

Sun Oil Company (P) Ltd. and Another

Vs

State of W. B. and Others

Civil Appeal No. 2056 of 1996

(S.P. Bharucha, D. P. Wadhwa, S.M. Quadri JJ)

22.09.1998

JUDGMENT

QUADRI, J. –

1. The short question that arises in this appeal is whether the word "tax" in Section 4-AA includes "turnover tax" levied under Section 4-AAA of the West Bengal Sales Tax Act, 1954.
2. The facts giving rise to this question lie in a short compass and are not in dispute. The appellant-Company is carrying on business of the manufacture of lubricating oil and grease. It was granted certificate of registration under the West Bengal Sales Tax Act, 1954 (for short "the Act"). A certificate for permanent registration as a small-scale industry was granted by the Directorate of Cottage and Small-scale Industries, Government of West Bengal. Under the Act, the authorities granted exemption from payment of sales tax for the period commencing from 14-1-1980 to 14-1-1985 by certificate dated 1-4-1980. Notwithstanding the said certificate of exemption for the period of four quarters ending on 31-3-1984, the appellant was assessed to turnover tax in a sum of Rs. 1,18,357.66 p. and a penalty of Rs. 2000 was also imposed under the Bengal Finance (Sales Tax) Act, 1941. The appellant filed appeal against the order of assessment before the Assistant Commissioner of Commercial Taxes who confirmed the order of the Commercial Tax Officer that the eligibility certificate does not absolve it of the liability to pay turnover tax under Section 4-AAA of the Act. The appellant then assailed the order of the Assistant Commissioner in the West Bengal Taxation Tribunal. By its order dated 25-6-1993, the Full Bench of the Tribunal dismissed the appeal. From the said order of the Tribunal, this appeal is filed by special leave.
3. Mr. Bhaskar Gupta, the learned Senior Counsel appearing for the appellants, has contended that Section 4 is the only charging section under which the liability assumes two forms - one by way of tax at the rate prescribed under Section 4(3) and the other by way of additional tax at the rate prescribed under Section 4-AAA - and that the only difference between the two is that while the burden of "tax" under Section 4 can be passed on to the purchaser, the burden of additional tax under Section 4-AAA cannot be so passed on, therefore, it would be anomalous to think that the exemption granted under Section 4-AA applies to "tax" but not to "additional tax". Such an interpretation of Section 4-AA, submits the learned counsel, would set at naught the very policy of the Government to grant tax holiday to small-scale industrial units.
4. The submissions of the learned counsel though appealing, have to be rejected on a plain reading and literal interpretation of Sections 4(1) and 4-AAA(1). We quote the said provisions here insofar as they are relevant for our purpose :

"4. Liability to payment of tax. - (1) There shall be paid by every dealer a tax on his turnover, at such rate not exceeding twenty per cent as the State Government may, by notification in the Official Gazette, fix in this behalf, and different rates may be fixed for different classes of notified commodities :

4-AAA. Liability to payment of turnover tax and rate thereof. - (1) Notwithstanding anything contained elsewhere in this Act, -

(a) every dealer, whose aggregate of the gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941) during the last year ending on or before the 31st day of May, 1987, exceeds rupees twenty-five lakhs, shall, in addition to the tax payable by him under Section 4, be liable to pay from the 1st day of June, 1987, a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2);

(b) every dealer, other than those referred to in clause (a), whose aggregate of the gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941) during any year ending on or after the 1st day of June, 1987, exceeds rupees twenty-five lakhs shall, in addition to the tax payable by him under Section 4, be liable to pay from the first day of the year immediately following such year a turnover tax at the rate specified in sub-section (3) of such part of his turnover as specified in sub-section (2);

(c) every dealer who has become liable to pay the turnover tax under clause (a) or clause (b) shall continue to be so liable until the expiry of three consecutive years during each of which the aggregate of his gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, does not exceed rupees twenty-five lakhs and on the expiry of such three years his liability to pay the turnover tax shall cease;

