

Karfule Private Ltd. and another

Vs

State of Maharashtra and others

Spl. Leave Petn. (Civil) No. 5148 of 1991

(Kuldip Singh, N. M. Kasliwal JJ)

22.04.1991

JUDGEMENT

KASLIWAL, J.:-

1. We have heard Mr. Florence Gabriel Sequeria who appeared in person and perused the written arguments submitted by him. The petitioners challenged the vires of R. 15 of the Bombay Sales of Motor Spirit Taxation Rules, 1958 (hereinafter referred to as 'the Rules'). Learned single Judge as well as the Division Bench of the Bombay High Court dismissed the writ petition and as such the petitioners have now come before this Court by Special Leave Petition filed under Art. 136 of the Constitution.

2. In order to the controversy we would state the facts in short. Karfule Private Ltd., Petitioner No. 1 is a private limited company registered under the Companies Act, 1956 and Mr. Florence Gabriel Sequeria, Petitioner No. 2 is the Director of the above company. The petitioners are doing the business of selling petrol, motor spirit and allied products at their Petrol' Pump at Ballard Estate, Bombay. The petitioner filed annual returns of their sales for the years 1-4-1977 to 31-3-1983 and 1-4-1986-31-3-1987. The petitioners submitted that the following quantity of motor spirit evaporated and leaked and as such they were entitled to refund of tax.

Year	Qty. of Evaporation (in Litres)
1977-78	636.3
1980-81	5230.4
1981-82	1080.9
1982-83	1852.6
1986-87	834.1

It may be mentioned that in the first round of litigation all the tax authorities decided against the petitioners and ultimately sales tax applications filed under S. 21(2) of the Bombay Sales of Motor Spirit Taxation Act, 1958 (hereinafter referred to as 'the Act') were dismissed by a Division Bench of the High Court of Bombay by order dated 17th December, 1984. The High Court held that the loss or evaporation had taken place when the motor spirit was stored in the tanks of the purchasing

dealer (petitioners in this case) and hence the provisions of sub-rule (3) of R. 15 did not come into play. It was further held that to sustain a claim for refund under this Rule, it was required and it must be established that refund was granted by the selling trader (Caltex (India) Ltd.) to the purchasing trader in respect of quantity of motor spirit lost on account of evaporation or leakage. The High Court in these circumstances dismissed the petitions. The petitioners now started second set of litigation by filing a writ petition No. 2974 of 1989 challenging the vires of R. 15(3) of the Rules. Learned single Judge held that after going through the affidavit in reply and reading the provisions of R. 15(3), he was satisfied that the petition was misconceived. In the opinion of the learned Judge even if the said Rule was struck down, it will not benefit the petitioners or others similarly situated. The petition was accordingly dismissed by order dated 27- 11- 1989. An appeal filed before the Division Bench was dismissed in limine by order dated 4-6-1990. The petitioners purchased the motor spirit from the licensed traders viz. (1) Indian Oil Corporation Ltd., (2) Bharat Refineries . Ltd., (3) Hindustan Petroleum Corp,n. Ltd., (4) Caltex (India) Ltd., (5) Indo Burma Petroleum Company Ltd. The petitioners pay sales tax at this stage itself to the above corporations and these corporations then deposit the sales tax in the treasury of the Government. The basic claim raised by the petitioners is that there is always some leakage and evaporation in the motor spirit and the quantity sold by them to the consumers is reduced and as there is no sale at all of such quantity of evaporated or leaked motor spirit, they should not be made liable for any sales tax on such quantity. It has been further submitted that R. 15(3) is liable to be struck down as it makes an unreasonable discrimination as it allows refund of sales tax to the selling trader like Caltex (India) Ltd. but not the purchasing trader like the petitioners. The Rule should provide for refund of sales tax to the trader like the petitioners in whose storage the evaporation of motor spirit takes place.

3. We find no force in the above contention of the petitioners. Rule 15(3) of the Rules reads as under:

"15. Liability of trader to pay tax-

1. & 2.....

3. Where any motor spirit Purchased by any trader has been: stored in the storage installation belonging to a trader who sells it, the quantity of motor spirit lost on account of leakage or evaporation shall be deducted from the total sales on which the tax is payable, if a refund in respect of such quantity is allowed by the trader who has sold such motor spirit."

So far as the above Rule is concerned, it comes into play only where the purchasing trader stores the motor spirit in a storage installed and belongs to the selling trader and the loss on account of evaporation or leakage takes place while the motor spirit is stored in the installation of the selling trader. It is further required that it must be established that refund was granted by the selling trader to the purchasing trader in respect of quantity of motor spirit lost on account of evaporation or leakage. The entire case of the petitioners is based on a wrong apprehension of the transaction. It may be noted that sales tax is chargeable only at one stage of the transaction of sale and not on further sales. In the present case the incidence of sales tax arises on the transaction of sale from Caltex (India) Ltd. to the petitioners and the motor spirit then becomes the property of the petitioners. Further sale of the motor spirit by the petitioners to the consumers is not liable to an tax. All the assessment orders clearly go to show that the liability of sales tax has been determined as nil, as would be clear from orders of assessment filed by the petitioners along with the special leave petition. The assessing authority in all the assessment orders has observed as under:

"All the purchases are from licensed traders viz. :-

1) Indian Oil Corporation Ltd., 2) Bharat Refineries Ltd., 3) Hindustan Petroleum Corpn. Ltd., 4) Caltex (India) Ltd., 5) Indo Burma Petroleum Co. Ltd. Hence all the sales are allowed as resales. The tax payable by the trader assessed at NIL. Issue formal notice of demand accordingly."

4. Thus it would be clear from the above observations that all the sales made by the petitioners have been considered as resale which are not liable to any tax. In view of these circumstances there is no question of claiming any refund by the petitioners from the Government. So far as the provisions of R. 15(2) are concerned which allow the refund in case the motor spirit is stored in the storage installation belonging to a trader who sells it is perfectly in order and does not suffer from any illegality in as much as the motor spirit still remains in the storage installed by the trader who sells it and the quantity of the motor spirit is reduced on account of evaporation or leakage at the stage of first sale which is liable to tax. So far as the petitioners are concerned, they purchase the motor spirit and make the payment of its price along with the sales tax and thereafter any further sale made by them is not liable to any tax and as such they cannot claim any refund of tax in respect of any quantity of motor spirit being lost on account of evaporation or leakage. There cannot be any dispute that the petitioners paid sales tax on a quantity of motor spirit actually purchased and delivered to them by the selling trader, The provisions of R. 15(f) are thus neither discriminatory nor violative of any provision of the Act or the Constitution. The petitioners pay the sales tax on the Quantity of motor spirit actually purchased by them at the time of the first transaction of sale and admittedly the motor spirit if any evaporates or leaks, subsequently from the custody of the petitioners-. Nobody is claiming any sales tax from the petitioners on any transaction of sale made by them. The petitioners after purchase become the full owner of the motor spirit and they have not been able to show that they were allowed any claim of money or compensation, in respect of any loss or shortage in motor spirit on account of leakage or evaporation, from the selling trader. If they are not entitled to claim any compensation for such loss from the selling trader how can they claim any refund of sales tax from the selling trader, or from the Government. The basis of the petitioners claim is on a misunderstanding of the provisions of the Act and the Rules as if the liability of sales tax arises on a further sale made by them to the consumers. The petitioners have also not placed the Act and the Rules of other States in order to show that traders in such business of the State of Maharashtra alone are treated differently.

5. In the result, we find no force in this petition and it is accordingly dismissed.

Petition dismissed.

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