SUPREME COURT OF INDIA

Jhunjhunwala

Vs.

State of U.P.

C.A.No.3019 of 2004

(Arijit Pasayat and S.H. Kapadia JJ.)

22.09.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted in SLP (C) Nos. 5645 of 2005 and 5646 of 2005.

These appeals involve identical questions and, therefore, are taken up for disposal together. In each of the appeals challenge is to legality of the judgment rendered by a Division Bench of the Allahabad High Court holding that the appellant/each of the appellants, as the case may be, was liable to pay tax as "manufacturer" under Section 2(ee) of the Uttar Pradesh Trade Tax Act, 1948 (in short the 'Act'). It was also held that the circular dated 13.12.2000 issued by the Commissioner of Trade Tax, was valid in law.

Background facts in a nutshell as projected in these appeals are as follows-

Writ petitioners who are the appellants are dealers registered with the concerned trade tax Authority under the Act and the Central Sales Tax Act, 1956 (in short the 'Central Act'). The appellants claim to be doing business as commission agents to effect the commission business of horticulture produces of agriculturists. Earlier there was no levy of tax on their transactions under the Act. They, as commission agents, were selling timber grown by the agriculturists and were therefore exempt from tax. On account of the amendment of Section 2(ee) of the Act with effect from 1.12.1988 the Trade tax authorities proposed to levy tax purportedly on the basis of the amendment even though writ petitioners were selling timber grown by the agriculturists on their own land. It was submitted that there was no question of any liability to pay "trade tax" as they could not have been treated as manufacturers of timber even after the aforesaid amendment as well as the circular. The High Court proceeded on the basis that the definition of Section 2(ee) was wide enough to cover the case of the appellant. In any event it was held that Section 3-AAAA empowered the authorities to levy and collect tax. The circular of the Commissioner of Trade Tax was also held to be legal.

In support of the appeals, learned counsel for the appellants submitted that the High Court proceeded on entirely erroneous premises. There could be no question of any levy of tax unless the seller is a manufacture-dealer. The High Court proceeded on the basis as if their case is covered

under Section 2(ee)(ii) of the Act. That provision applies to transactions between two registered dealers. No liability could have been created by a circular of the Commissioner. The definition of "Manufacturer" in terms of Section 2(ee) does not encompass the case of the appellants.

In response, learned counsel for the State of Uttar Pradesh submitted that a combined reading of Section 2(ee) and Section 3-AAAA makes the position clear that validity of the circular has been rightly upheld by the High Court.

In order to appreciate the rival submissions, the provisions of the Act and the circular issued by the Commissioner need to be noted. Section 2(e-1) defines "Manufacture" and Section 2(ee) defines "Manufacturer" while Section 3-AAAA deals with transaction regarding certain services. They read as follows:-

"2(e-1) 'Manufacture" means producing, making, mining, collecting, extracting, altering, ornamenting, finishing, or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed;

2(ee) 'Manufacturer' in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes:

(i) a dealer who sells bicycles in completely knocked down form;

(ii) a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act other than sales exempted under Sections 4,4-A and 4-AAA."

(Underlined for emphasis)

Section 3-AAAA. Liability to tax on purchase of goods in certain circumstances - Subject to the provision of Section 3, every dealer who purchases any goods liable to tax under this Act (a) from any registered dealer in circumstances in which no tax is payable by such registered dealer, shall be liable to pay tax on the purchase price of such goods at the same rate at which, but for such circumstances, tax would have been payable on the sale of such goods:

(b) from any person other than a registered dealer whether or not tax is payable by such person, shall be liable to pay tax on the purchase price of such goods at the same rate at which tax is payable on the sale of such goods:

Provided that no tax shall be leviable on the purchase price of such goods in the circumstances mentioned in clauses (a) and (b), if

(i) such goods purchased from a registered dealer have already been subjected to tax or may be subjected to tax under this Act;

(ii) tax has already been paid in respect of such goods purchased from any person other than a registered dealer;

(iii) the purchasing dealer resells such goods within the State or in the course of inter- State trade or commerce or exports out of the territory of India in the same form and condition in which he had

purchased them;

(iv) such goods are liable to be exempted under Section 4-A of this Act.

