

J. K. Synthetics Ltd. and Another

Vs

Commercial Tax Officer and Another

Civil Appeal No. 1757 of 1982

(CJI A. M. Ahmadi, S. P. Bharucha, K Venkataswami JJ)

28.01.1997

JUDGMENT

BHARUCHA, J.

1. The impugned judgment (reported in CTO v. Delhi Cloth and General Mills Ltd. [(1992) 87 STC 534 (Raj)] was delivered by a learned Single Judge of the High Court of Rajasthan. It rejected a writ petition filed by the present appellant against an order of the Board of Revenue.

2. The assessment years in question are 1965-66, 1966-67 and 1967-68. The assessee (respondent) manufactures tyre cord fabric. That tyre cord fabric was, at the relevant time, covered by the term "textile" is not in dispute.

3. Three notifications were issued by the State Government in exercise of powers conferred by Section 8(5) of the Central Sales Tax Act, 1956. They are dated 14-12-1957, 12-8-1980 and 2-1-1981 and they read thus :

1. "F.5(48)E&T/57-II dated December 14, 1957 :

In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (74 of 1956), the State Government being satisfied that it is necessary so to do in the public interest, directs that no tax under the said Act shall be payable, on and from the fourteenth day of December, 1957, by any dealer having his place of business in the State of Rajasthan in respect of the sale by him to a registered dealer from any such place of business, of the following goods, in the course of inter-State trade and commerce, namely :

(i) sugar,

(ii) tobacco and its products, and

(iii) all textiles, whether cotton, woollen or silken, including rayon, art-silk or nylon, but exclusive of pure silken cloth of all varieties (howsoever manufactured)."

2. "F.4(46)FD/Gr.IV/80-7 dated August 12, 1980 :

In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, the State Government being of the opinion that it is necessary in the public interest so to do, hereby directs that the tax in respect of sales made in the

course of inter-State trade or commerce by any dealer having his place of business in the State from any such place of business of tyre cord fabrics or warp sheets shall be payable and be calculated at 4 per cent.

This shall have immediate effect."

3. "F.17(71)FD/Gr.IV/71-I dated January 2, 1981 :

In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, the State Government being satisfied that it is necessary so to do in the public interest hereby directs that all the notifications issued under the said sub-section insofar as they relate to the sales made in the course of inter-State trade, or commerce by any dealer having his place of business in the State, from such place of business, of tyre cord fabrics and/or warp sheets shall stand superseded."

4. The relevant notifications that were issued by the State Government under the powers conferred by Section 4(2) of the Rajasthan Sales Tax Act, 1954, are dated 14-12-1957, 1-7-1958 and 20-2-1968, and they read thus :

1. "F.5(48)E&T/57/I dated December 14, 1957 :

In exercise of the powers conferred by sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (29 of 1954), the State Government being of the opinion that it is necessary in the public interest so to do, does hereby exempt the sale of -

(i) sugar,

(ii) tobacco and its products, and

(iii) all textiles, whether cotton, woollen or silken, including rayon, art-silk or nylon but exclusive of pure silken cloth of all varieties (howsoever manufactured).

from payment of the tax payable under the said Act on and from the fourteenth day of December, 1957, on the following conditions, namely :

(a) that every dealer in the aforesaid goods shall not later than the 2nd January, 1958 correctly declare in the form appended hereto all goods of the aforesaid classes held by him, whether in stock or in transit, upon the close of business on the 13th of December, 1957, separately in respect of :

(i) the goods purchased by him from dealers registered under the said Act, and

(ii) the goods otherwise purchased, whether from outside or within the State of Rajasthan, and

(b) that every such dealer shall on or before the 10th July, 1958 pay to the appropriate assessing authority under the said Act, in respect of the goods of the aforesaid classes declared under clause (a), either

(i) an amount in the case of sugar and tobacco, calculated at the existing rate of tax

payable under the said Act on the total purchase price thereof increased by way of profit by 3% and 6 1/4% respectively and in the case of textiles eighty per cent of the amount calculated at the existing rate of tax payable under the said Act on the total purchase price thereof.

(ii) an amount equal to the sum paid by him as tax under the said Act for the quarter of the previous year corresponding to the quarter of the current year in which the 14th day of December, 1957, falls :

Provided that the amount referred to in clause (b) of this notification shall not be payable in respect of stocks declared under clause (a) thereof, if the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) of the Central Legislature applies thereto, whether by virtue of the said Act being passed by Parliament or by virtue of the provisions of the Provisional Collection of Taxes Act, 1931, of the Central Legislature :

Provided further that upon payment of the amount indicated in clause (b) -

(i) a dealer in textiles mentioned above shall be eligible to a rebate of 15%, and

(ii) a dealer in tobacco and its products or sugar shall, if such payment is made in full within one month of the 13th December, 1957, be eligible to a rebate of 5% :

Provided also that nothing contained in conditions (a) and (b) above shall be applicable to handloom textiles :

Provided further that the option contained in sub-clause (ii) of clause (b) above shall not be available to the dealers in the aforesaid goods in the area of Abu, Ajmer and Sunej :

Provided further that if a dealer is unable to furnish by 2nd January, 1958, a declaration as required as aforesaid in the form already prescribed, he may submit by 2nd January, 1958, a declaration stating according to his books the value and the quantity of the stock in hand on the said fourteenth day of December, 1957, separately in respect of the articles liable to different rates of sales tax but he shall furnish further information as and when required of him by the appropriate assessing authority.

