

State of U.P. and another

Vs

Hindustan Safety Glass Works (P) Ltd.

Civil Appeal No. 109 of 1977, (with C. A. Nos. 110 and 2961 of 1977, 4591-92 of 1996, 1302 to 1305 of 1978, 4593-4594 of 1996

(N. P. Singh, S. C. Sen JJ)

20.03.1996

JUDGEMENT

SEN, J.

1. This case arises out of a Gazette Notification dated 9th January, 1970 issued by the Government of Uttar Pradesh granting exemption from payment of sales tax to various newly set up industrial undertakings. The notification was to the following effect:-

"Whereas, it has been brought to the notice of State Government that the seven Industrial Units mentioned in Schedule below have started the manufacture of goods mentioned in Column II of the Schedule with effect from the date noted against each;

And, whereas, the State Government is of opinion that it is necessary so to do for increasing the production of the said goods manufactured by the said Industrial Units;

Now therefore, in exercise of the powers under Section 4-A of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor is pleased to declare that the turnover in respect of the said goods manufactured by the said Industrial Units shall be exempt from payment of sales tax for a period of three years with effect from the date of publication of this notification in the official Gazettee;

2. As a result of this notification, the notified goods became exempt from sales tax with effect from February, 1969 for a period of three years from the date of publication of the notification in the official Gazette. The claim of the respondent, Hindustan Safety Glass Works (P) Ltd. is that it was entitled to exemption from payment of tax under the Central Sales Tax Act by virtue of the provisions of Section 8(2A) of the Central Sales Tax Act before its amendment by Act No. 61 of 1972 which came into force with effect from 1-4-1973. The position after the amendment came was examined by this Court in the case of Commissioner of Sales Tax, J and K v. Pine Chemicals Ltd. (1995) 1 SCC 58; (1995 AIR SCW 1717). In that case, it was held that where the sale or purchase of the goods was exempt generally under the State Sales Tax Law, the benefit of the exemption under Section 8(2A) of the Central Sales Tax Act would be available to an assessee. But, if the exemption granted was not of general nature, then the assessee could not claim the benefit of any exemption provided by Section 8(2A). In that case, the Government Order No. 159 provided exemption to large and medium scale industries in the State of Jammu & Kashmir from payment of sales tax both on raw materials and finished products for a period of five years from the date on

which the unit went into production. By a subsequent Government Order dated 25-8-1971, the earlier order was modified and it was provided that the State sales tax paid by large and medium scale industries on the raw materials procured by them for the initial five years of the production would be refunded to such industries. Similarly such industries were granted exemption from payment of State Sales Tax on their finished products for a period of five years from the date the unit went into production.

3. It was pointed out in that case that because of the aforesaid Government Order the assessee could not claim benefit of exemption under Section 8(2A) of the Central Sales Tax Act because the exemption was not a general one, the exemption under Government Order No. 159 was not with reference to goods or a class of category of goods, but with reference to an industrial unit producing them and their manufacture and sale within a particular period.

4. In the instant case, the exemption has not been granted to the goods generally. Specified goods (mirrors and toughened glass) produced by a specified company have been exempted from payment of sales tax for a specified period of time. It is not the case of the assessee that mirrors and toughened glass have been generally exempted from payment of tax. Therefore, in view of the ratio laid down in the aforesaid case of Commissioner of Sales Tax v. Pine Chemicals Ltd. (1995 AIR SCW 1717), (supra), it must be held that the assessee will not be entitled to get benefit of Section 8(2A) of the Central Sales Tax Act in the facts of this case.

5. On behalf of the respondent, it has been contended by Mr. Raja Ram Agarwal that sub-section (2A) of Section 8 of the Central Sales Tax Act was amended with effect from 1-4-1973. He drew our attention to the language of the section before its amendment, which was as under:-

"8(2A). Notwithstanding anything contained in sub-sec. (1) or sub0section (2) if under the sales tax laws of the appropriate State the sales or purchases as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than two percent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof, relates to the sale of such goods shall be nil or as the case may be, shall be calculated at the lower rate.

Explanation : For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sale tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods."

6. It has been contended that under the old Act the exemption was in respect of a dealer whereas under the amending Act exemption was in respect of goods. Under the repealed provisions, it would have been sufficient if a dealer was exempted from payment of tax generally. It was not necessary to establish that exemption had to be granted to the goods in order to get the benefit of the provisions of Section 8(2A).

7. Having regard to the language of the section before its amendment, we are unable to uphold the contention of Mr. Agarwal. The exemption from the Central Sales Tax Act under the repealed provisions was in respect of 'sales or purchasesof any goods by a dealer.' The section granted exemption to any goods of a dealer when such goods were 'exempt from tax generally.....'.In order

to take advantage of this Section 8(2A) a dealer will have to establish that sale or purchase of the goods in question was exempt from tax generally. If it was a special exemption granted to him because his undertaking was a new industrial undertaking or for any other reason for a limited period, then the exemption will not be of general nature and he will not be entitled to get the benefit of this sub-section. There was an Explanation to the old sub-section (2A) of Section 8 which made it clear that if the exemption was only in specified circumstances or under specified conditions or in relation to which the tax was levied at specified stages or otherwise than with reference to the turnover of goods, then the sale or purchase of goods shall not be deemed to be exempted from tax generally.

