SUPREME COURT OF INDIA

Jay Vee Rice & General Mills

Vs.

State of Haryana

C.A.No.8236 of 2010

(Dr. Mukundakam Sharma and Anil R. Dave JJ.)

23.09.2010

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. Leave granted.

2. Since all these appeals raised similar issues and all of them were taken up together for final hearing, they are being disposed of by this common judgment and order.

3. The questions which fall for consideration in these appeals are mainly two-fold. The first issue that arises for our consideration is whether in light of the facts and circumstances of the present case and upon true and correct interpretation of construction of Note (i) to Schedule III under Clause 2(i) of the Haryana Rice Procurement Levy Order, 1985 (hereinafter referred to as "Levy Order"), the appellants/dealers had collected purchase tax on paddy from the government or its agencies alongwith procurement price of levy fixed under the said Levy Order and if so, what would be the effect of such collection.

4. There is a second issue which arises for our consideration, i.e., as to whether the State is empowered to recover certain amounts as purchase tax in light of the scheme envisaged under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act") and also keeping in view that no sales tax was paid, as payment of the same was specifically excluded.

5. The appellants-companies are engaged in the business of purchase of paddy and manufacture of rice therefrom.

> "The assessees are registered under the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act") and also under the Haryana Value Added Tax Act, 2003. The assessees were granted exemption from the payment of sales tax under Rule 28A of the Haryana Sales Tax Rules, 1975 (hereinafter referred to as "the

> Rules") for a period of seven years with effect from 3.10.1995 to 2.10.2002 under Exemption Certificate, which has been attached with the appeals. By virtue of this Exemption Certificate issued under the Haryana Sales Tax Rules, 1975, the appellants were exempted from payment of sales tax."

6. However, by virtue of Note (i) of the Haryana Government Notification dated 17.10.1996, which was incorporated vide an amendment to clause 2(i) of Schedule III of the Rules, the appellants while supplying rice to District Food and Supplies Controller (hereinafter referred to as "DFSC") collected purchase tax among other things by way of price received from the DFSC. The aforesaid Note (i) by virtue of which such tax was collected reads as follows:- "Note (i): The above prices of rice are for net rate of naked grains inclusive of purchase tax (emphasis added) and mandi charges of paddy and depreciation of gunny bags used for packing paddy but exclusive of cost of gunny bags and taxes, if any, after ex-mill stage of rice."

7. Therefore, although the appellants were exempted from the payment of sales tax, but since they had collected purchase tax on paddy from the DFSC as part of the price received from the DFSC, the respondents took up a plea that they are required to pay purchase tax so collected as tax or as the amount as tax collected and the amount which since collected was required to be deposited in the government treasury.

8. The contention of the appellants on the other hand, however, was that the appellants were granted exemption from the payment of both sales as also purchase tax which would be amply clear from a harmonious reading of Section 13-B of the Act and also Rule 28A, sub-Rule 2(k) of the Rules.

> "Section 13-B of the Act reads as follows:- "Power to Exempt Certain Class of Industries-The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from payment of sales tax, for such period and subject to such conditions as may be prescribed."
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> Rule 28-A (2k) reads as follows:- Sub-rule 2(k) - "exemption certificate means a certificate granted in form S.T.-73 by the Deputy Excise and Taxation Commissioner of the district to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from the payment of sales or purchase tax or both, as the case may be."

9. It is the case of the appellants that since there was a difference between the original Section 13-B of the Act as inserted on 08.09.1988, and Rule 28A(2k) of the Rules, Section 13-B was subsequently amended by deleting the word "sales" and consequently the new Section reads as under:-

> "Power to Exempt Certain Class of Industries-The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from payment of tax, for such period and subject to such conditions as may be prescribed."

10. Relying on the said amendment, the learned counsel appearing for the appellants submitted that by use of the word "tax" instead of the words "sales tax", the legislature intended to declare that the exemption was available on both sales as well as purchase tax.

11. It is interesting to note that while the Act and the Rules were so amended, due to a legislative omission, the statutory Forms ST-72 and ST-73 relating to grant of exemption remained unchanged. Eligibility in Form ST-72 was granted to the appellants for a period of 9 years and upto a total benefit of 41.95 lakhs.

12. Assessment for the years 1996-97 was completed by the assessing authority. While doing so, no purchase tax was levied but in the assessment order, it was held that since payment of the rice received from the government was inclusive of purchase tax which was received by the assessees but was not deposited, the same should be deposited by the assessees.

13. Being aggrieved by the aforesaid order of assessment, a first appeal was filed which was dismissed, holding that the amount sought to be recovered by the department has not been levied as purchase tax, but the said amount is being recovered since the assessees had received a price of rice inclusive of purchase tax.

14. On further appeal filed by the assessees, the Haryana Tax Tribunal dismissed the appeals holding that since the exemption certificate was only for sales tax and the same was not amended, the liability to pay purchase tax would arise and would continue. While holding that the appellants should restitute the amount which they had received from the DFSC as purchase tax, the Tribunal also made an observation and sent to the Government, a request to provide relief to them in the exercise of its sovereign power. The said request was however, not acceded to by the Government.

15. Being aggrieved by the aforesaid order, the appellants filed writ petitions in the High Court, which were dismissed under the impugned judgment and order out of which the present appeals arise.

