

SUPREME COURT OF INDIA

Food Corporation of India

Vs.

State of Haryana

C.A.No.979 of 1998

(S. P. Bharucha, N. Santosh Hegde and Ruma Pal, JJ.)

16.02.2000

ORDER

1. When the State of Haryana tried to impose sales-tax on levy transactions undertaken by the appellant in the year 1973, the same was challenged by the appellant before the Punjab and Haryana High Court on the ground that the said transactions did not amount to either purchase or sale. The High Court of Punjab as per its judgment dated 17th May, 1975 following a judgment of this Court in the case of *M/s. Chhitter Mal Narain Dass v. C.S.T.*, (1971) 1 SCR 671 : (AIR 1970 SC 2000), allowed the said writ petition and declared that the State of Haryana did not have the constitutional authority to impose sales-tax on levy transactions, consequently, it quashed the assessment orders and demand notices issued by the State. This judgment was not challenged by the State of Haryana, hence, remained to be the declared law so far as the State of Haryana is concerned.

2. Subsequently, in the year 1982 even though the above referred judgment of the Punjab and Haryana High Court remained to be a good law, the State of Haryana again issued a demand notice to the appellant levying sales-tax on the turn over involving levy transactions. A challenge to the said demand notice by the appellant came to be rejected by the Punjab and Haryana High Court on the ground the appellant should first avail the statutory remedy available to it without deciding the validity of the notice. The appellant challenged the said demand order before this Court which

challenge was admitted by this Court by grant of special leave. This Court also issued interim orders restraining the respondent-State from enforcing the demands.

3. Once again, during the pendency of the appeal of the appellant before this Court, the respondent-State issued further demand notices in the year 1986 which again came to be challenged by the appellant before the Punjab and Haryana High Court and the said challenge came to be upheld following the earlier judgment dated 17th May, 1975 and the demand notices were quashed. Against this judgment of the High Court, the State preferred an appeal before this Court in which the leave was granted but no interim order was granted.

4. The appeal of the appellant and the State of Haryana filed before this Court came to be heard by this Court in the year 1997 along with many other appeals involving similar questions and this Court as per its judgment dated 6th January, 1997 declared the law as follows:

"We, therefore, answer the principal common point holding that the levy procurement is a sale/purchase and, therefore, falls within the purview of Entry 54 List II of the Seventh Schedule to the Constitution. The States were competent to levy sales/purchase tax on such transactions."

5. It also ultimately dismissed the appeal of the appellant and allowed the appeal filed by the State of Haryana along with other States. By the above judgment, the authority of the State to impose sales-tax on levy transactions came to be restored.

6. After the judgment of this Court, referred to above, the State issued another demand notice for the assessment years 1975-76, 1982-83, 1983-84 and 1984-85 dated 20th of February, 1997, out of these the demand for the year 1975-76 was for a sum of Rs. 89,39,947/-. It is submitted before us that the appellant has paid the amount so demanded in the month of March, 1997 itself. However, on 25th of April, 1997 the appellant was issued a further notice purported to be under Section 59 of the Haryana General Sales Tax Act, 1973 (the 'Haryana Act') demanding a sum of Rs. 2,26,01,400/- towards the interest payable on the belated payment of Rs. 89,39,947/- which was the principal tax due from the appellant for the assessment year 1975-76.

7. The appellant challenged this levy of interest before the Punjab and Haryana High Court but the same came to be rejected by an order of the said High Court dated 18th of January, 1998 against which the above appeal is preferred.

8. The question that arises for our consideration in this appeal is whether the State of Haryana is

justified in demanding interest from the appellant on the tax due by it for the assessment year 1975-76.

9. We have heard learned counsel for both the parties. The answer to the question that falls for consideration by us depends upon the fact whether there was a valid demand notice in the year 1982 (the year from which the interest is demanded) which obligated the appellant to pay the tax demanded under the said notice.

10. As we have noticed herein above, so far as the State of Haryana is concerned during the period between 17th of May, 1975 to 6th of January, 1997, the law declared by the High Court was that the State of Haryana did not have the constitutional authority to impose sales-tax on levy transactions. This declaration of law was not challenged by the State per contra the State of Haryana accepted the declaration of law made by the High Court, therefore, until the position of law stood changed from 6th of January, 1997, the State of Haryana could not have made a demand for the payment of sales-tax on levy transactions. The demand notice by which the State claimed the tax for the assessment year 1975-76 was of the year 1982 which fell within the period when the law did not permit the State of Haryana to impose sales-tax on levy transactions. Therefore on that day when the notice of demand was issued for payment of sales-tax for the assessment year 1975-76, the demand was without authority of law. Subsequently, the State of Haryana could have made such demand only after the judgment of this Court which was delivered on 6th January, 1997. There is no doubt that by the judgment of this Court, the right of the State of Haryana to collect sales-tax would date back to 1975 but that is not the same as saying that during the said period when the law was adverse to the State of Haryana it could still have made a legitimate demand, because, as stated above, during the period between 1975-77, the States authority to make a demand was eclipsed because of the law declared by the High Court. The declaration of law made by this Court now empowers the State to raise a demand even for the assessment year 1975-76 and the appellant is bound to satisfy the said demand, but the duty of the assessee to satisfy that demand would arise only when a fresh and valid demand after the judgment of this Court is made by the State. If the assessee fails to pay after the fresh demand is made then as contemplated under Section 59 of the Haryana Act, the assessee becomes liable to pay the interest also.

11. Facts in this case show that after the judgment of this Court, the respondent-State issued a demand notice dated 20th of February, 1997 specifically stating as follows:

"The Hon'ble Supreme Court of India has disposed of the Civil Appeal No. 1130 of 1987 and 1995 of 1987 vide orders dated 28-1-1997 and a copy of the order has also been sent to you. After the disposal of the Civil Appeal tax on levy rice and on wheat is payable. (Emphasis supplied). As per the statement submitted by you and record of this office, following amount for the years shown against each is payable by you,"

12. From the above extract of the demand notice issued to the appellant, it is clear that a fresh demand was made pursuant to the judgment of this Court which according to us is the right step to be taken consequent to the declaration of law made by this Court.

13. The further question, therefore, is whether on the demands now made by the respondents on the appellant, can the State also claim interest? We have noticed that the power of the State to collect interest arises under Section 59 of the Act. The said section authorises the State to collect interest on belated payment of tax demanded but this payment of interest can be levied on such belated payment of tax which is legally payable for which a valid demand is condition precedent. As has been noticed by us, the demand notice of the year 1982 which was issued during the period when the State had no authority to levy sales-tax cannot be said to be a valid demand, based on which interest could be claimed. A valid demand for the assessment year 1975-76 could have been made by the State of Haryana only after the judgment of this Court i.e. from 6th of January 1997 and on such a demand being made on 20-2-1997, the appellant has, satisfied the said demand within the period available to it. If that be so, in our opinion, the State could not have demanded interest on the tax due for the assessment year 1975-76 based on its earlier demand notice.

14. We are of the opinion that the interest demanded by the State of Haryana on the amount due from the appellant for the assessment year 1975-76 cannot be sustained. Therefore, the said demand of interest, impugned in the appeal is quashed.

15. For the reasons stated above, this appeal is allowed, the judgment and order of the High Court of Punjab and Haryana impugned in the above appeal is set aside. No costs.

Appeal allowed.