8. In the instant case, the exemption has been granted only in respect of specified goods produced by certain specified newly set up undertakings mentioned in the notification. The benefit of exemption will be available to these new undertakings for a period of three years. In other words at a specified stage of development of these industries they will be given a special benefit which will not be available generally to other industries producing goods of similar nature. Therefore, we fail to see how the aforesaid case of Commissioner of Sales Tax v. Pine Chemicals Ltd. (1995 AIR SCW 1717)(supra) can be distinguished on the ground that it was a decision given under post-amendment law. In fact, it does not appear that by the amendment of sub-section (2A) of Section 8 any change has been brought about in respect of meaning or the concept of sale or purchase of goods exempt from tax generally.

9. We were also referred to a decision of this Court in the case of M/s. Indian Aluminium Cables Ltd. v. State of Haryana, (1976) 4 SCC 27 : (AIR 1976 SC 1711). In that case the question was whether inter-State sale of electrical goods to State Electricity Undertaking under Section 5(2)(a)(iv) of the Punjab Sales Tax Act, though exempt under the State Act was not exempt from the Central Sales Tax. After referring to the Explanations to Section 8(2A) it was held that there would be no exemption under the Central Sales Tax Act if the sale, which was exempted under State Act, was only 'in specified circumstances or under specified conditions. This decision goes against the contention advanced on behalf of the respondent. In that case, this Court pointed out that exemption under the State Act was under the specified circumstances and that sale must be to an undertaking engaged in supplying electrical energy to the public under the licence granted under the Indian Electricity Act. There was also specified condition that the goods purchased by the undertaking must be used for generation or distribution of electrical energy.

10. It was contended on behalf of the respondent that in the case of Indian Aluminium Cables Ltd. (AIR 1976 SC 1711)(supra), there is a passage which seems to suggest that the decision of Allahabad High Court in the case of Hindustan Safety Glass Works (P) Ltd. v. State of Uttar Pradesh, (1974) 34 STC 209 (All) was approved by this Court.

11. We are unable to uphold this contention. The judgment of Allahabad High Court in the case of Hindustan Safety Glass Works (P) Ltd. (supra) and also some other judgments of some other High Courts were referred to and distinguished on facts. The distinguishing feature in the case of Hindustan Safety Glass Works (P) Ltd. was that the stipulation that the turnover of such sales would, for a period of three years be exempt from payment of sales tax did not amount to exempting the turnover of such goods from tax under specified circumstances or specified conditions as in the case of Indian Aluminium Cables Ltd. This Court was not called upon to hold nor did it hold that this would amount to general exemption of the goods from the sales tax.

12. In that case the principle underlying Section 6 was explained as under:-

"Section 6 of the State Act does not speak of exemption but deals with tax free goods. In other words, Section 6 deals with specified goods on which no tax is payable. Section 5 of the State Act deals with what has to be excluded from the taxable turnover of the dealer. Both the sections deal with goods which do not suffer from sales tax. Section 8(2A) of the Central Act exempts goods from inter-State sales tax where a tax of the State has exempted them from sales tax. The explanation to Section 8(2) of the Central Act takes away the exemption where it is not general and has been granted in specified circumstances or under specified conditions. The provisions contained in Section 5(2)(a)(iv) of the State Act exclude sales which are made under specified circumstances or specified conditions. The specified circumstances are that the sale must be to an undertaking engaged in supplying electrical energy to the public under a licence of sanction granted under the Indian Electricity Act, 1910. The specified condition is that the goods purchased by the undertaking must be used for the generation or distribution of electrical energy. If the circumstances do not exist or if the conditions are not performed then the sales of goods cannot be exempted from tax. General exemption means that the goods should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available. Where the exemption from taxation is conferred by condition or in certain circumstances there is no exemption from tax generally."

13. These observations completely negate the argument now advanced on behalf of the respondent. The exemption in the instant case has been granted to a few specified goods of some new industries for a specified period of time. The exemption is not generally given to all industries or all similar goods manufactured and sold in Uttar Pradesh. Similar goods produced by other industries will be taxable under the said Act.

14. Moreover it has to be noted that in the Notes on Clauses to the Bill introduced for amending the Central Sales Tax Act by the Amendment Act of 1972 (61 of 72), it was stated that "sub-clause (a) of Clause 5 sought to substitute a new sub-section for existing sub-section (2A) of Section 8 of principal Act. The new sub-section seeks to bring out more clearly that an exemption or lower rate of levy under the local sales tax law of the appropriate State would be available in respect of an inter-State sales of goods only if such exemption or lower levy is available generally with reference to such goods or such class of goods under the local sales tax law."

15. The purpose behind the amendment of Section 8(2A) was to make the existing provisions clearer. In other words the object was not to bring about any change in the existing law but to set it out in clearer words.

16. For all these reasons, we are unable to uphold that the law laid down in the case of Commissioner of Sales Tax v. Pine Chemicals Ltd. (1995 AIR SCW 1717)(supra) will not apply to a case governed by Section 8(2A) before its amendment on 1-4-1973.

17. In that view of the matter the appeal is allowed. There will be no order as to costs.

18. CIVIL APPEALS NOS. 110 AND 2961 OF 1977 AND CIVIL APPEALS NOS. 4591-92 OF 1996 (ARISING OUT OF S.L.P. (C) NOS. 245-46 OF 1978).

19. Special leave granted.

20. In view of our judgment in Civil Appeal No. 109 of 1977, the above appeals are allowed. There will be no order as to costs.

21. CIVIL APPEALS NOS. 1302,1303,1304,1305 OF 1978 AND CIVIL APPEALS NOS. 4593-94 OF 1996 (ARISING OUT OF S.L.P. (C) NOS. 7842 AND 1522 OF 1979).

22. Special leave granted.

23. In view of our judgment in Civil Appeal No. 109 of 1977, the above appeals are dismissed. There will be no order as to costs. Order accordingly.