Lipton India Ltd. And Ors. vs Union Of India (Uoi) And Ors. on 16 September, 1994

Equivalent citations: JT1994(6)SC71, 1994(4)SCALE165, (1994)6SCC524, [1994]SUPP3SCR600, [1995]97STC84(SC)

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Bench: M.N. Venkatachaliah, B.P. Jeevan Reddy

JUDGMENT

B.P. Jeevan Reddy, J.

1. The petitioner is engaged in the manufacture inter alia of vanaspati. It has a plant at Ghaziabad in Uttar Pradesh.

2. With a view to ensure supply of vanaspati at an uniform rate throughout the country, the Government of India had evolved, in consultation with the manufacturers of vanaspati, a scheme known as 'All-India voluntary price control system', whereunder the manufacturers of vanaspati were obliged to sell vanaspati at an uniform price throughout the country. Oil is the main raw material for manufacturing vanaspati. Part of the oil so required was being imported through the agency of State Trading Corporation and sold to various manufacturer all over the country. Very often, the S.T.C. depot, nearest to the plant, was designated as the source from which the manufacturer was to draw the supply of imported oil. Since the manufacturers were obliged to sell vanaspati at an uniform price, the Government of India proposed to supply imported oil to all the manufactures, wherever their plants are situated, at an uniform price. It is this aspect which gave rise to certain problems. The rates of sales tax on the sale of oil were not uniform throughout the country. Some State enactments did not levy any tax while others levied tax at rates ranging from 1% to 4%. Complaining of discrimination on this score, a number of vanaspati manufacturers approached the High Courts by way of writ petitions which were all transferred to this Court and numbered as Transferred Case No. 7 of 1981 etc. Some writ petitions were filed directly in this Court under Article 32 of the Constitution. All these matters came to be disposed of by this Court by order dated February 8, 1982 which reads as follows:

> In these writ petitions, counsel for the petitioners have expressed a desire to withdraw the petitions, provided that the Central Government and the State Trading Corporation are prepared to consider the representations which they propose to make. The learned Attorney General agrees that any representation which the

petitioners and other manufacturers of vanaspati may make will be considered carefully and objectively from all relevant points of view, including the questions which are covered by the undertakings given by the parties, which have now lapsed.

We allow the petitioners to withdraw the writ petitions. We hope that the Central Government and the State Trading Corporation will take a fair and final decision on the representations of the petitioners and other manufacturers of vanaspati as expeditiously as possible, preferably before September 1, 1982. The petitioners agree that they will make their representations within one month from today.

If the Central Government decides to appoint a Committee to go into the various questions which arise in these Petitions the Committee, we are sure, will give a proper hearing to the manufacturers of vanaspati, individually, if necessary.

The amounts payable towards inland freight equalisation charges which the petitioners of some of them did not pay as a result of the stay orders passed by the various High Courts became payable when the stay orders were vacated. These amounts shall be paid, subject to such convenience as the State Trading Corporation may grant. We recommend that such of the petitioners who are liable to pay the amounts as aforesaid, may be granted the facility of paying the same in four equal monthly instalments, with interest at 12% p.a. from the date of payment, with monthly rests.

There will be no order as to costs.

(The writ petitioner was not one of the petitioners in the aforesaid batch.)

3. Pursuant to the observations made in the above order, the Government of India constituted a committee known as 'Parmeshwaran Committee' (hereinafter referred to as 'Committee') with the following terms of reference:

1. To examine the representations submitted by individual vanaspati manufacturers and their Associations to Government before 7.3.82 (i.e. within the time limit fixed by the Supreme Court by their order dated 8.2.82) against the existing STC's scheme about freight equalisation charged included in the release price of imported oils.

2. To consider various relevant issues such as equalisation of incidence of Sales tax and other statutory duties like octroi etc. by giving proper hearing to the vanaspati manufacturers individually, if necessary.

3. To suggest a suitable formula of periodical revision of freight equalisation charge as to neutralise the escalations in transportation charge of imported oil incurred by the vanaspati manufacturers from time to time.

