State of M. P. and Others

Vs

Indore Iron & Steel Mills Pvt. Ltd.

Civil Appeals No. 1987 of 1995

(S. P. Bharucha, V. N. Khare JJ)

12.08.1998

JUDGMENT

BHARUCHA, J.

The order under appeal of the High Court of Madhya Pradesh allowed the writ petitions filed by the respondents, following the High Court's earlier judgment in the case of New Shakti Iron and steel Re-rolling Mills v. State of M. P. The State is in appeal by special leave. The State had preferred a petition for special leave to appeal against the judgment in the case of New Shakti Iron and Steel Re-rolling Mills but this Court had declined to interfere in view of the comparatively small amounts involved in the assessments. It left it open to the State to urge its contentions in an appropriate case.

2. By a notification dated 8-10-1978 issued in exercise of the powers conferred by section 12 of the M.P. General Sales Tax Act, 1958, the State exempted

> "in whole or in part the purchases of the class of goods specified in column (1) of the Schedule ... from the payment of tax under Section 7 of the State Act so as to reduce it to the total rate of tax specified in column (2) for the periods specified in column (3) of the said Schedule subject to the restrictions and conditions specified in column (4) thereof".

What we are concerned with is Items 2(b) of the Schedule. It relates to the purchase of iron and steel as specified in clause (4) of Section 14 of the Central Sales Tax Act, 1956. Under column 2, relating to the reduced total rate of tax, it is said : "Zero per cent (exemption from tax under Section 7 in whole)." Column (4) in relation to Item 2(b) reads :

> "Subject to the same conditions specified against Serial No. 2(a) and subject to the further condition that the goods referred to in column 1 had suffered entry tax under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 before they were purchased by the registered dealer."

3. By reason of a notification issued on 9-2-1977 under Section 10 of the M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976, the State exempted in whole the class of dealers specified in column (1) of the Schedule thereto from the payment of entry tax for the period and subject to the conditions stated therein. The exemption thereunder applied to new industries and, by reason thereof, the respondents were exempted from the payment of entry tax in respect of the period with which we are concerned. The petitioner in the earlier matter before the High Court, New Shakti Iron and Steel Re-rolling Mills, stood in the same situation as the petitioners. In its writ

petition, it contended that it was, therefore, exempted also from the payment of purchase tax under Item 2(b) of the Schedule to the notification under the State Sales Tax Act. The High Court took the view that it was

> "a matter of no consequence that the petitioner had not actually to pay, by virtue of the exemption granted under Section 10 of the Entry Tax Act any amount by way of entry tax. That means that although the petitioner would otherwise have been liable to pay entry tax under the provisions of that Act at the rate of 2.5%, it is exempted from doing so by virtue of the special notification issued by the State Government granting such an exemption to a class of dealers to which the petitioner belongs for a period of 5 years by virtue of incentive. When the provisions of the Sales Tax Act talk of the rate on which the purchase tax would be payable by a registered dealer as one which is prescribed under the notification (Annexure 'C' for our present purpose) it is a different matter altogether that the petitioner has not actually had to discharge the liability of payment under the Entry Tax Act".

The writ petition was, accordingly, allowed.

4. Learned counsel for the appellant-State contended that the words of the notification under the State Sales Tax Act were clear. For the purposes of the exemption thereunder, the condition that had to be satisfied was that the goods had "suffered" entry tax under the Entry Tax Act. Learned counsel submitted that there was no room, in the circumstances, for the argument that "suffered" meant "deemed sufferance". Our attention was invited by learned counsel to the judgment of a Constitution Bench of this Court in Gannon Dunkerley and Co. v. State of Rajasthan ((1993) 1 SCC 364) to which we shall advert.

5. Learned counsel for the respondents submitted that the word "suffered" referred to the charge of tax under the Entry Tax Act and not to the actual payment of that tax. It was also submitted that the goods could be required to have suffered entry tax under the Entry Tax Act only if they were subjected to tax by reason of inclusion under the Schedule in the Entry Tax Act. Our attention was invited to the judgment of this Court in CCE v. Usha Martin Industries ((1997) 7 SCC 47 : (1997) 94 ELT 460) and of the Patna High Court in Tata Yodogawa Ltd. v. Union of India ((1987) 32 ELT 521 (Pat)).

6. In our view, the words of the said notification under the State Sales Tax Act are so clear that they leave no doubt whatsoever and cannot be subjected to any construction but one, namely, that only goods upon which entry tax under the Entry Tax Act has been paid are entitled to the exemption thereunder. There has to be actual payment. The impact of the entry tax upon the goods for which the exemption is sought has to be felt; only then is the exemption available. The use of the word "suffered" makes this plain.

7. This interpretation has found favour with this Court in the case of Gannon Dunkerley and Co. ((1993) 1 SCC 364) The Rajasthan Sales Tax Rules used the words "which have already suffered tax at the rate prescribed under Section 5". This Court said that they referred to "goods which have already been subject to tax under the Act at the rate specified under Section 5 ....."

8. The judgment in the case of Usha Martin Industries ((1997) 7 SCC 47 : (1997) 94 ELT 460) construed an exemption notification where the words "on which appropriate amount of duty has already been paid" had been used. This Court said that if the words "already paid" were delinked

from the other words employed therein, they would lend support to the contention of the Revenue as the said contention related to an antecedent act of payment; but the word "already" was not the decisive term because the word "appropriate" had also to be considered. It is difficult to see that the conclusion in the case of Usha Martin Industries ((1997) 7 SCC 47 : (1997) 94 ELT 460) furthers the case of the respondents before us. Upon a parity of reasoning, it in fact, supports the case of the appellant for the notification under the State Sales Tax Act does not use the word "appropriate" or any other similar word. The judgment of the Patna High Court dealing with the words "has already been paid", is of no assistance in construing this notification. The provisions of the Entry Tax Act that learned counsel for the respondents referred to are of no relevance in the construction of the language of the notification under the State Sales Tax Act.

9. The respondents had raised other objections to their assessments. These shall now be considered by the appropriate authorities.

10. The appeals are allowed. The order under appeal is set aside. No order as to costs.