SUPREME COURT OF INDIA

Messrs Monga Rice Mill Etc

Vs

State of Haryana

Appeal (Civil) 3674-3710 of 2002, Civil Appeal Nos. of 2004 Arising Out of Slp (C) Nos.12835-12893, 14836, 17419, 21900, 22013, 22235-22273 of 2002, Civil Appeal Nos. 2455-2465 of 2004 Arising Out of Slp (C) Nos.10276-10286 of 2003, Civil Appeal Nos.6163-6180 of 2002, 1117-1121, 1131-1139 & 4333-4337 of 2003 and Wp(C) Nos.254, 262 & 288 of 2003 & Wp (C) No.15 of 2004.

((Mrs.) Ruma Pal and S. H. Kapadia)

13/04/2004

JUDGMENT

S.H.KAPADIA, J.

Leave granted.

These civil appeals by special leave involve common question of law as to whether the State has power and competency to levy tax on paddy, purchased by the miller for sale of rice to the exporter, in view of section 5(3) read with section 15(ca) of Central Sales Tax Act, 1956 (hereinafter referred to as "the 1956 Act").

For the sake of convenience, we may refer to the facts of Civil Appeal Nos.3674-3710 of 2002. Appellant is the miller. It produces paddy, processes it and sells rice to the exporter who exports it out of India. In the assessment proceedings, the appellant claimed that in view of Article 286 of the Constitution and section 5(3) and 15(ca) of the 1956 Act, the State was not competent to levy

purchase tax on the paddy purchased by it for sale of rice to the exporter. The appellant filed sales tax returns for four assessment years 1996-1997 to 1999-2000 in accordance with section 25 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the 1973 Act"). On August 16, 1999, the sales tax tribunal accepted a similar claim of dealer M/s Veerumal Monga & Sons vide sales tax appeal No.698 of 1998-99. Later in review by the State, the tribunal held that the assessee was not entitled to exemption from payment of purchase tax on paddy. In pursuance of the order passed by the tribunal, the assessing authority issued notice to the appellant herein to show cause why purchase tax be not levied. The appellant appeared before the assessing authority and produced the necessary forms to show that the rice had been actually exported out of India by the exporter who had a prior order from the foreign buyer. The appellant claimed that no tax was, therefore, leviable. While the matter was pending before the assessing authority, the appellant approached the High Court through writ petition no.8532 of 2000. In the writ petition, the appellant challenged the order of assessment. The department filed its reply. It was averred that the purchase of paddy by the miller-cum-exporter, by virtue of legal fiction in section 15(a), became purchase in the course of export under section 5(3) of 1956 Act, but the legal fiction does not extend to the case of the appellant who purchased the paddy from the market for sale of rice to the exporter. By the impugned judgment and order dated 28.8.2001, the High Court held that the purchase of paddy by the appellant for sale of rice to the exporter is exigible to the levy of purchase tax under the 1973 Act. Hence, these civil appeals.

Before dealing with the arguments advanced by the learned counsel for the parties, four concepts arising from sections 5 and 15 of 1956 Act are required to be understood. These are - local sale, sale in the course of exports, export sale and single point levy of tax for declared goods. These are inbuilt in sections 6 and 17 read with schedule-D to the 1973 Act. For sake of convenience, we quote hereinbelow sections 5 and 15 of the 1956 Act along with sections 6 and 17 read with schedule 'D' of 1973 Act: Sections 5 and 15 of the 1956 Act: Section 5. When is a sale or purchase of goods said to take place in the course of import or export.(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in sub- section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

Section 15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.Every sales tax law of a State shall, insofar as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(ca) where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of section 14 is leviable under the law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub- section (3) of section 5, the paddy and rice shall be treated as a single commodity;

(d) Each of the pulses referred to in clause (via) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

Sections 6 and 17 of the 1973 Act: Section 6.Incidence of Taxation.(1) Subject to other provisions of this Act, every dealer whose gross turnover during the year immediately preceding the 27th day of May 1971 and every other dealer shall, on the expiry of thirty days after the date on which his gross turnover first exceeds the taxable quantum, be liable to pay tax under this Act on the sale or purchase of goods by him in the State at the stage hereinafter provided:

(a) On declared goods at the stage specified under section 17;

(b) On goods notified under section 18 at the stage of first sale as specified under that section;

(c) On all other goods at the stage of

(i) last sale when the goods are sold to any person other than a registered dealer who furnishes declaration as specified under section 27 or as notified under section 13 or as prescribed under section 13B of this Act;

(ii) Last purchase in all other cases except when the purchase is made on payment of tax;

Provided that this sub-section shall not apply to a dealer who deals exclusively in goods specified in Schedule B or who executes a sub-contract with a contractor who is liable to pay tax in respect of the works contract of which the sub- contract is a part.

