

# PUNJAB AND HARYANA HIGH COURT

The State

Vs

Indian Aluminium Cable Ltd

Sales Tax Reference No. 11 of 1969

( D.K. Mahajan and Pritam Singh Pattar, JJ.)

05.11.1973

## JUDGMENT

### **D.K. Mahajan and P.S. Pattar, JJ.**

1. By this order we propose to dispose of Sales Tax Reference Nos. 11 and 12 of 1969. Sales Tax Reference No. 12 of 1969 relates to the assessment year 1962-63, In this case the assessee is M/s. Indian Aluminium Cables Ltd., Faridabad. Sales Tax Reference No. 11 of 1969 relates to the assessment year 1963-64 and in this case the assessee is M/s. R.N. Ghanekar and Company, Faridabad. The assessee in Sales Tax Reference No. 11 of 1969 supplied electric poles to M/s. Delhi Electric Supply Undertaking from Faridabad in Haryana, and in Sales Tax Reference No. 12 of 1969, the assessee supplied electricity cables to certain State Electricity Undertakings. On the sale of such Cables in S.T. Ref. No. 12, the Assessing Authority Gurgaon passed an order on 7th of July, 1965, levying tax on the inter-State sales on such Cables., In S.T. Reference No. 11 of 1969, the order of the Assessing Authority is dated 28th October, 1965. The Assessing Authority rejected the contention of the assesseees that the sale of poles and Cables to the Delhi Electric Supply Undertaking was exempt from inter-State tax by reasons of the provisions of section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the State Act) read with section 8(2A) of the Central Sales Tax Act (hereinafter referred to as the Central Act). An appeal to the Deputy Excise and Taxation Commissioner on this matter met with no success in both the cases. A revision was taken to the Excise and Taxation Commissioner, but with no result. Thereafter, an appeal was taken under section 20(1) of the State Act, read with section 9(3) of the Central Act to the Sales Tax Tribunal, Haryana, The Sales Tax Tribunal accepted the contention of the assesseees that the sales in question were not liable to inter-State sales tax and the appeals were allowed by two separate orders dated 26th March, 1969, The Department being dissatisfied moved an application under section 22 of the State Act on behalf of the Commissioner, Excise and Taxation, requiring the Tribunal to refer a question of law for our opinion. The Tribunal has referred the following question of law in Sales Tax Reference No. 12 of 1969 :-

"Whether under the facts and circumstances of the case, the sale of electricity cables by M/s. Indian Aluminium Cable Ltd., Faridabad, during the year 1962-63 to certain State

electricity undertakings in the course of inter-State commerce is exempt from levy of tax 'generally' within the meaning of section 8(2-A) of the Central Sales Tax Act, 1956 read with section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948."

In Sales Tax Reference No. 11 of 1969, the Tribunal has referred the following question of law :-

"Whether under the facts and circumstances of the case, the sale of electricity poles, by M/s. R.N. Ghanikar & Co. to M/s. Delhi Electric Supply Undertaking, Delhi, in the course of inter-State trade or commerce from Faridabad in Haryana for distribution of electricity is exempt from levy of tax 'generally' within the meaning of section F(2-A) of the Central Sales Tax Act, 1956, read with section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948."

2. It will appear from both the references that the point involved is the same that is why we have decided to dispose of the same by a single order.

3. Before proceeding to deal with the respective contentions of the parties, it will be proper to set out the relevant provisions of the statutes, namely the Punjab General Sales Tax Act, 1948, and the Central Sales Tax Act, 1956.

4. Section 5(2)(a)(iv) of the State Act is in the following terms :-

"In this Act the expression 'taxable turnover' means that part of a dealer's gross turnover during any period which remains after deducting therefrom -

(a) his turnover during that period on -

(i) .....

(ii) .....

(iii) .....

(iv) Sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy;"

Section 6 of the State Act is in the following terms :-

"6(1) No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the Sale of goods which are declared tax-free from time to time under this section.

(2) The State Government, after giving by notification not less than thirty days notice of its intention so to do, may by like notification add or delete from Schedule B and thereupon Schedule B shall be deemed to be amended accordingly."

Section 8(2-A) of the Central Act is in the following terms :-

"8(2-A). Notwithstanding anything contained in sub-section (1A) of section 6 or sub-section (1) or sub-section (2), of this section, if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or as the case may be, shall be calculated at the lower rate.

*Explanation* - For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods."

