MUKERIAN PAPERS LTD. A

v.

STATE OF PUNJAB

FEBRUARY 13, 1991

[RANGANATH MISRA CJ M.N. VENKATACHALIAH, A.M. AHMADI, JJ.] B

Punjab General Sales Tax Act, 1948: Sections 4B, 10(6) and 11D—Raw Material consumed in manufacture of goods sent outside the State—Purchase Tax on such raw material—Levy of—Whether valid interest and penalty on such levy—Imposition of.

C

The appellant, a registered dealer under the Punjab General Sales Tax Act, 1948 despatched some part of the manufactured goods outside the state, without paying the tax on the taxable raw material consumed in the manufacture of such goods. The assessing authority issued a show cause notice for the assessee's failure to pay the said tax. Interest was also demanded on the tax amount. The assessee disputed its liability to pay penalty and interest on the amount of tax withheld on the plea that there was no wilful default on its part, as it was under a *bona fide* belief that no tax was to be paid on the raw material used in the manufactured goods sent outside State. The assessee further stated that it had acted on legal advice that it was not liable to pay any Purchase Tax and, therefore, in the absence of a clear intention to avoid the payment of tax, there could be no question of imposition of penalty and demand for interest. The assessee's submissions did not find favour with the Revenue, as also the Tribunal, and the assessee sought a reference to the High Court under section 22(1) of the Act. But the Tribunal rejected application for reference. Thereafter the assessee preferred appeals to this Court, against the Tribunal's rejection of reference as also the Tribunal's order in appeal. D E F

On behalf of the appellants, it was contended that the main question involved in this case is concluded by several decisions of this Court, and it was not liable to pay the tax, as demanded by the Revenue. G

On behalf of the Revenue it was contended that the assessee was liable to pay the tax on the raw materials used in the manufactured goods sent outside the State.

Allowing the appeals, this Court, H

A **HELD: 1.1 Under Section 4B of the Punjab General Sales Tax Act, 1948 the tax becomes exigible not on the purchase of the raw material or on the use thereof in the manufacture of a new and distinct commodity but only after the goods so manufactured are despatched to a place outside the State. Once the goods are sent outside the State the purchaser is made liable to pay the tax at the rate prescribed on the** B **purchase of such goods provided no tax is payable on the purchase thereof under any other provision of the Act. It is obvious that the tax though described as purchase tax is in effect a tax on consignment since it becomes effective on the happening of an event which has nothing to do with the actual purchase. Even if the raw material is used in the manufacture of any taxable goods, the purchaser does not become liable to pay tax on the raw material until the manufactured item is sent out of** C **the State. And between the manufacture of the goods out of the purchased raw material and their actual despatch outside the State there may be a long time gap. The liability of tax falls only after despatch of the manufactured goods outside the State and that event may have no relation to the actual purchase or manufacture. That being** D **so, the tax though described as a purchase tax is actually a tax on the consignment of the manufactured goods, the levy of which is beyond the competence of the State Legislature as the power to impose such tax is vested in Parliament by virtue of clause (h) of Article 269(1) of the Constitution read with Entry 92B in Schedule 7, List I. [352H; 353A-E; 354B]**

E **1.2. Even though the language of section 4B of the Act is not identical to section 9(1) of the Haryana Sales Tax Act, it is in substance similar in certain respects, particularly in respect of the point of time when the liability to pay tax arises. Under that provision also the liability to pay purchase tax on the raw material purchased in the State which was consumed in the manufacture of any other taxable goods** F **arose only on the despatch of the goods outside the State. [353D-E]**

M/s. Goodyear India Ltd. **v.** *State of Haryana,* **AIR 1990 SC 781; applied.**

State of Tamil Nadu **v.** *M.K. Kandaswami etc.*, **[1976] 1 SCR 38;** G **referred to.**

2. Since the Revenue was not entitled to levy the tax which it purported to levy as purchase tax on the raw material, there can be no question of imposition of penalty or interest on the unpaid amount of tax. Therefore, the action taken in exercise of power under section 10(6) H **and section 11D of the Act cannot be allowed to stand. [354G-H]**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 936 (NT), 937, 2339 & 2340 of 1988. A

From the Judgments and Orders dated 12.8.1987, 3.7.1986, and 22.8.1988 of the Sales Tax Tribunal, Punjab in Misc. Reference No. 60 of 1986-87, First Appeal No. 379 of 1986 and in Appeal Nos. 46 and 47 of 1987-88. B

V.M. Tarkunde, R.C. Misra and Ms. Meera Aggarwal for the Appellant.

