

Calcutta Iron Merchant's Association

Vs

Commissioner of Commercial Taxes

(CJI J.S. Verma, S.C. Sen, S.P. Kurdukar JJ)

17.09.1997

JUDGMENT

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M. JAGANNADHA RAO, J.

1. Leave granted in S.L.P. (Civil) No. 13125 of 1990.

2. These two appeals have been filed by the Calcutta Iron Merchants 'Association'. Civil Appeal No. 3234 of 1990 is filed against the order of the West Bengal Taxation Tribunal, Calcutta (herein after called the Tribunal) dated 31.7.1989 in Revision Case No. R.N-144 (T) of 1989. The connected Civil Appeal (arising out of S.L.P (Civil) No. 1312 of 1990) in which we are passing separate orders is filed against the order of the same Tribunal in Case No. R.N. 89 of 1990 dated 6.7.1990.

3. To the extent the Tribunal held in its orders dated 31.7.1989 and 6.7.1990 against the State of West Bengal there are no appeals before us by the State. Appeals are preferred only by the appellant Association aggrieved by that part of the orders of the Tribunal by which the Tribunal read down sub-clause (vd) of Section 5(2) of the Bengal Finance (Sales Tax) Act, 1941 (hereinafter called the 1941 Act) and the relevant rule, namely, Rule 27A (i) (1b) (ii) (c) (i) of the Bengal Sales Tax Rules, 1941 and treating them as "directory" and not mandatory. Appellant Association contends in these appeals that having regard to the language employed in the latter part of sub-clause (vd) of Section 5(2) (a), the said language is not capable grammatically of such a construction. CIVIL APPEAL NO. 3234 OF 1990 The following are the relevant facts:

4. The 1st appellant is a registered Association and the 2nd appellant is its President. The President is himself an iron merchant carrying on his business. The 2nd appellant and the members of the Association are dealers under the 1941 Act in respect of iron and steel. In the writ petition, the constitutional validity of Section 5(2) (a) (vd) of the Act as it stood from 1.4.1985 to 1.4.1989 before the same was amended in 1989 by West Bengal Act 3 of 1989 with effect from 1.4.1989 was challenged under Article 226 of the Constitution of India in the High Court of Calcutta. The said writ petition stood transferred to the Tribunal and was disposed of by Judgment dated 31.7.1989 in R.N. 144(T) of 1989 and batch. It was contended before the Tribunal that under the above provision in Section 5(2) (a) (vd) which was introduced in 1985 with effect from 1.4.1985, the point of taxation was changed to the first point of sale from the last point of sale inside the State of West Bengal. Under the Central Sales Tax Act, 1956 only the first point of sale in iron and steel in West Bengal was eligible for tax and subsequent sales thereof would not be subject to any tax, provided the dealer at the second and subsequent points of sale was able to prove to the satisfaction of the Commissioner of Commercial Taxes that the concerned iron and steel were purchased by him from the same firm in West Bengal on or before 1.4.1985 from a registered dealer and provided that a

declaration in Form XXIVC obtainable in the prescribed proforma and duly signed by the selling registered dealer was furnished. It was the contention of the petitioners before the Tribunal that sub-clause (vd) of Section 2(5)(a) of the 1941 Act imposes an unreasonable restriction on the free flow of trade in iron and steel. The State legislature had no power to enact such a provision. Sales Tax was an indirect tax intended to be passed on to the buyers. But clause (vd) of Section 5(2)(a) prohibited such recovery and this violated article 19(1)(g) and Article 14. The clause was bad because it cast an additional obligation on the second of the subsequent selling dealer to furnish a declaration in Form XXIVC. Accordingly to them, it was sufficient to ask such a dealer to prove that the goods had, in fact, suffered tax at the first point of sale. The first purchasing dealer was unreasonably put at the mercy of the first selling registered dealer, it is contended.

5. The Tribunal, in its Judgment dated 31.7.1989, which is the subject matter of the Civil Appeal No. 3234 of 1990, held that non-production of a declaration as required under Section 5(2) (a)(vd) of the 1941 Act would result in rejection of a claim of exemption on same goods which had either actually suffered tax at an earlier stage (first point of sale) or was taxable at that stage. Such a result would amount to contravention of Section 15(a) of the Central Sales Tax Act and Article 286 (3) of the Constitution of India, according to the Tribunal. In order to conform to the requirements of Section 15(a) of the Central Sales Tax Act, provision of law must lay down a definite and ascertainable point of taxation and there must not be the possibility of tax being levied at more than one stage on the same goods and in the same form. Production of such a declaration may in some cases be an impossibility and no law could compel a person to do the impossible. For these and other reasons, the tribunal held initially that Section 5(2)(vd) was invalid on this ground but proceeded to hold the provision directory and not mandatory.