Provided further that in the case of a dealer

(a) Who imports any goods for sale or for use in manufacturing or processing any goods for sale, the liability to pay tax shall commence from the date on which he imports such goods.

(b) Who manufactures or processes any goods for sale, the liability to pay tax shall commence, from the date on which his gross turnover, during any year, first exceeds the taxable quantum.

(c) Who exports any goods purchased within the State, the liability to pay tax shall commence from the date on which he purchases such goods.

(d) Who deals in declared goods, the liability to pay tax shall commence from the date on which his gross turnover of such goods exceeds the taxable quantum;

(e) Who deals in foreign liquor (Indian made foreign liquor and foreign liquor), the liability to pay tax shall commence from the date on which he deals in such goods.

(f) Who deals in textiles exclusively, the liability to pay tax shall commence from the date on which the sales of goods other than those specified in Schedule B exceeds rupees one lac in a year.

(g) who is a contractor doing the work of construction, fitting, improvement or repair of any building, road, wall, bridge, embankment, dam or other immovable property and has not charged tax or has not made use of the authority of his registration certificate under this Act or the Central Sales Tax Act, 1956 during the period from Ist day of April, 1987 to 31st day of March, 1989, shall not be liable to pay tax under this Act during aforesaid period on the goods involved in the execution of works contract.

(h) who transfers the right to use tents, kanats, chholdari, crockery, utensils, furniture and all other goods for decoration and lighting purposes, and has not charged tax or has not made use of the authority of his registration certificate under this Act or the Central Sales Tax Act, 1956, during the period from Ist day of April, 1987 to 31st day of March, 1989 and opts for the payment of lump sum as may be prescribed, in lieu of sales tax; shall not be liable to pay tax under this Act during the aforesaid period and his liability to pay tax under this Act on the transfer of right to use any goods for cash, deferred payment or other valuable consideration shall commence from Ist day of April,

1989 and shall remain in force upto 31st March,1995.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry, as may be prescribed, and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer, whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act in accordance with the provisions of sub-section (1).

(5) Notwithstanding anything to the contrary contained in this Act or any other law or judgment or order of any court or authority in respect of cases relating to assessments for the period from the 7th September, 1955 up to the commencement of this Act, every dealer who was assessed under the Punjab General Sales Tax Act, 1948 shall be deemed to have been assessed under this Act as if this Act was in force during the said period.

Section 17. Tax on declared goods.Tax on declared goods shall be leviable and payable at the stage of sale or purchase, as the case may be and under the circumstances specified against such goods in Schedule D;

Provided that where the goods have not been subjected to tax at any of the stages of sale or purchase specified in Schedule D, the tax shall be levied on and paid by a dealer liable to pay tax under this Act at the stage of last purchase of such goods by him;

Provided further that the tax under this section shall be levied, charged and paid after providing deductions admissible under section 27 of this Act.

SCHEDULE 'D':

Sl. No. Name of declared goods Circumstances under which tax is to be levied Stage of levy

1. Cotton, paddy and oil seeds other than cotton seeds, as are defined in section 14 of the Central Sales Tax Act, 1956.

(i) When imported.

(ii) When purchased within the State. First sale within the State by a dealer liable to pay tax under

this Act. Last purchase within the State by a dealer liable to pay tax under this Act.

In these civil appeals, we are not concerned with imports and, therefore, in the course of our judgment we have only emphasized the concept of sale or purchase in the course of export. Section 5 of the 1956 Act lays down principles for determining as to when a sale or purchase takes place in the course of export. It defines constitutional inhibition of Article 286(1)(b), namely, that no law of a State shall impose tax on sale or purchase which takes place in the course of import of goods into or export of goods out of India. Section 5(1) covers direct export sale, whereas section 5(3) applies to penultimate sale or purchase, which is deemed to be sale or purchase in the course of export and consequently falls under section 5(1) of the 1956 Act. Therefore, in cases where a sale is not directly connected with exports and where between the seller and the ultimate buyer, intermediaries are involved, such a sale, if not covered under section 5(3), cannot occasion any export and, therefore, such transaction would not fall under section 5(1).