Explanation: For the purpose of this section and of Section 3-AAA, the sale of-

(i) ginned cotton after ginning raw cotton purchased as aforesaid; or

(ii) dressed hides and skins or tanned leather, after dressing or tanning raw hides and skins purchased as aforesaid; or

(iii) rice during the period commencing on September 2, 1976 and ending with April 30, 1977 after hulling paddy purchased as aforesaid;

shall be deemed to be in same form and condition."

The Commissioner's circular dated 13.12.2000 which was impugned before the High Court reads as follows:

"..with regard to the above the tax payability has been prescribed at the manufacturers and importers points, after promulgation of Section-2(ee) of the Trade Tax Act such traders purchases or sells from unregistered traders, falls within the category of manufacturers. Thus all the produce purchased from the farmers, timbers, ballis, bamboos, which are being grown, cut or sawing, but their produce does not include burning woods have been purchases and sold to other traders falls within the category of manufacturer under Section 2(ee) of Uttar Pradesh Tax Act. Keeping in view this provision after 1.12.1998 the payability of tax is made out on the registered dealer who purchase the above produce from the unregistered traders."

The High Court appears to have completely lost sight of challenge before it and went on to decide issues which are really not relevant. It took note of paragraph 3(c)(iii) of the Counter Affidavit filed by the respondent before the High Court which reads as follows:

"Many of the big dealers, sells after showing the purchase from such alleged manufacturer dealer who are not liable to pay tax under the act and do not pay tax because the manufacturer- dealer liable to pay tax, only if, its sales exceeds Rs. 1 lakh in any assessment year. To prevent the evasion of tax and in the interest of revenue, these dealers have been brought by bringing in amending Section 2(ee) so as to include such within the definition of manufacturer."

According to the High Court, the object of enacting amendment to Section 2(ee) was to prevent evasion of tax. Even if the aforesaid object is in any way relevant for the purpose of the present dispute, the object appears to be to levy tax on manufacturer-dealer and/or manufacturer-dealer who did not pay tax as his turnover did not exceed Rs.1 lakh in any assessment year.

It was, therefore, necessary to be established that the seller was a manufacturer-dealer. Commissioner's circular could not have created a liability by drawing inference that the purchases from farmers who have been grown, cut or sawn timbers, ballis, bamboos will brings them within the umbrella of expression 'manufacturer'. The view that tax liability has been prescribed at the manufacturers and importers points and therefore after the amendment traders who purchase the

timber from unregistered dealers fall within the category of manufacturer is indefensible. There is no logic for such a conclusion, where the statutory definition does not say so. It needs no emphasis that the circular cannot create tax liability. That is precisely what has been done which the High Court has failed to notice. Therefore, to that extent the circular cannot be of any assistance for levying tax. The crucial words in the definition of "Manufacturer" is the sale of goods "after their manufacture". As noted above, the expression "manufacture" cannot cover types of transactions referred to in the commissioner's circular Whether an activity amounts to manufacture has to be factually determined. There cannot be a direction to treat a particular type of transaction to be a manufacturing activity without examining the factual scenario. There cannot be a generalization in such matters

Learned counsel for the State submitted that even purchases from a person who is not a registered dealer is also liable to tax in terms of Section 3-AAAA of the tax and the circular is, therefore, in order. The argument is not acceptable for the simple reason that in Section 3-AAAA the sine qua non for liability is that the goods must be liable to tax under the Act. That aspect has to be factually determined. The Commissioner's circular is not and cannot be a substitute for such determination. The assessments in these cases appear to have been done solely on the basis of the view expressed in the circular.

We, therefore, set aside the assessments/appellate orders under challenge and direct the assessing officer to consider the case of the appellants without treating them to be manufacturers for the purpose of levy of tax, solely on the basis of the Circular.

The appeals are accordingly disposed of. No costs.