The amount payable under the aforesaid notification by a dealer may be paid up to 31st March, 1961 :

Provided that the assessing authority, after such enquiry as it may deem fit, is satisfied that the amount deposited or to be deposited is based on a correct declaration :

Provided further that no rebate admissible under the aforesaid notification (as amended up to date) shall be allowed to such a dealer.

Extract from Press Note. - (1) In the case of dealers who fail to deposit the requisite amount by the 30th June, 1958, the exemption under the aforesaid notification would not be available and all sales made by them up to and including 30th June, 1958 would be subject to sales tax at the rates in force from time to time irrespective of the fact whether the sale are of goods which have been subject to additional duty of excise imposed on 13th December, 1957 or not.

(2) Dealers thus exempted would not be liable to pay tax on fents, rags, dyed and printed cloth including tied and dyed cloth.

2. "F.5(48)E&T/57 dated July 1, 1958 :

In exercise of the powers conferred by sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (29 of 1954), the State Government being of the opinion that it is necessary in the public interest so to do, does hereby unconditionally exempt from the 1st July, 1958, from tax, the sale of -

(i) sugar including refined sugar, khandsari and palmyra sugar but excluding all preparations thereof such as sweets, sugar candy, confectionery, etc.;

(ii) all varieties of tobacco manufactured or unmanufactured;

(iii) all varieties of textiles (other than pure silk cloth) made wholly or partly of cotton, rayon, nylon, wool or artificial silk including handkerchiefs, towels, napkins, dusters, cotton, velvets and velveteen, hosiery cloth in lengths excluding finished items thereof, tapes, niwars and laces."

3. "F.5(96)FD(CT)/67-I dated February 20, 1968 :

In exercise of the powers conferred by sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954, the Government of Rajasthan being of the opinion that it is expedient in the public interest to do so, hereby rescinds the following notifications with immediate effect :

1. Excise & Taxation Department Notification No. F.5(48)E&T/57 dated 1st July, 1958.

2. Excise & Taxation Department Notification No. F.5(139)E&T/57 dated the 11th August, 1959.

3. Finance (Revenue & Economic Affairs) Department (Commercial Taxes Section) Notification No. F.5(54)FD(RT)/64 dated the 23rd February, 1965."

5. The provisions of Sections 8(1), (2-A) and (5) of the Central Sales Tax Act read thus :

"8. Rates of tax on sales in the course of inter-State trade or commerce. - (1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent of his turnover.

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(2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or sub-

section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover insofar as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent whether called a tax or fee or by any other name, 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 any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

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(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct, -

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification."

6. The provisions of Sections 3, 3-A and 4 of the Rajasthan Sales Tax Act read thus :

"3. Incidence of taxation. - (1) Subject to the provisions of this Act, every dealer whose turnover in the previous year in respect of sales or supplies of goods exceeds -

(a) in the case of a dealer who imports goods, or manufactures any goods other than cooked food excluding bakery products - Rs. 50,000,

(b) in the case of a dealer not falling in clause (a) Rs. 1,00,000,

shall be liable to pay tax under this Act on his taxable turnover if his taxable turnover exceeds Rs. 10,000 in the previous year :

Provided that a dealer who ceases to be liable to pay tax as a result of any

amendment in this sub-section, shall be liable to pay tax in respect of any goods purchased by him at a concessional rate of tax or without paying any tax on the strength of any declaration furnished by him as a registered dealer on the purchase price of such goods at the full rate applicable to the sale of such goods after adjusting the tax if already paid by him in respect thereof.

Explanation. - For the purpose of limits specified in sub-clause (a) or (b) the turnover shall include the aggregate amount for which all goods are sold or supplied, irrespective of the fact whether any of such goods are imported or manufactured or otherwise obtained by the dealer concerned or whether or not they are exempted from payment of tax; and

(2) A dealer who is not liable to pay tax under sub-section (1) or who had no business in the previous year, shall be liable to pay tax under this Act with effect from the date when his sales for the period from the first day of April are of such an amount as would render, the proportionate sales up to 31st March liable to tax according to sub-clauses (a) or (b) of sub-section (1).

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(3) (i) A casual trader, or

(ii) any other dealer in goods (except cereals and pulses) notified for the purpose of clause (ccc) of Section 2.