H.S. Munjral and C.M. Nayar for the Respondent.

The Judgment of the Court was delivered by C

AHMADI, J. the assessee-appellant M/s. Mukerian Papers Ltd., is a company engaged in the manufacture of paper at Mukerian in the State of Punjab and is a registered dealer under the Punjab General Sales Tax Act, 1948 ('The Act' hereinafter). The assessee despatched D some part of the manufactured goods outside the State of Punjab for sale on cosignment basis. However, the assessee had not paid the taxes on the taxable raw material consumed in the manufacture of such goods. A show cause notice was, therefore, issued by the Assessing Authority under section 10(6) of the Act for the assessee's failure to pay the taxes along with the return as required by section 4B of the E Act. Interest on the tax amount which the assessee had failed to pay was also claimed under Section 11D of the Act. The assessee disputed its liability to pay penalty and interest on the amount of tax withheld on the plea that there was no wilful or intentional default on the part of the assessee to pay the taxes due under section 4B of the Act as the assesee was under a *bona fide* belief that no tax was to be paid on the F raw material purchased for the manufacture of paper which was ultimately sent outside the State on consignment basis. This impression, based on the language of the statute, stood confirmed by the subsequent decisions of the Punjab & Haryana High Court in the case of *Goodyear India Ltd.*, 53 STC 163 and *Bata India Ltd.*, 54 STC 226 till those decisions were overruled by the Full Bench decision in *Des Raj Pushpak Kumar's* case 58 STC 393. The assessee further contended G that it had acted on legal advice that it was not liable to pay any purchase tax and, therefore, in the absence of a clear intention to avoid the payment of tax, there could be no question of imposition of penalty and demand for interest. On the other hand it was contended on behalf of the revenue that the two decisions on which the assessee H

placed reliance were subsequent to the date on which the liability to pay the tax had arisen and hence the assessee could not take shelter under the said two decisions. The submissions made on behalf of the assessee did not find favour with the Revenue. The assessee thereupon sought a reference under section 22(1) of the Act but the Presiding Officer of the Tribunal by its order dated 12th August, 1987 rejected the application as he saw no point of law to make a reference to the High Court. Civil Appeals Nos. 936 and 937 of 1988 arise out of the said order of 12th August, 1987. In the other two appals Nos. 2239 and 2240 of 1988 the appellants have come to this Court directly from the Tribunal's order in appeal without going through the formality of seeking a reference under section 22(1) of the Act in view of the rejection of a similar request by the impugned order of 12th August, 1987. This Court granted special leave to appeal without insisting on the appellant-assessee approaching the High Court in view of the Full Bench decision of that Court in *Des Raj's* case. As the facts are identical and common questions of law arise we have thought it proper to dispose of all the four appeals by this common judgment.

Counsel for the assessee-appellant contended that the main question of law involved in this case is concluded by the decision of this Court in *M/s. Goodyear India Ltd.* v. *State of Haryana*, AIR 1990 SC 781 which was an appeal arising from the High Court's decision in the case of the same assessee reported in (1983) 53 STC 163 to which reference is made hereinabove. He further pointed out that while deciding the true scope of section 9 of the Haryana General Sales Tax Act, 1974, which, says counsel, is in *pari materia* with section 4B of our Act, this Court affirmed the High Court's view expressed in *Goodyear India Ltd.*, 53 STC 163 and *Bata India Ltd.*, 54 STC 226 and disapproved the Full Bench view in *Des Raj's* case 58 STC 393. Counsel for the Revenue, however, placed strong reliance on this Court's decision in *State of Tamil Nadu* v. *M.K. Kandaswami etc.*, [1976] 1 SCR 38 and submitted that the assessee's case falls within the ratio of the said decision. But counsel for the assessee pointed out that this Court had considered the ratio of *Kandaswami's* case in the subsequent decision and had pointed out that in that case this Court was not concerned with the actual argument with which it was concerned in the subsequent case and, therefore, the decision in the former case is not an authority for the question of law involved in the subsequent case. In order to appreciate the rival submissions it would, we think, be appropriate to examine the language of section 4B of the Act, which reads as under:

"4B. *Levy of Purchase tax on certain goods—*

Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source and—

(i) uses them within the State in the manufacture of goods specified in Schedule B, or

(ii) uses them within the State in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the State in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India; or

(iii) uses such goods for a purpose other than that of resale within the State or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or

(iv) sends them outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India,

and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the State Government may direct."

We may first read the plain language of the section bearing in mind the contextual setting and the objective of the law. The section seeks to provide for the levy of purchase tax on certain goods. It seeks to levy a tax on the purchase of goods, other than those specified in Schedule B, which are used in the manufacture of goods specified in Schedule B or in the manufacture of goods, other than those specified in Schedule B and sent outside the State in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of Indian territory provided of course no tax is payable on the purchase of such goods under any provision of the Act. Where a dealer purchases raw material other than the goods referred to in Schedule B and uses the said raw material within the State in the manufacture of goods specified in Schedule B, he becomes liable to purchase tax at the rate specified by the State Government not exceed-

A ing the maximum fixed under section 5(1) provided no tax is paid on such goods under any other provision of the Act. However, when the raw material is used within the State in the manufacture of goods under than the one specified in Schedule B and the manufacturer 'sends' the goods so manufactured outside the State in any manner (other than by way of sale in the course of inter-State trade or com-
B merce or in the course of export out of India) he becomes liable to pay purchase tax at the rate specified. To attract this provision the revenue must show that (i) the manufacturer is a dealer liable to pay tax under the Act (ii) he has purchased goods other than those specified in Schedule B from any source (iii) he has used the said goods within the State in the manufacture of any goods other than those specified in
C Schedule B and (iv) he has sent the goods so manufactured outside the State in any manner other than the one excepted. Before this provision can be invoked the above requirements must be strictly proved. The first requirement identifies the tax-payer, the second and the third requirements identify the goods liable to tax in the event the fourth requirement of the goods so manufactured being sent outside the State
D takes place. Thus the liability to pay purchase tax does not accrue on the purchase of the raw material within the State or its use in the manufacture of goods other than those specified in Schedule B but falls on the dealer when the goods so manufactured are sent outside the State. To avoid a duplication of the levy the charging-clause provides that the purchase tax will be leviable under Section 4B provided
E it is not leviable on the said goods under any other provision of the Act. Although the purchase tax is levied on the raw material purchased by the manufacturer, the actual levy is postponed till after the said raw material is consumed in the manufacture of another commercially distinct commodity having its own separate identity and character and is actually sent outside the State. The relevant date is the date
F on which the goods are sent outside the State. The taxable event takes place when the taxable goods are sent outside the State and not before that date notwithstanding the fact that the raw material was purchased and converted into a new commodity long before that date. In the present case since it is not disputed that the demand of purchase tax is based on the fact that the goods manufactured within the State from
G raw material purchased earlier had been sent outside the State of sale on consignment basis, we are concerned only with clause (ii) of Section 4B whereunder the tax liability accrues on the date the goods are sent outside the State.

Under Section 4B of the Act the tax becomes exigible not on the
H purcahse of the raw material or on the use thereof in the manufacture