6. We are, in these appeals, not concerned with the correctness of the finding that the sub-clause was invalid for the State has not preferred any appeal. But the grievance of the writ petitioners in this appeal is that the subsequent part of the Judgment holding the provision relating to production of a declaration from the seller to be directory and not mandatory and directing that the words and furnishes be read as or furnishes is not correct inasmuch as the statute, so recast, does not convey any meaning and the sentence does not run properly even from a grammatical point of view. This is that the High Court said; "But all these vices of sub clause (vd) arise from the mandatory requirement of production of a declaration. In our view, it is necessary and also reasonable to read the words "and furnishes" as " or furnishes" in sub clause (vd) so that the mandatory character of the requirement becomes directory". Appellants contend that having held that the requirement of production of a declaration from the seller was invalid, the Tribunal could not have held that the provisions should be read as directory. Counsel, as already stated, contends that the State has not filed any appeal, that the requirement of production of the declaration from the seller is incapable of being construed as "directory". In fact, if we read the words "and furnishes" as as "or furnishes", the latter part, it is contended, does not make any since and the sentence gets grammatically distorted.

7. On these contentions, we have heard the learned counsel for the State of West Bengal.

8. We are of the view that the contention of the learned counsel for the appellant is liable to be accepted. While it is not necessary for us to go into the correctness of the conclusion that the requirement of the provision, if treated as mandatory, is invalid, the limited question before us is whether it is permissible and possible in the context of the language used to read the words " and furnishes" as "or furnishes". We shall recast the provision by using the words "or furnishes" in sub clause (vd) of Section 5(2) to find out if it conveys any meaning. So recast, it reads as follows:

"Section 5(2): In this Act, the expression taxable turnover means, in the case of a dealer who is liable to pay tax under Section 4 or under sub-section (3) of Section 8, that part of his gross turn over during any period which remains after deducting therefrom -

(a) his turn over during that period in.....

(va) sales of goods specified in Section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956) on a prior sale whereof in West Bengal due tax is shown to the satisfaction of the Commissioner to have been paid.....

(vd) sales on iron and steel as specified in clause (iv) of Section 14 of the Central Sales Tax Act, 1956, where he proves to the satisfaction of the Commission that such iron and steel were purchased by him in the same form in West Bengal, on or after the date with effect from which this sub clause comes into force, from a registered dealer or furnishes in the prescribed proforma a declaration containing prescribed particulars in the prescribed form obtainable in the prescribed manner and duly signed by the registered dealer from whom such goods were purchased". We agree with the learned counsel for the appellant that if the sub clause is read as aforesaid, it does not make sense and the sentence gets distorted from a grammatical point of view and, therefore, the latter part of the sub-section dealing with the mandatory requirement of production of declaration from the seller as stated therein, must be treated as not required to be fulfilled by the assessee for the purpose of the first part of sub-clause (vd) of Section 5(2)(a). That would result in deleting the second limb - namely, the underlined portion and leave the first limb intact thus permitting the affected parties to produce such proof as they can, in respect of the fact to be proved without being compelled to comply with the second limb of the sub-section.

9. We declare accordingly and dispose of Civil Appeal No. 3234 of 1990. CIVIL APPEAL NO..... OF 1997 (Arising out of S.L.P. (Civil) No. 13125 of 1990).

10. So far as the Civil Appeal arising out of S.L.P. (Civil) No. 13125 of 1990 is concerned, that is directed against the order dated 6.7.1990. This order was passed by the Tribunal in respect of the provisions of Section 5(2) (a) (v) as amended with effect from 1.4.1989 and, according to the appellants, this amendment too did not fully remove the mandatory requirement of furnishing the declaration by the registered dealer who is the seller. The Tribunal once again agreed that for the reasons given in its earlier order dated 31.7.1989, the concerned provision should also be held to be bad to that extent but that the latter part of the sub-clause was to be read as directory. What we have stated in regard to the provisions prevailing before 1.4.1989 equally applies to the proviso after 1.4.1989 protanto. We accordingly dispense with the need to produce the declaration from the seller as stated in the provision as amended from 1.4.1989, leaving the assessee to prove the required fact in any other manner.

11. We, therefore, dispose of the appeals in the matters accordingly.