> 4. To recommend measures necessary for achieving the objective of uniform delivered cost of imported oils to vanaspati units as far as possible so as to enable the Government to enforce a uniform price of vanaspati throughout the country more effectively.
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> 5. To make other recommendations as may be necessary to allay the apprehensions of a Section of Vanaspati industry about the alleged discriminatory treatment for fixation of release price of imported oils. The Committee was required to submit its final report to Government by the 15th June, 1982. The Committee had to give hearings to vanaspati manufacturers who submitted their representations as required by this Hon'ble Court's order and to discuss various points raised by them in their representations. Due to various reasons, the Committee had to seek extension of time upto 1st January, 1983 for finalisation and submission of its report to the government.

(Terms of reference Nos. 2 and 4 are relevant for the present purposes.)

4. The Committee heard the manufacturers and other concerned parties and also obtained the opinion of Price Waterhouse, a reputed firm of Chartered Accounts in India. Price Waterhouse recommended two alternate formulas for equalisation of incidence of sales tax. Paras 4.21 and 4.22 of the report contain the said two formulas:

> 4.21...
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> (i) Alternative No. 1 : STC should charge varying prices for oils so that the price and the sales tax on that price always sums to a uniform value throughout the country. In other words, the various prices charged, should be so linked to the sales tax rates that in the end, the cost of imported edible oils inclusive of sales tax is identical for all manufacturers. For example, in case where sales tax is nil with declaration form, the basic price and end price would be - say Rs. 100. In case of entire State sale, where sales tax rate is 4%, the basic price would be Rs. 96-00 and 4% sales tax thereon, the end price would be Rs. 100.
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> (ii) Alternative No. 2 : STC should charge sales tax on release price and give discount of an amount equivalent to the sales tax.

4.22 In both the systems sales should be made against proper declaration forms which allow a concessional rate of tax. Where declaration forms are not submitted, the manufacturers should be charged higher rate of sales tax in States where a higher rate is applicable.

5. After considering the said suggestions, the Committee recommended the acceptance of the second alternative. In para 6.3 of its report, the Committee observed thus:

(a) The second alternative on sales tax reimbursement by STC through credit notice facility may be adopted. Sales tax as paid by the the parties be reimbursed to them at actuals, subject to their furnishing necessary declaration forms etc. as required under the relevant Sales Tax Acts, (para 5.18).

(b) In addition to sales tax, other statutory local levies such as octroi etc., if any, may be reimbursed at actuals on production of necessary documentary evidence by the manufacturers. (para 5.19)

6. The Government of India accepted the aforesaid recommendation and issued instructions accordingly. It is the interpretation of the said formula that falls for consideration in this writ petition. But before we set out how the controversy has arisen, it would be appropriate to refer to certain provisions of the Uttar Pradesh Sales Tax Act.

7. Section 4-B of the Uttar Pradesh Act provides for special relief to certain manufacturers. Sub-section (2) provides that "where a dealer requires any goods, referred to in Sub-section (1), for use in the manufacture by him, in the State, of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commence or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period, as may be prescribed, for the grant of a recognition certificate in respect thereof; and if the applicant satisfies such requirements and conditions, as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form, and subject to such conditions, as may be prescribed." The explanation appended to Sub-section (2) says that the goods required for use in manufacture shall mean raw material and processing material among others and that the expression "notified goods" means such goods as may from time to time be notified by the State Government in that behalf. Sub-section (1) of Section 4-B - which opens with a non-obstante clause, "notwithstanding anything contained in Sections 3, 3A, 3AAAA and 3B" - contains three clauses, viz., (a) (a-1) and (b). Clauses (a) and (a-1) refer to goods taxable at purchase point, while Clause (b) refers to all other goods taxable under the Act. Since clauses (a) and (a-1) are not relevant for our purposes, it is not necessary to refer to their contents. Clause (b) covers all goods other than those mentioned in clauses (a) and (a-1) taxable under any of the provisions of the Act. It says that where such goods are sold by a dealer to another dealer and such other dealer furnishes to the selling dealer a certificate in the prescribed form and manner, to the effect that he holds a recognition certificate issued under Sub-section (2), the selling dealer shall charge either such such concessional rate as may be notified or shall not charge any tax, if the notification says so. Notification means a notification issued by the State Government under the Act.

8. Oil is taxable at the sale point and, therefore, falls under Section 4-B(1)(b), which means that if the purchasing dealer, holding a recognition certificate, furnishes the relevant certificate - called a 'declaration' by Rule 25-B of the Uttar Pradesh Rules - to the selling dealer, the selling dealer is obliged not to charge any tax on such sale. During the relevant period, the notification issued by the State Government provided for full exemption in such a case.