of a new and distinct commodity but only after the goods so manufactured are despatched to a place outside the State. Once the goods are sent outside the State the purchaser is made liable to pay the tax at the rate prescribed on the purchase of such goods provided no tax is payable on the purchase thereof under any other provision of the Act. It is, therefore, obvious that the tax though described as purchase tax is in effect a tax on consignment since it becomes effective on the happening of an event which has nothing to do with the actual purchase. Even if the raw material is used in the manufacture of any taxable goods, the purchaser does not become liable to pay tax on the raw material until the manufactured item is sent out of the State. And between the manufacture of the goods out of the purchased raw material and their actual despatch outside the State there may be a long time gap. There is, therefore, no room for doubt that the liability of tax falls only after despatch of the manufactured goods outside the State and that event may have no relation to the actual purchase or manufacture. That being so, the conclusion is inescapable that the tax though described as a purchase tax is actually a tax on the consignment of the manufactured goods. Therefore, even though the language of section 4B of the Act is not identical with the relevant part of section 9(1) of the Haryana Act, it is in substance similar in certain respects. particularly in respect of the point of time when the liability to pay tax arises. Under that provision, as here, the liability to pay purchase tax on the raw material purchased in the State which was consumed in the manufacture of any other taxable goods arose only on the despatch of the goods outside the State. We are, therefore, of the opinion that the ratio of the said decision of this Court in *Goodyear India Ltd.* (supra) applies on all fours to the main question at issue in this case.

In the case of *Goodyear India Ltd.* (supra), this Court was concerned with the interpretation of section 9(1) and section 24(3) of the Haryana Act. The facts revealed that the assessee-company, which was engaged in the manufacture of automobile tyres and tubes at its factory at Ballabgarh in Haryana, had purchased raw materials from within and outside the State for the manufacture of the said products. After manufacturing the same, the assessee-company despatched some part of the manufactured products to its depots outside the State. The revenue sought to recover purchase tax on the raw material purchased in the State and consumed in the manufacture of such goods under section 9(1) of the Haryana Act. The action of the revenue was challenged in the High Court of Punjab & Haryana. The High Court held that both on principle and on precedent, a mere despatch of goods to various depots of the assessee-company outside the State did

not fall within the ambit of the phrase "disposes of the manufactured goods in any manner otherwise than by way of sale" employed in section 9(1)(a)(ii) of the Haryana Act. The High Court also held that the decision of this Court in *Kandaswami* (supra) was not an authority for the proposition that a mere despatch of goods outside the State fell within the ambit of the said provision. This Court while upholding the final order passed by the High Court came to the conclusion that as the tax levied was a tax on consignment of goods, the provisions imposing the said tax were beyond the competence of the State Legislature as the power to impose such tax vested in Parliament by virtue of clause (h) of Article 269(1) of the Constitution read with Entry 92B in Schedule 7. List I, inserted by the 46th Amendment to the Constitution. This Court also clarified that even before the amendments introduced by the 46th Amendment came into effect, Entry 54, in List II of the 7th Schedule read with Article 246(3) of the Constitution conferred power on the State Legislature to impose a tax on sale or purchase of goods and not on the mere consignment of goods, since consignment of goods simpliciter is neither a sale nor purchase or disposal of goods. Holding that in substance the levy was sought on the consignment of goods, this Court held that it was not liable to tax since the State's power to tax did not extend that far.

Counsel for the revenue placed reliance on an earlier decision of this Court reported in the case of *Kandaswami* (supra) which dealt with Section 7A of the Tamil Nadu Act which though not identical was similar to Section 9(1) of the Haryana Act. The decision in *Kandaswami* though rendered in the context of an analogous provision was distinguished by this Court in *Goodyear India Ltd.* on the ground that it did not touch the core of the question at issue in the latter case. This aspect of the matter is elaborately dealt with in paragraphs 31 to 34 at page 796 of the Report. We need not dilate on this any more since the correctness of the judgment in *Goodyear India Ltd*, is not canvassed before us. This Court, therefore, affirmed the High court's view in *Goodyear India Ltd.*, 53 STC 163 and *Bata India Ltd,* 54 STC 226 and disapproved of the Full Bench decision in the case of *Des Raj* 58 STC 393.

Once it is found that the revenue was not entitled to levy the tax which it purported to levy as purchase tax on the raw material, there can be no question of imposition of penalty or interest on the unpaid amout of tax. Therefore, the action taken in exercise of power under section 10(6) and section 11D of the Act cannot be allowed to stand and must be set aside.

In the result these appeals succeed. We allow all these appeals and set aside the decision of the Salex Tax Tribunal, Punjab, in each case. Any recovery made under the impugned orders will be refunded within a period of three months from today. Having regard to the facts and circumstances of the case, we make no order as to costs.

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G.N. Appeals allowed.