There is a difference between sale for export and sale which occasions export. When the assessee buys paddy and converts it into rice which is sold to the exporter, although purchase of paddy is a transaction for export, such transaction does not occasion export and consequently it does not fall within section 5(3). Under section 5(3), a penultimate local sale is deemed to be an export sale under section 5(1) only if such local sale occasions export.

Now coming to the question of single point tax, it is important to bear in mind that in law every transaction has two ends , sale end and purchase end. Section 14 of the 1956 Act enumerates declared goods including paddy and rice. It does not impose any liability. Section 15(a) of the 1956 Act, as it stood at the relevant time, makes it mandatory for the State to tax either the sale point or the purchase point. Accordingly, under sections 6 and 17 read with schedule-D of the 1973 Act, a single point tax is levied on rice and paddy separately provided there is sale and purchase of identical goods. Section 15(c) of the 1956 Act inter alia provides for adjustment/set-off of tax paid on paddy against tax paid on rice procured therefrom. To the same effect are the provisions in sections 15 proviso (iii), 15A and 27 of the 1973 Act. Hence, the legislature had all along treated rice and paddy as two separate taxable items for all purposes till 28.9.1996 when clause (ca) was introduced to get over the effect of the judgment of the High Court in the case of United Riceland Ltd. & Anr. v. State of Haryana & Ors. reported in [1995 Indlaw PNH 198]. In that case, it was held that paddy and rice, both being declared goods under section 14 of the 1956 Act, are different taxable commodities subject to tax under sections 6 and 17 read with schedule-D of the 1973 Act and consequently, the exporter who buys paddy, converts it to rice and exports it, is liable to pay tax on purchase of paddy under the said 1973 Act. This resulted in cost plus effect on exports, which made the exports very costly as the exporter had to pay the purchase tax. In order to make exports more competitive, globally, clause (ca) was inserted in section 15 of the 1956 Act, under which rice and paddy are equated by a deeming fiction for the purposes of section 5(3) of the said 1956 Act. The effect of clause (ca) was two fold. Firstly, both the commodities were equated so that the State cannot tax them at multiple stages. Secondly, in view of the said equation by a deeming fiction, the last purchase of paddy for sale of rice to be exported could not be taxed in view of section 5(3) of the said 1956 Act. But for clause (ca) of section 15, the exporter was liable to pay purchase tax on the last purchase. Hence, clause (ca) has nullified the effect of the judgment in United Riceland's case (supra).

Mr. Dushyant Dave, learned senior counsel appearing on behalf of the appellant contended that export sales involve a series of integrated activities commencing from agreement of sale with the foreign buyer and ending with delivery of goods to a common carrier for transport out of India. Such a sale cannot be disassociated from the export. Therefore, sale of rice by the appellant to the exporter, procured from paddy was a part of export sales and consequently exempt from tax. It was urged that section 5(1) of the 1956 Act applies to export sales. They are sales which occasion export. On the other hand, section 5(3) of that Act refers to penultimate sale preceding export sale, which is deemed to be "sale in the course of exports" and not exigible to tax. It was urged that prior to 28.9.1996, paddy and rice were taxed separately as two different commodities under the 1973 Act and consequently the full bench of the High Court in the case of United Riceland Ltd. (supra) took the view that purchase of paddy by miller-cum-exporter was exigible to purchase tax under sections 6 and 17 read with schedule-D of the 1973 Act. The result was that although the penultimate sale was not liable to tax in terms of section 5(3) of the 1956, the exporter had to pay purchase tax on purchase of paddy under the 1973 Act. Consequently, rice exported from India lost its competitive edge as its export became costlier in the international market as compared to rice exports from neighbouring countries. In the circumstances, clause (ca) was inserted in section 15 on 28.9.1996 under which paddy and rice were made taxable at one stage so that purchase of paddy could be exempted from tax under the local law thereby enabling the exporter to reduce the cost of export. It was contended that today we live in the age of globalization where revenue from exports help the national economy and, therefore, this Court should read the above provisions in the widest possible terms keeping in mind the global competition in the world market.