5. Two contentions were in fact raised before the Tribunal, namely (1) that the sales to which section 8(2A) relates are only those sales which fall within section 6 of the State Act, and (2) that even if the sales are covered by section 5(2)(a)(iv) of the State Act, the provisions of explanation to section 8(2A) take them out of the exemption available under that provision. Both these contentions were negated by the Tribunal and this is what the Tribunal observed :-

"The argument is that the only section, in the Punjab General Sales Tax Act for dealing with commodities entitled to exemption generally, is its section 6 and that if it is intended to exempt electricity poles sold to licensed undertakings, then this commodity would have been included in Schedule B under the said section. Perusal of Schedule B would show the weakness in this reasoning. There are several items for which the exemptions in Schedule B are conditional. Thus articles ordinarily prepared by Halwais are exempt only when sold by Halwais exclusively, country-made shoes (Jutis) are exempt when sold by makers of such shoes themselves or by any member of his family provided that the maker does not employ any outside labour or use power at any stage for making the shoes. Medicines are exempt when sold by medical practitioners owning dispensaries in the course of dispensing medicines to their patients on their own prescriptions. It is obvious that some of the conditions in exceptions incorporated in Schedule B of the State law subject to which exemption is available will disqualify these commodities for similar benefit under section 8(2A) of the Central Act. The mere exclusion of Sales of electricity poles to electricity undertakings from this Schedule, therefore, is no ground for assuming that they are not entitled to the benefit of section 8(2A) of the Central Act. The next question is whether the fact that exemption, are allowed only to licensed undertakings and not to unlicensed undertakings and is restricted to goods used in the generation and distribution of energy constitute conditions or exceptions which are caught in the exclusion of the explanation to section 8(2A) of the Central Act. Electrical undertakings require many different kinds of machinery and raw material. The intention, obviously, is

that the goods of certain categories that are purchased by a certain class of electrical undertakings should be exempted. One method would be to draw up a list of all such articles and enumerate them by name. In case this be not practicable, the other equally legitimate method would be to make the divisions with reference to either the source or consumptive use of such commodities. It is nobody's case that electricity poles are a commodity which can be put to any use other than distribution of energy. Classification of goods by consumptive use is of common occurrence and is not the kind or restriction condition or circumstances hit by that explanation to section 8(2A) of the Central Act. Plain reading of the sub-section (2)(a)(iv) of section 5 of the Punjab Act shows that it is descriptive. In any case, in respect of goods which cannot be put to any use other than generation or distribution of electric energy, no conditions have to be fulfilled by the seller or the purchaser in order to be exempt from tax. The exemption in respect of electricity poles in my opinion is, therefore, General and without restrictions of any kind. The next question is whether restricting concession to licenced undertakings as distinguished from unlicensed undertakings can be a specified circumstance which would exclude the sale involved from benefit of section 8(2A). This question is practically the same as decided recently by the High Court of Madhya Pradesh in case *Commissioner of Sales Tax v. Kapur Dori Nawar & Co<sup>l</sup>.*, In that case exemption was granted to sale of Nawar by a registered dealer and it was held that the fact that exemption was not available to non-registered dealers did not make any difference as the sales so far as registered dealers were concerned were exempted in general without any condition or restriction. It was clearly held that sub-section (2A) of section 8 of the Central Act does not speak of exemption under the State law of sale or purchase of any goods by all dealers and that even when exemption was not granted to unregistered dealers, it could not be said that the exemption for registered dealers was not general and universal, M/s. Delhi Electric Supply Undertaking are admittedly an undertaking licensed under the Indian Electricity Act, 1910, and it is not contested that the electricity poles purchased by them could not be put to any use other than distribution of energy. Hence, therefore, the sales in question were not liable to tax."

6. Before us, the same contentions have been advanced. Mr. Chetan Dass Dewan, learned counsel for the State, has urged that the provisions of section 8(2A) of the Central Act only apply to exemptions under section 6 of the State Act. The burden of his argument is that exemptions are covered by section 6 of the State Act whereas section 5 of the State Act deals with deductions. As section 8(2A) of the Central Act talks of exemptions it only relates to section 6 and not to section 5. There seems to be a fallacy in this contention. Section 6 does not talk of exemptions, but deals with tax-free goods or in other words, specified, goods on which no tax is payable and it makes a reference to Schedule of the Act, whereas section 5 deals with what has to be excluded from the taxable turnover of a dealer. But the substance of the matter is, both deal with goods which do not suffer sales tax and in that sense both provisions deal with exemptions of goods from sales tax. Therefore, we are unable to accept the contention of the learned counsel for the State that the provisions of section 8(2A) of the Central Act are restricted to section 6 of the State Act and do not cover section 5 of the State Act. Therefore, we find no fault with the

decision of the Tribunal on this aspect of the case.

7. However, the question on which the Tribunal went wrong was that it did not appreciate the ambit and scope of the explanation to section 8(2A) of the Central Act. The explanation to this provision whittles down the main provision. The main provision exempts goods from interstate sales tax where the tax law of the appropriate state has exempted them from sales-tax. However, the explanation puts a rider on this and takes away the exemption where it is not general and has been granted in specified circumstances or under specified conditions. Therefore, the short question that requires determination is, whether the sales in the present case are of a nature which have not been made under specified circumstances or under specified conditions. This brings us to the provisions of section 5(2)(a)(iv) of the State Act which have already been reproduced. The sales excluded are those made under specified circumstances and specified conditions; the specified circumstances being that the sale must be to an undertaking engaged in supplying electrical energy to the public under a licence or sanction granted under the Indian Electricity Act, 1910; and the specified condition is that the goods purchased by the undertaking must be used for the generation or distribution of electrical energy. We see no escape from this conclusion.