16. The aforesaid facts would clearly indicate that the Assessing Officer as also the First Appellate Authority did not decide the liability of the appellant to pay the purchase tax, but had held that since the payment of the price of rice received from the government was inclusive of purchase tax, the same was required to be deposited with the government exchequer. Therefore, since the amount had not been deposited by the appellants, they could be recovered by the assessing authorities. The Tribunal, however, held that since the exemption certificate was only for sales tax and the same was not amended, the liability to pay purchase tax would continue. The High Court, moreover, held that the appellants were

liable to pay purchase tax as there was no exemption granted to the appellants from payment of purchase tax at any point of time.

17. We have already referred to the aforesaid note appended to the Notification dated 17.10.1996. The aforesaid note leaves no room for doubt that the assessees, while supplying rice to DFSC, collected purchase tax amongst other things by way of the procurement price.

18. Since they had collected the purchase tax, they were required to deposit the same in the government exchequer and there could be no justification for them to retain the purchase tax and appropriate the same to their own use.

> "Retention of such purchase tax collected by the appellant amounts to unjust enrichment which is not permissible in view of the law laid down by the Constitution Bench of this Court in the case of Mafatlal Industries Ltd. and Others 536.
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> This Court in the said case held as under:-
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> "254.....The Excise Officer cannot tax more than what is permitted by the statute. If the levy is in excess of the statute, then its retention by the State is unauthorised by law. What is being retained is not in enforcement of the charging section but something else. Such illegally collected tax is not the property of the State and is not within the disposing power of the State....."

19. In *Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs*[1], this Court (at page 748) elaborated upon the aspect of unjust enrichment thus:

> "31. Stated simply, "unjust enrichment" means retention of a benefit by a person that is unjust or inequitable. "Unjust enrichment" occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.
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> 32. The doctrine of "unjust enrichment", therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of "unjust enrichment" arises where retention of a benefit is considered contrary to justice or against equity....
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> .....34. In the leading case of *Fibrosa v. Fairbairn, Lord Wright stated the principle*[2] thus:
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> "[A]ny civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in contract or in tort, and are now recognised to fall within a

third category of the common law which has been called quasi- contract or restitution."

The above principle has been accepted in India.

This Court in several cases has applied the doctrine of unjust enrichment."

20. In *Orient Paper Mills Ltd. v. State of Orissa & Ors.*[3], this Court did not grant refund to a dealer since he had already passed on the burden to the purchaser. It was observed that it was open to the legislature to make a provision that an amount of illegal tax paid by the persons could be claimed only by them and not by the dealer and such restriction on the right of the dealer to obtain refund could lawfully be imposed in the interests of general public.

21. The law laid down in Orient Paper Mills Ltd. (supra) was quoted with approval by this Court in Mafatlal Industries Ltd. (supra), and the relevant portion of the said judgment has been quoted hereinabove.

22. A reference may also be made to a decision of the Constitution Bench in *Godfrey Phillips India Ltd. & Anr. v. State of U.P & Ors.*[4]. In that case, the constitutional validity of the Uttar Pradesh Tax on Luxuries Act, 1995 as also other State Acts was challenged inter alia on the ground of legislative competence of the State Legislatures. The Court allowed the petition and held that the State Legislatures were not competent to impose luxury tax on tobacco and tobacco products and the Acts were declared ultra vires and unconstitutional. In the intervening period, however, tax was collected by the appellants from consumers and also paid to the State Governments. In certain cases, interim relief was obtained by the appellants from this Court against recovery of tax and as alleged by the State Governments, the appellants continued to charge tax from consumers/customers. The Court held:

"It was stated on behalf of the State Governments that after obtaining interim orders from this Court against recovery of luxury tax, the appellants continued to charge such tax from consumers/customers. It is alleged that they did not pay such tax to respective State Governments. It was, therefore, submitted that if the appellants are allowed to retain the amounts collected by them towards luxury tax from consumers, it would amount to `unjust enrichment' by them.

In our opinion, the submission is well founded and deserves to be upheld. If the appellants have collected any amount towards luxury tax from consumers/customers after obtaining interim orders from this Court, they will pay the said amounts to the respective State Governments."

23. The learned counsel appearing for the appellants would not dispute the position that the payment made to them by DFSC also included the element of purchase tax.

> "That being the position and they having collected the purchase tax on paddy from the buyer, the same has to go to the government exchequer. If however, such tax was found to be legally not payable after its collection from the purchaser, it either has to go back to the purchaser from whom it was collected or has to be surrendered to the State exchequer and a dealer cannot retain it as otherwise the same will amount to unjust enrichment which is legally impermissible."

24. In the present case, since the aforesaid purchase tax was collected by the appellants, the same is now required to be paid back to the State exchequer in terms of the orders.

25. Since we have held that the appellants are now required to pay back the purchase tax element which was collected by them to the respondents, all the appeals could be disposed of on the aforesaid ground alone. We have seen from the decision in Godfrey Phillips India Ltd. (supra) that even when the legality of a tax has been challenged successfully, there can be no question of the said tax being retained by the dealer/manufacturer, notwithstanding its illegality. In the present instance, it is beyond doubt and clear from the appellants' own admission that the procurement price included the element of purchase tax.

> "That there may be an issue relating to the levy of purchase tax does not in any way, affect the conclusion that the appellants, who have been unjustly enriched, must deposit the purchase tax element with the State."

26. Therefore, in the facts and circumstances of the present case, we are not required to go into the other issue as to whether or not there could have been levy of purchase tax on the purchase of paddy in case of exempted units. We keep that question open to be decided in an appropriate case.

27. The present appeals are dismissed.

[1]*(2005) 3 SCC 738*
[2]*(All ER p.135 H)*
[3]*AIR 1961 SC 1438*
[4]*(2005) 2 SCC 515*