It was submitted that purchases and sales are two sides of the same coin and where such purchases and sales have been made prior to and not subsequent to placement of export orders by the foreign buyer, such transactions should get benefit of exemption under section 5(3) read with section 15(ca) of the 1956 Act. It was submitted that the High Court had erred in restricting the deeming fiction under clause (ca) only to the miller-cum-exporter; that it had failed to appreciate the scope and content of clause (ca) under which paddy and rice have been equated for the purposes of section 5(3) so that purchase of paddy by the appellant for sale of rice to the exporter would also be exempt from payment of purchase tax under the 1973 Act.

Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellant in civil appeal Nos.1117-1121 of 2003, in addition to the above arguments, submitted that in view of clause (ca) of section 15, the term "paddy" and the term "rice" are interchangeable. He submitted that in the present case, we are concerned with two sales namely, sale from appellant to the exporter and sale by the exporter to the foreign buyer. It was urged that under the impugned judgment, the High Court has restricted the benefit of tax exemption only to sale by the exporter and not to the sale by the appellant to the exporter. According to the learned counsel since the terms "paddy" and "rice" were interchangeable under clause (ca), it must follow that what the appellant sold to the exporter is paddy and therefore the last purchaser of such paddy was the exporter and not the appellant and consequently the appellant was not liable for payment of purchase tax on purchase of paddy and sold as rice to the exporter.

Lastly, it was urged that tax levied on purchase value of paddy was adjustable against tax liability on the sale of rice under sections 12, 15 and 27 of the 1973 Act and since there was no tax on export of

rice, the liability of tax on the appellant was nil.

At the outset, we state that none of the judgments cited by the learned counsel for the parties deal with the points which arises for determination in these civil appeals. As stated above, there are two ends in every transaction, namely, the sale end and the purchase end. Section 5 of the 1956 Act lays down principles for determining when a sale or purchase occasions export. It inter alia defines the constitutional inhibition of Article 286(1)(b), namely, that no law of a State shall impose tax on sale or purchase which occasions export. To constitute a purchase, exempt from State purchase tax, the purchase must occasion export. The question which we have to decide in these civil appeals is : whether purchase of paddy by the appellant (miller), who procures rice from it and sells the rice to the exporter is a purchase which occasions export or is it a purchase for export? Section 5(1) of 1956 Act exempts export sales.

There are three categories of sales, namely, local sale, inter- State sale and export sale. Section 5(1), therefore, covers direct export whereas section 5(3) covers last sale or purchase preceding direct export which is deemed to be in the course of export. The last sale or purchase preceding the direct export is deemed to be in the course of export as the two are so closely connected that breach of one may result in breach of the composite contract. It is for this reason that section 5(3) inter alia requires such sale or purchase transaction being entered into after and in compliance with the export order being placed by the foreign buyer. The underlying rationale of section 5(3) is that such penultimate sale or purchase must occasion export in order to constitute sale or purchase in the course of export. Section 5(3) does not cover the penultimate transaction which occasions sale in the local market, nor does it cover sale for export. In the present case, **appellant is a miller within the State; it buys paddy and procures rice therefrom within the State and sells it to the exporter within the State and as such it is a local sale which does not fall under section 5(3). It is a sale for export and not a sale which occasions export. #** There is one more way of looking at the question in hand. Under section 15(a) of 1956 Act, as it stood at the material time, the State could levy tax either at the sale end or purchase end of the transaction in case of declared goods. Consequently, **under sections 6 and 17 read with schedule-D of 1973 Act, we have single point levy of tax and not tax at multiple points. It is the last purchase of paddy which is made taxable under 1973 Act. #**