8. Mr. Ved Vyas, who represents the Cable Company, contended on the basis of *Commissioner of Sales Tax, Madhya Pradesh v. Kapoor Dori Niwar and Co., Gwalior*<sup>2</sup>, a Bench decision of the Madhya Pradesh High Court, that the sales in question do not prescribe any specified circumstances or conditions. It will be seen that in the case of Kapoor Dori Niwar & Co., by a notification the sale of Niwar by a registered dealer was exempted from the sales-tax by the Government. The question arose whether to such an exemption the explanation to section 8(2A) of the Central Act applied, and the learned Judges of the High Court held that it did not apply. However, the following observations made in that case really clinch the matter in favour of the Department in the present case :-

"The expression 'exempt only in specified circumstances or under specified conditions', occurring in the explanation to sub-section (2A) means such circumstances or conditions the non-existence or non-performance of which precludes the grant of exemption ; so that if those circumstances do not exist or those conditions are not performed ; then the sales of goods cannot be exempted from tax even if they are effected by a class of dealers to whom exemption is granted and during the period for which exemption is granted. The notification dated the 1st April, 1959, does not prescribe any such conditions or circumstances with regard to grant of exemption on sales of Niwar by registered dealers. It must be noted that sub-section (2A) of section 8 of the Act does not speak of exemption under the State sales tax law of sale or purchase of any goods by all dealers. It says if under the sales tax law of the appropriate State the sale or purchase, as the case may be of any goods by a dealer is exempt from tax'. The words 'a dealer' used in sub-section (2A) mean a registered as well as an unregistered dealer. Therefore, there can be no room for the argument that as under the notification dated the 1st April, 1959, exemption has not been granted in respect of sales of Niwar by unregistered dealers, the exemption from tax is not general in regard to sales by registered dealers."

If the notification in the Madhya Pradesh case is compared with the provisions of section 5(2)(a)(iv) of the State Act in the cases in hand, it will appear that there is a word of difference between the two. So far as the Madhya Pradesh notification is concerned, there were neither specified circumstances nor specified conditions regarding sales of Niwar by registered dealers, whereas in the case of sales to the undertaking of various items covered by section 5(2)(a)(iv), this does not happen. Those sales are subject to specified circumstance; as well as specified conditions and, therefore, this authority does not help the learned counsel for the assessee.

9. In *M.A. Abbas and Co. v. The State of Madras*<sup>3</sup>, a Bench decision of the Madras High Court, which dealt with section 8(1), and now after amendment is equivalent to section 8(2A), it was observed :-

"To our minds, the correct interpretation of this expression is that the goods should be totally exempt from tax before similar exemption from the levy of Central Sales Tax can become available; but where the exemption from taxation is conferred on conditions such as that the turnover of a dealer under the local sales tax law is below the minimum prescribed, or that the tax will attach to a transaction only in certain circumstances, there is no exemption from tax 'generally'."

These observations fully apply to the facts of the present case.

10. A Full Bench decision of the Kerala High Court also supports the view we have taken of the matter. It was observed in *Krishna Iyer v. State of Kerala*<sup>4</sup>:-

"Where in order to get the benefit of an exemption a licence has to be obtained under the State Act, it cannot be said that there is a general exemption from tax as contemplated by section 8(2A) and the explanation to that sub-section."

11. Therefore, we are clearly of the view that the contention of the State counsel that the provisions of section 8(2A) of the Central Act do not apply to the facts of the present case is correct and the Tribunal has gone wrong in reversing The view adopted by the Departmental authorities.

12. The next contention of Mr. Ved Vyas is that what we, have read in Section 5(2)(a)(iv) of the State Act as specified circumstances and specified conditions. According to the learned counsel, they are merely descriptive of the persons who purchase the goods but they do not in any manner detract from the general nature of the sale. We are unable to agree with this contention. The exemption cannot be said to be granted generally, because there can be undertakings doing the very job and buying poles or cables. No provision of law has been brought to our notice which rules out this possibility.

13. The last contention urged by Mr. Ved Vyas is that if there is any doubt as to the interpretation of section 8(2A) of the Central Act, its benefit should go to the assessee. In the first place, we have no doubt on the matter and we have already expressed our opinion. In the second place, the assessee would not be entitled to the benefit of the doubt. The rule is firmly settled that if the assessee claims exemption the burden of proof that he is entitled to it is on him and, therefore, there is no question of his getting the benefit of the doubt. See in this connection *M/s. Sharma*

*Sales Centre v. The State of Haryana*<sup>5</sup>,

14. For the reasons recorded above, we answer the questions referred to us in the negative, i.e. in favour of the Department and against the assesseees. In the circumstances of the cases, however, we leave the parties to bear their own costs.

Reference answered.

Cases Referred.

1(1968) XXII S.T.C. 152

222 STC 152

313 STC 433

4 13 STC 838

51973 R.L.R. 276