(cc) every dealer who has become liable to pay the turnover tax before the commencement of clause (a) of sub-section (3) of Section 4 of the West Bengal Taxation Laws (Amendment) Act, 1987 shall, notwithstanding anything contained in clause (a) or clause (b), continue to be so liable until the expiry of three consecutive years commencing from any year before the commencement of clause (a) of sub-section (3) of Section 4 of the West Bengal Taxation Laws (Amendment) Act, 1987 during each of which his aggregate of the gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941 (Bengal Act VI of 1941) does not exceed rupees fifty lakhs and on the expiry of such three years after the commencement of clause (a) of sub-section (3) of Section 4 of the West Bengal Taxation Laws (Amendment) Act, 1987, his liability to pay the turnover tax shall cease unless he becomes again liable to pay the turnover tax under clause (a) or clause (b);

(d) every dealer whose liability to pay the turnover tax has ceased under the provisions of clause (c) or clause (cc) shall, if the aggregate of his gross turnover under this Act and the gross turnover under the Bengal Finance (Sales Tax) Act, 1941, during any year again exceeds rupees twenty-five lakhs, be liable to pay from the first day of the year immediately following such year the turnover tax at the rate

specified in sub-section (3) of such part of his turnover as specified in sub-section (2)."

5. A perusal of the provisions extracted above which are clear and unambiguous shows that the legislature itself has referred to two forms of impost under the Act differently. In Section 4, it is referred to as "a tax", whereas in Section 4-AAA, it is referred to as "a turnover tax". The difference in nomenclature is consistently maintained in the said sections as well as other sections of the Act. Now it will be apt to refer to Section 4-AA, as it stood at the relevant time, which read thus :

"4-AA. Exemption from payment of tax. - Notwithstanding anything contained in Section 4, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by a notification in the Official Gazette and subject to such condition as may be specified therein, direct that no tax shall be payable by such a dealer or category of dealers as may be specified in the notification."

6. This section opens with a non obstante clause and provides that despite the provisions of charging Section 4, if the State Government is satisfied that it is in the public interest so to do, it may issue notification in the Official Gazette directing that no tax shall be payable by the dealer or category of dealers specified therein. Here it may be noticed that the empowerment under this section to notify that no tax shall be payable relates to "tax" levied under Section 4. The pertinent portion of Notification No. 1809/F-T dated 1-6-1976 issued under Section 4-AA is in the following terms :

"(3) No. 1809/F-T dated 1st April, 1976. - Whereas the Governor is of the opinion that it is necessary in the public so to do;

Now, therefore, in exercise of the power conferred by Section 4-AA of the West Bengal Sales Tax Act, 1954 (West Bengal Act 4 of 1954) (hereinafter referred to as the said Act), the Governor is pleased hereby to direct that no tax shall be payable by a dealer under the said Act on sales of notified commodity or commodities manufactured, made or processed by him in a newly set up small-scale industrial unit for five years, if the said industrial unit is situated within the area of the Calcutta Metropolitan District as described in the Schedule to the Calcutta Metropolitan Planning Area (Use and Development of Land) Control Act, 1965, or for seven years if it is situated elsewhere in West Bengal, years from the date of commencement of his first sale subject to the conditions noted below :

(Conditions are omitted)."

7. From a perusal of the notification, it is evident that the expression used here is, the Governor is pleased to direct that "no tax" shall be payable by a dealer under the said Act which obviously refers to the tax under Section 4 but not to "turnover tax" imposed under Section 4-AAA. In this view of the matter, we overrule the judgment of the learned Single Judge of the Calcutta High Court to the contra in *ABN Food and Beverage (P) Ltd. v. Asstt. Commr. of Commercial Taxes, South Circle* ((1990) 77 STC 339 (Cal)) and approve the conclusion in the judgment of the Full Bench of the Tribunal in *Kejriwal Electronics (P) Ltd. & Co. v. CTO* ((1991) 81 STC 20 (WBTT)) holding that a small-scale industrial unit was not entitled to exemption from payment of turnover tax during the period of the validity of the eligibility certificate by virtue of notification issued under Section 4-AA of the Act.

8. In the result, the appeal is dismissed but in the circumstances of the case, without costs.