9. It is necessary to emphasise a feature of Sub-section (2) of Section 4-B. A recognition certificate can be issued only to such dealer-manufacturer who intends to sell the goods manufactured by him either within the State or in the course of inter-state trade or commerce or in the course of export out of India. The reason for such exemption - a common feature in almost all the State Sales Tax enactments - is well-known and has been explained by this Court in Hotel Balaji v. State of Andhra Pradesh (1993) 88 S.T.C. 98 and Devi Das Gopal Krishan Pvt. Ltd. etc. etc. v. State of Punjab and Ors. etc. etc. (1994) 3 J.T. 239. The State does not wish, in the interest of consuming public and of trade, to tax both the raw material and manufactured goods. If the manufactured goods are sold within the State or sold in the course of inter-state trade or commerce, the State gets the tax. So far as the export out of India is concerned, though the State does not get the tax, it serves the national interest by promoting exports. It is for reason that the purchase of raw material required for the manufacture of such goods is exempted from tax. But where the manufactured goods are taken out of State without selling them in any of the above three modes, the State says, it will tax the sale/purchase of raw materials. This is for the reason that where the manufactured goods are taken out of the State without selling them in any of the above three modes (sale within State, sale in the course of inter-state trade or commerce and export sale), neither the State gets the tax nor the national interest in export promotion is served. The petitioner says that half of its manufactured product, vanaspati, is sold within the State of Uttar Pradesh while the other half is taken out of Uttar Pradesh to its depots outside Uttar Pradesh for sale in different States. For this reason, says the petitioner, it used to furnish certificates/declarations (contemplated by Section 4-B and Rule 25-B) only to the extent of half the quantity of oil purchased by it and not for the full quantity purchased. Where it furnished the 'declaration', the State Trading Corporation could not, and did not, charge - and pass on - the tax to it. But where it did not furnish such a 'declaration', the State Trading Corporation was entitled to and did charge and pass on the sales tax burden to the petitioner-purchaser. The petitioner says that it is entitled to refund of the sales tax amount paid by it to State Trading Corporation in respect of sales for which it did not furnish the 'declaration' by virtue of the Parmeshwaran Committee formula accepted by the Government of India and implemented by the State Trading Corporation. The State Trading Corporation denies this claim on the ground that since the petitioner did not furnish the 'declaration' contemplated by the Uttar Pradesh Act, it is not entitled to any reimbursement in terms of the 'formula'. And thereby hangs the controversy.

10. The second alternative suggested by the Committee and accepted by the Government of India says that "sales tax as paid by the parties be reimbursed to them at actuals, subject to their furnishing necessary declaration forms etc. as required under the relevant Sales Tax Acts". The State Trading Corporation says that unless declaration forms, as provided by the Uttar Pradesh Sales Tax Act, are furnished by the petitioner to it, it is not entitled to or bound to reimburse the sales tax to the petitioner. By declaration forms, the Corporation means the declaration forms provided by Section 4-B of the Uttar Pradesh Sales Tax Act read with Rules 25-B of the Uttar Pradesh Sales Tax Rules. The petitioner, however, says that this is asking for an impossibility. It says that if it had furnished a declaration as it did, as a fact, in respect of half of its purchases of oil, no tax could have been levied or collected by the Corporation (Selling dealer); in such a case, there is no question of reimbursement of sales tax. Only where the declaration was not furnished by the petitioner (purchasing dealer) that the Corporation charged and collected (i.e., passed on the burden of) the

sales tax. Inasmuch as 50% of its produce is taken out of the State of Uttar Pradesh and sold in some other State in India, the petitioner could not and did not furnish any declaration forms with respect to 50% of its purchases. Furnishing of a declaration for purchase of raw material required for manufacturing goods which are intended to be taken out of the State of Uttar Pradesh and sold in other States, says the petitioner, would have exposed it to penalty and prosecution besides the liability to pay the tax due. Insistence upon furnishing of declarations as a condition for reimbursement, says the petitioner, amounts in effect to denial of the benefit of the 'formula' accepted and enforcement by the Government of India. Sri Ganesh, learned Counsel for the writ petitioner seeks to explain the words "subject to their furnishing necessary declaration forms etc., as required under the relevant Sales Tax Act" in the formula thus : Under some State enactments, furnishing of a declaration does not lead to full exemption from sales tax but only a partial exemption or to a concessional rate of tax, as the case may be; declaration forms are, therefore, necessary to know and ascertain the amount of tax charged by the Corporation and passed on to the purchasing dealer-manufacturer; they are not necessary in case of total exemption.

