax does not accrue on the purchase of the raw material within the State or its use in the manufacture of goods other than those specified in Schedule B but falls on the dealer when the goods so manufactured are sent outside the State. To avoid a duplication of the levy the charging clause provides that the purchase tax will be leviable under Section 4-B provided it is not leviable on the said goods under any other provision of the Act. Although the purchase tax is levied on the raw material purchased by the manufacturer, the actual levy is postponed till after the said raw material is consumed in the manufacture of another commercially distinct commodity having its own separate identity and character and is actually sent outside the State. The relevant date is the date on which the goods are sent outside the State. The taxable event takes place when the taxable goods are sent outside the State and not before that date notwithstanding the fact that the raw material was purchased and converted into a new commodity long before that date. In the present case since it is not disputed that the demand of purchase tax is based on the fact that the goods manufactured within the State from raw material purchased earlier had been sent outside the State for sale on consignment basis, we are concerned only with clause (ii) of Section 4-B whereunder the tax liability accrues on the date the goods are sent outside the State.

4. Under Section 4-B of the Act the tax becomes exigible not on the purchase of the raw material or on the use thereof in the manufacture of a new and distinct commodity but only after the goods so manufactured are dispatched to a place outside the State. Once the goods are sent outside the State the purchaser is made liable to pay the tax at the rate prescribed on the purchase of such goods provided no tax is payable on the purchase thereof under any other provision of the Act. It is, therefore, obvious that the tax though described as purchase tax is in effect a tax on consignment since it becomes effective on the happening of an event which has nothing to do with the actual purchase. Even if the raw material is used in the manufacture of any taxable goods, the purchaser does not become liable to pay tax on the raw material until the manufactured item is sent out of the State. And between the manufacture of the goods out of the purchased raw material and their actual despatch outside the State there may be a long time gap. There is, therefore, no room for doubt that the liability of tax falls only after despatch of the manufactured goods outside the State and that event may have no relation to the actual purchase or manufacture. That being so, the conclusion is

inescapable that the tax though described as a purchase tax is actually a tax on the consignment of the manufactured goods. Therefore, even though the language of Section 4-B of the Act is not identical with the relevant part of Section 9(1) of the Haryana Act, it is in substance similar in certain respects, particularly in respect of the point of time when the liability to pay tax arises. Under that provision, as here, the liability to pay purchase tax on the raw material purchased in the State which was consumed in the manufacture of any other taxable goods arose only on the despatch of the goods outside the State. We are, therefore, of the opinion that the ratio of the said decision of this Court in *Goodyear India Ltd.* ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781) applies on all fours to the main question at issue in this case.

5. In the case of *Goodyear India Ltd.* ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781) this Court was concerned with the interpretation of Section 9(1) and Section 24(3) of the Haryana Act. The facts revealed that the assessee-company, which was engaged in the manufacture of automobile tyres and tubes at its factory at Ballabgarh in Haryana, had purchased raw materials from within and outside the State for the manufacture of the said products. After manufacturing the same, the assessee-company dispatched some part of the manufactured products to its depots outside the State. The revenue sought to recover purchase tax on the raw material purchased in the State and consumed in the manufacture of such goods under Section 9(1) of the Haryana Act. The action of the revenue was challenged in the High Court of Punjab and Haryana. The High Court held that both on principle and on precedent, a mere despatch of goods to various depots of the assessee-company outside the State did not fall within the ambit of the phrase "disposes of the manufactured goods in any manner otherwise than by way of sale" employed in Section 9(1) (a) (ii) of the Haryana Act. The High Court also held that decision of this Court in *Kandaswami* ((1975) 4 SCC 745 : 1975 SCC (Tax) 40 : (1976) 1 SCR 38) was not an authority for the proposition that a mere despatch of goods outside the State fell within the ambit of the said provision. This Court while upholding the final order passed by the High Court came to the conclusion imposing the said tax were beyond the competence of the State legislature as the power to impose such tax vested in Parliament by virtue of clause (h) of Article 269(1) of the Constitution read with Entry 92-B in the Seventh Schedule, List I, inserted by the 46th Amendment to the Constitution. This Court also clarified that even before the amendments introduced by the 46th Amendment came into effect, Entry 54 in List II of the Seventh Schedule read with Article 246(3) of the Constitution conferred power on the State legislature to impose a tax on sale or purchase of goods and not on the mere consignment of goods, since consignment of goods simpliciter is neither a sale nor purchase or disposal of goods. Holding that in substance the levy was sought on the consignment of goods, this Court held that it was not liable to tax since the State's power to tax did not extend that far.

6. Counsel for the revenue placed reliance on an earlier decision of this Court reported in the case of *Kandaswami* ((1975) 4 SCC 745 : 1975 SCC (Tax) 40 : (1976) 1 SCR 38) which dealt with Section 7-A of the Tamil Nadu Act which though not identical was similar to Section 9(1) of the Haryana Act. The decision in *Kandaswami* ((1975) 4 SCC 745 : 1975 SCC (Tax) 40 : (1976) 1 SCR 38) though rendered in the context of an analogous provision was distinguished by this Court in *Goodyear India Ltd.* ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781) on the ground that it did not touch the core of the question at issue in the latter case. This aspect of the matter is elaborately dealt with in paragraphs 31 to 34 at page 796 of the report. We need not dilate on this any more since the correctness of the judgment in *Goodyear India Ltd.* ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781) is not canvassed before us. This Court, therefore, affirmed the High Court's view in *Goodyear India Ltd.* (*Goodyear India Ltd. v. State of Haryana*, (1983) 53 STC 163) and *Bata India Ltd.* (*Bata India Ltd. v. State of Haryana*, (1983) 54 STC 226) and disapproved of the Full Bench decision in the case of *Des Raj* (*Des Raj Pushp Kumar Gulati v. State of Punjab*,

(1985) 58 STC 393).

7. Once it is found that the revenue was not entitled to levy the tax which it purported to levy as purchase tax on the raw material, there can be no question of imposition of penalty or interest on the unpaid amount of tax. Therefore, the action taken in exercise of power under Section 10(6) and Section 11-D of the Act cannot be allowed to stand and must be set aside.

8. In the result these appeals succeed. We allow all these appeals and set aside the decision of the Sales Tax Tribunal, Punjab, in each case. Any recovery made under the impugned orders will be refunded within a period of three months from today. Having regard to the facts and circumstances of the case, we make no order as to costs.

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