

SUPREME COURT OF INDIA

FCI

Vs.

Maheshwari Flour Mills

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

03.02.2000

ORDER

S.P. BHARUCHA, J.

1. The appellant sells wheat to purchasers in the State of Andhra Pradesh. One of the terms and conditions of the sale is that the price for the wheat is exclusive of all local taxes and that these would be borne and paid by the purchaser. Section 5 of the Andhra Pradesh General Sales Tax Act 1957 imposes basic tax at the rate of one percent; Section 5-A(c) imposes additional tax on turn over at the rate of 1.50 per cent and Section 6B(1) imposes a surcharge at the rate of 10 per cent on the aggregate of the basic and turn over taxes. In other words, on the sale price of Rs. 100/- the appellant is required to pay Rupee one by way of basic tax, Rs. 1.50 by way of additional tax and 0.25 paise as and by way of surcharge aggregating to Rs. 2.75. There is no difficulty insofar as the above is concerned.

2. Now, as we understand from counsel the appellants' case, the said Act has no provision that empowers the appellant to pass on the aforesaid tax to its purchasers. It, therefore, collects Rs. 102.75 from the purchaser upon the sale of Rs. 100/worth of wheat. Consequently, it pays tax (basic, additional and surcharge) on the sale price of Rs. 102.75. It has therefore, to pay 10 paise for every Rs. 100/- more than it has collected from its purchaser by way of tax. Its contention is that it is entitled to pass on even that 0.10 paise to its purchaser.

3. Some of the appellants' purchasers, namely, the respondents to this appeal, filed a writ petition in the High Court of Andhra Pradesh and sought a refund of the extra amount collected as aforesaid. By the principal order under challenge the writ petition was allowed. A review petition was filed based upon an earlier judgment of that High Court. The review petition was dismissed; the order on the review petition is also under challenge.

4. In the judgment in the earlier writ petition, it was noted that sales tax was then levied at the rate of Rs. 4/- on the sale of wheat costing Rs. 100/-. The appellant was liable to pay tax on Rs. 104/-, which worked out to Rs. 1.47. The difference of 17 paise was sought to be recovered by the appellant from its purchaser. The High Court found that the amount of sales tax payable by the appellant formed a part of the sale price. Therefore, the amount of tax that was passed on to the purchaser formed part of the price for the sale of the wheat and, therefore, had to be treated as turn over exigible to sales tax. It noted the provisions of Section 30B(2) of the said Act, whereby a

dealer was prohibited from calculating any amount by way of tax in excess of the tax payable by him under the provisions of the Act. It held that since sales tax formed part of the sale price, the appellant was entitled to pass on the tax payable by it to the purchaser so long as it did not exceed 4 per cent of the sale price. The writ petition filed by the purchaser was, accordingly, dismissed.

5. In the instant case, the provisions of law having been noted, the High Court said that there was no provision in the said Act or elsewhere which empowered the appellant to collect from its purchaser tax @ 2.85 per cent. It relied upon Article 265 of the Constitution, which provided that no tax could be levied or calculated except by authority on law. The order on the review petition does not contain any reason other than that the matter could not be re-argued.

6. In our view, the High Court was right in the view that it took in the impugned judgment. So far as the purchaser is concerned, on a purchase of Rs. 100/- worth of wheat the sales tax that it is liable to recoup to the appellant under the terms and conditions of sale is only Rs. 2.75. That the appellant may show that sale price as Rs. 102.75 in its books and incur tax thereon does not entitle it, under the terms and conditions of sale or otherwise, to require the purchaser to recoup it for sales tax paid on Rs. 102.75. Without, therefore, relying upon Article 265 of the Constitution, it must be held that the writ petition filed by the respondents was correctly allowed.

7. The appeals are dismissed.

8. Since the respondents do not appear, there shall be no order as to costs.