11. We do recognise that the language of the formula does present some difficulty. The Corporation is insisting upon literal compliance with the formula without realising that by doing so, they are asking for the impossible in cases governed by Uttar Pradesh Sales Tax Act. (We may say that we wish to confine our decision to a case arising under the Uttar Pradesh Act; we do not wish to generalise.) As rightly pointed out by Sri Ganesan, where the petitioner furnished the declaration - these declarations, it must be noted, have to be furnished at the time of purchase to the selling dealer - the selling dealer, State Trading Corporation in this case, could not have, and as a matter of fact, did not charge, or pass on the incidence of, sales tax; no question of reimbursement would ever arise in such a case. Question of reimbursement arises only where tax is paid by - i.e., passed on to the purchasing dealer-manufacturer - the petitioner, because it did not furnish the declaration. Since the purchaser-petitioner intended to sell half of its manufactured product in other States, it did not - indeed, it could not - furnish the declaration to the extent of half of its purchases of oil from the State Trading Corporation. If the petitioner could not furnish the declarations at the time of purchase, it cannot also furnish them at the time of claiming reimbursement. Indeed, the Act does not contemplate or permit the furnishing of declarations for purposes other than the one specified by it. This is how the problem arises - problem of interpretation of the formula - and it is real. But before we proceed to deal with the problem, we must say that explanation offered by Sri Ganesan for the words "subject to their furnishing necessary declaration forms etc., as required under the relevant Sales Tax Acts" is no explanation in cases arising under the Uttar Pradesh Sales Tax Act. Whether it is total exemption or partial exemption (or a case of concessional rate of interest), a declaration is necessary to claim it - and such declaration has to be furnished at the time of purchase/sale and not at a later point of time, and certainly not for claiming reimbursement of tax. The Sales Tax enactments do not prescribe any declaration forms for claiming reimbursement in a case like the present one. The claim for reimbursement in this case arises not under the Uttar Pradesh Sales Tax Act but under the formula suggested by the Parmeshwaran Committee and accepted and implemented by the Government of India. This is a matter outside any of State Sale Tax enactments - certainly outside the Uttar Pradesh Act.

12. Having regard to the difficulty created by the language employed in this formula - the formula, it may be noted is not statutory but only an administrative decision, no doubt of general application - one has to turn to the object and purpose underlying the formula. It was simply this: since the manufacturers were obliged under the scheme to sell vanaspati at a uniform price all over the country, the imported oil - raw material required for such manufacture - was to be supplied to them at an uniform price. The import of oil was canalised at that time. Only the State Trading Corporation could and did import the oil and State Trading Corporation alone was supplying it to various manufacturers through its own depots. But variation in the rates of sales tax on sale of oil brought about a differential treatment. For example, a purchaser in State 'A' where there is no tax on sale of oil was getting oil at a cheaper rate than the purchaser in State 'B' where the rate of tax was 4%. Rates of tax, even where it was levied, were not uniform. Hence, the Parmeshwaran Committee sought to evolve a formula to off-set this incidence to ensure that every manufacturer in the country, wherever he may be located and subject to whichever sales tax enactment, shall get the oil at the same price. For this purpose, two alternate formulas were suggested to the Committee. The first was that the "State Trading Corporation should charge varying prices for oil so that the price and sales tax on that price always sums to a uniform value for oil', while the second was that "State Trading Corporation should charge sales tax on release price and give discount of an amount equivalent to the amount of sales tax". Both the formulas were intended to and did achieve the same objective - only the method adopted was different. The Government of India accepted the second alternative. According to this formula, the purchaser first pays - i.e., the State Trading Corporation passes on the burden to him - the tax and then claims reimbursement. When the claim for reimbursement is made, State Trading Corporation has to look to the Bills of Sales and ascertain the amount of sale tax collected from the purchaser and refund the same. The question of furnishing the declaration forms prescribed by the Uttar Pradesh Act or Rules does not and cannot arise for the reasons explained hereinbefore. It must, therefore, be held that so far as the State of Uttar Pradesh is concerned, the purchasing dealers-manufacturers therein cannot be called upon to produce the declaration forms as a condition for claiming reimbursement. The words "subject to their furnishing declaration forms etc., as required under the relevant Sales Tax Act" have no application to a purchaser in the State of Uttar Pradesh who could not have furnished such a declaration, according to law, at the time of purchase of oil. If, however, it is established in a given case that a particular purchaser could have furnished the declaration according to law, but he did not so on account of his negligence or otherwise, he may not be entitled to claim reimbursement under the said formula. Ordinarily, it must be noted, no dealer-purchaser would fail to furnish the declaration if he is entitled to do so but the possibility of such failure cannot be ruled out altogether.