Who is not liable to pay tax under sub-section (1) shall nevertheless be liable to pay tax under and in accordance with the provisions of this Act and the rules made thereunder, whatever may be the amount or extent of his turnover in respect of the sales of goods made by him within the State.

3-A. Liability of dealers registered under Central Act 74 of 1956. - (1) A dealer registered under the Central Sales Tax Act, 1956 (74 of 1956) who is not liable to pay tax under Section 3 of this Act, shall nevertheless be liable to pay tax under and in accordance with the provisions of this Act and the rules made thereunder, whatever may be the amount or extent of his turnover, in respect of sales of goods made by him within the State on or after the commencement of the Rajasthan Sales Tax (Second Amendment) Act, 1958.

(2) A dealer who is liable to pay tax under sub-section (1) shall be deemed to be a registered dealer for all purposes of this Act and the rules made thereunder.

4. Act not to apply to certain sales. - (1) Not tax shall be payable under this Act on sale or purchase of any of the exempted goods if the conditions specified in column 3 of the Schedule are satisfied.

(2) Where the State Government is of opinion that it is necessary or expedient in the public interest so to do, the State Government may, by notification, in the Official Gazette, exempt, whether prospectively or retrospectively from tax the sale or purchase of any goods or class of goods or any person or class of persons on such conditions and on payment of such fee as may be specified in the notification.

(3) The Excise and Taxation Department Notification No. F.5(139)E.&/T./57, dated the 11th day of August, 1959, published in Rajasthan Rajpatra, Part IV-C, dated the 15th of October, 1959 issued under sub-section (2) shall be deemed to have been rescinded with effect on and from the 11th day of August, 1959, and notwithstanding such rescission, sale of old gunny bags during the period commencing on the 11th day of August, 1959 and ending on the 20th day of February, 1968 shall be deemed to have been exempted from payment to tax."

7. Entry 18 of the Schedule to the Rajasthan Sales Tax Act, as it read at the relevant time, was this :

"All cotton fabrics, rayons or artificial silk fabrics, woollen fabrics, sugar and tobacco as defined in the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957)."

8. The contention on behalf of the appellant is that the notifications dated 14-12-1957, were superseded by the notification dated 1-7-1958, issued under the provisions of the State Act and, in any case, in 1964 by the insertion of Entry 18 in the Schedule to the State Act. The notification dated 1-7-1958, under the State Act gave unconditional exemption to textiles. Thereby Section 8 of the Central Act was attracted. It covered the field and implicitly rescinded the notification dated 14-12-1957, issued under Section 8(5) of the Central Act which had given such exemption. Entry 18, inserted in 1964, for the same reason also covered the field. The field having been covered, the said notification dated 14-12-1957, stood rescinded by necessary implication.

9. The contention must be rejected having regard to the terms of the three aforementioned notifications issued under the provisions of the Central Act. The notification dated 2-1-1981 stated that the State Government, being satisfied that it was in the public interest so to do, directed that "all the notifications" issued under Section 8(5) in respect of sales of tyre cord fabric made in the course of inter-State trade or commerce by any dealer having his place of business in the State from such place of business should stand superseded. It will be noted that the phrase used is "all the notification". The phrase, using the plural, covers not only the notification dated 12-8-1980, but also the only other notification that meets the requirements, being the said notification dated 14-12-1957. The State Government, therefore, acted upon the basis that the said notification dated 14-12-1957, issued under Section 8(5) of the Central Act, was in force on 2-1-1981. The appellant, its officer, cannot be heard to contend that the terms of the notification dated 2-1-1981, were the result of non-application of mind and that the said notification dated 14-12-1957, had stood impliedly rescinded long before 2-1-1981.

10. On this short ground the appeal must fail. It becomes, therefore, unnecessary to analyse the provisions of the Central and State Acts under which the notifications were issued for the purpose of examining the appellant's aforestated contention.

11. The appeal is dismissed. No order as to costs.

CA No. 3382 of 1993 and Review Petition No. 1674 of 1993 in SLP (C) No. 8995 of 1982.

12. These appeals and review petition are dismissed in the light of the above judgment and order. No order as to costs.

CAs Nos. 3179-82 of 1985

13. These appeals are allowed in the light of the above judgment. No order as to costs.

CA Nos. 1757 of 1982

14. In this matter the assessee is in appeal. It had challenged in a writ petition before the High Court provisional assessment made on the basis that we have rejected above. During the pendency of the writ petition, the provisional assessments were finalised. The assessee applied for an amendment of the writ petition to challenge the final assessment orders. The amendment was refused. We find no valid ground for such rejection. However, it is fairly pointed out that in respect of one of the two assessment years in question, the assessee has filed the statutory appeal available to it. We think that it is, therefore, proper that even for the remaining year, namely, Assessment Year 1974-75, the assessee should file such statutory appeal and we direct that the bar of limitation shall not be raised or considered in such appeal; in other words, the appeal shall be decided on merits if filed within 12 weeks from today. Order on the appeal accordingly. No order as to costs.