The single point levy envisages tax at either ends of the same transaction provided that the identity of the goods remains unchanged. It is a tax on one single commodity. Section 15(a) inter alia states that the tax payable under the State law shall not be levied at more than one stage. The word "stage" in section 15(a) refers to stages of successive sales and purchases and not to stages, which raw material undergoes, resulting in the manufacture of a different commercial commodity. The reason is not far to see. Under the 1973 Act, rice and paddy are two different commodities. They are taxable at different rates. Under section 15(c) of 1956 Act as also under sections 15 [proviso (iii)], 15A and 27 of 1973 Act, the tax paid on the rice stands reduced to the extent of tax paid on paddy. It is for this reason that clause (ca) in section 15 of 1956 Act equates paddy and rice for the purposes of section 5(3), otherwise it would not be possible to harmonize the set-off provisions, stated above, with clause (ca) of section 15 of 1956 Act. Moreover, clause (ca) applies only in cases of export of rice procured from paddy. In all other situations, paddy and rice remain two different taxable items. If clause (ca) is read in the manner suggested by the appellant, sections 15(a) and 15(c) would be rendered nugatory. Similarly, proviso (iii) to section 15, section 15A and section 27 of 1973 Act,

which provides for set-off/adjustment of tax paid on paddy against tax paid on rice, would be rendered otiose. The High Court was, therefore, right in holding that clause (ca) of section 15 of 1956 Act provides for a limited deeming fiction attached to purchased commodity, namely, paddy purchased by the miller-cum-exporter. In the present matter, we are concerned with levy of purchase tax under section 17 read with schedule-D of 1973 Act. Schedule-D was introduced by notification dated 1.8.1988 in line with the provisions of section 5(3) of 1956 Act, which as stated above, defines last sale or purchase preceding export sale, as sale or purchase in the course of export. Schedule-D refers to levy of tax on "last purchase", an expression which is borrowed from section 5(3) of 1956 Act. Schedule-D of 1973 Act is, therefore, in-conformity with the provisions of section 5 of 1956 Act. So read, it is clear that the words "last purchase" in schedule-D connotes purchase which occasions export and not purchase of paddy for export. In the case of Hotel Balaji & Ors. v. State of A.P. & Ors. reported in] this Court has observed that it is difficult to define the words "last purchase" except with reference to the mode of the use of the purchased goods subsequent to that purchase and in that sense levy can be crystallized only at the point of time when the goods have been utilized in a particular way. Applying the test propounded by this Court in Hotel Balaji's case, we hold that **clause (ca) of section 15 contains a limited deeming fiction by which tax exemption is given only to the sale of rice by the exporter and not to the sale by the appellant miller to the exporter. #**

At one stage, it was sought to be contended on behalf of the appellant in civil appeal Nos.1117-1121 of 2003 that terms "rice" and "paddy" were interchangeable under clause (ca) from which it follows that what the appellant sold to the exporter was paddy and, therefore, the last purchaser of such paddy was the exporter and not the appellant and consequently the appellant was not liable for payment of purchase tax. We do not find merit in this argument. **Clause (ca) of section 15 inter alia states that where a tax on purchase of paddy is leviable under the State law and the rice procured out of such paddy is exported, then for the purposes of section 5(3), paddy and rice shall be treated as a single commodity. As stated above, clause (ca) contains a limited deeming fiction, which only applies to sale of rice by the exporter. #** This fiction is attached to the purchased commodity which is paddy from which rice is procured and not the exported commodity. Clause (ca) equates the two commodities only in cases where rice procured from paddy is exported and not to any other case.

Accordingly, we hold that **the purchase of paddy by the appellants in these cases is not exempt from the levy of a tax. Such purchases do not fall within section 5 of 1956 Act. The sale by the exporter is, however, exempt under section 5(1) and the purchase of paddy by the miller-cum-exporter is covered under section 5(3) of 1956 Act. #**

Before concluding, we notice the concluding argument advanced on behalf of the appellants in civil appeal nos.1117- 1121 of 2003. It was urged that tax levied on the purchase value of paddy was adjustable against tax liability on sale of rice under sections 12, 15 [proviso (iii)], 15A and 27 of 1973 Act and since there was no tax on export of rice, the liability of tax on the appellant was nil. In this matter, as can be seen from the impugned judgment, the High Court has granted liberty to the appellant to file appeal against the assessment order(s). Since the above contention needs adjudication on facts, we do not wish to deal with this contention, at this stage, leaving it open to the appellant to raise all such contentions before the Assessing/Appellate Authority.

Subject to above, civil appeals and writ petitions herein fail and are accordingly dismissed with no order as to costs.