13. At the same time, we must point out that any dealer-manufacturer claiming such reimbursements has to established to the satisfaction of State Trading Corporation the following facts, which constitute the basis - the underpinning - of the scheme, viz., (1) that the oil purchased by the purchasing dealer- manufacturer from the Corporation was in fact utilised by the purchasing dealer-manufacturer entirely and exclusively for the manufacture of vanaspati, (2) that the entire vanaspati manufactured was in fact sold at the prescribed rate either within the State of Uttar Pradesh or in any other State, as the case may be, and that such sale was subjected to tax under the relevant Sales tax enactment and (3) that the non-furnishing of declaration contemplated by Section 4-B of the Uttar Pradesh Sales Tax Act read with Rules 25-B of the Uttar Pradesh Sales Tax Rules

was because the purchasing dealer could not in law furnish such a declaration. Only where the above facts are established that the purchasing dealer-manufacturer would be entitled to reimbursement contemplated by the formula.

14. Sri A. Subba Rao, learned Counsel for the Corporation contended that the Corporation is entitled to only 1% commission on the sale of imported oil and if the Corporation is now made liable to reimburse the sales tax to the purchasers of such oil, it would suffer grave loss inasmuch as the amount of tax to be reimbursed would be far above the commission amount to which the State Trading Corporation is entitled. May be, it is so. But this only means perhaps that the Government of India, which had evolved the aforesaid scheme, has to subsidies - provide subvention - to the State Trading Corporation to the extent of the tax to be reimbursed.

15. The period for which the relief of refund is claimed is the period commencing from December, 1984 to May, 1988. The writ petition was filed in June, 1988. In the reply affidavit, relief is claimed upto November, 1988. Sri A Subba Rao, learned Counsel for the State Trading Corporation submitted that the writ petition is liable to be dismissed on the ground of laches. Learned Counsel submitted that while the aforesaid formula was implemented as far back as 1983, the petitioner approached this Court only in the year 1988 - five years later and that there is no explanation for this delay. While we agree that the petitioner could have approached the court earlier, it cannot be said that the writ petition suffers from such laches as to merit dismissal on that ground. At the same, it must be remembered that the claim for refund in the present case does not arise from or founded upon 9 statutory provision - much less is this a case where a provision or a notification having statutory force is struck down. The present claim is one which ought to have been agitated in a civil court. We have entertained the writ petition because a complaint of discrimination was made in implementation of a scheme of general application evolved by this Court pursuant to the observations of this Court in its order dated February 8, 1982. In such a situation the petitioner cannot claim a greater relief than he could have claimed in the suit. Accordingly, we direct that the petitioner's claim will be limited to the period of three years prior to the date of filing of this writ petition. Insofar as the period subsequent to the filing of the writ petition, i.e., upto November, 1988, is concerned, the petitioner shall be entitled to it on the same basis as the claim for the period anterior to the filing of writ petition. The respondent- State Trading Corporation shall examine the petitioner's claim in the light of this judgment, with notice to the petitioner and determine the amount, if any, payable to it. The petitioner shall be entitled to interest on the amount found due at the rate of 6% per annum from the date of this judgment upto the date of realisation.

16. The writ petition is accordingly allowed with the above directions. No costs.

IA..../91 IN T.C. (C) Nos. 7-10, 1345/81, T.C. (C) Nos. 18, 18A/81 AND 1/82.

17. This Interlocutory Application is misconceived. The petitioner was not a party to any of the writ petitions which were disposed of by this Court by its order dated February 8, 1982. Moreover - and this is more important - the claim made by the petitioner does not arise from the judgment aforesaid. It is an independent claim. The Interlocutory Application is accordingly dismissed. No costs.