

State Of U.P. & Another vs Haji Ismail Noor Mohammad & Co on 9 May, 1988

Equivalent citations: 1988 AIR 1409, 1988 SCR SUPL. (1) 261, AIR 1988 SUPREME COURT 1409, 1988 (3) SCC 398, (1988) 2 JT 468 (SC), 1988 2 JT 468

Author: R.S. Pathak

Bench: R.S. Pathak

PETITIONER:
STATE OF U.P. & ANOTHER

Vs.

RESPONDENT:
HAJI ISMAIL NOOR MOHAMMAD & CO.

DATE OF JUDGMENT 09/05/1988

BENCH:
VENKATACHALLIAH, M.N. (J)
BENCH:
VENKATACHALLIAH, M.N. (J)
PATHAK, R.S. (CJ)

CITATION:
1988 AIR 1409 1988 SCR Supl. (1) 261
1988 SCC (3) 398 JT 1988 (2) 468
1988 SCALE (1) 1050

ACT:
U.P. Sales Tax Act, 1948/U.P. Sales Tax Rules, 1948
Sections 3D and 4B/Rule 25A(5)-Tax-Special relief to dealer
holding recognition certificate-Date of actual issue of
certificate immaterial-Dealer to be in possession of
certificate at assessment.

HEADNOTE:
The respondent "dealer" registered under the U.P. Sales
Tax Act, 1948 was carrying on the business of manufacture of
oils from groundnuts and other oil seeds, and was under
section 3-D of the Act, liable to purchase-tax on oil seeds
at 3% ad valorem on the turnover of its purchases from the
cultivators or other unregistered dealers. Section 4-B of

the Act contemplated special reliefs in purchase-tax to certain manufacturers of 'notified goods', if the "dealer holds a recognition certificate issued under sub-section (2) in respect thereof". Sub-rule (5) of Rule 25-A of the U.P. Sales Tax Rules, 1948, however, stipulated that a 'recognition-certificate' issued for purposes of Section 4-B of the Act "shall take effect from the date of its issue."

On 10.2.1969 the State Government notified oils of all kinds to be "notified goods" for purposes of section 4-B entitling the dealer to a concessional rate of purchase tax at 2% on the raw material required for the manufacture of the "notified goods". On 21.3.1969, respondent applied under section 4-B(2) for the grant of a recognition certificate, which was granted only on 5.12.1969. The relief to the respondent in the form of concessional rate of purchase tax was accordingly confined and limited to the turnover of such first-purchases made only after 5.12.1969, the date of issue of the recognition certificate.

In the writ petition filed by the respondent, the Full Bench of the Allahabad High Court, by majority, accepted its contention that the clause in sub-rule (5) of Rule 25-A regarding the effective date of the recognition certificate was at cross-purposes with and did not carry out the objects of Section 4-B and was therefore, ultra-vires section 4-B. The High Court held that the requirements of section 4-B were substantially complied with if the dealer, at the time of assessment, held a recognition certificate, subject to the requirement that the turnover was after the date of the application.

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Before this Court the Revenue contended that the interpretation placed by the High Court runs in the teeth of the express statutory language and the clear intendment of the provision that the dealer should hold the 'recognition certificate' at the time of the purchases.

Dismissing the appeal, it was,

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HELD: (1) There is nothing basically wrong in the approach of the High Court that the statutory language does not insist upon the contemporaneity of the holding of the certificate with the purchases and that it was sufficient if the dealer, subsequently, came to hold a certificate "in respect thereof". [267D-E]

(2) To insist upon a contemporaneity would amount to qualifying the word 'holds' in section 4-B by adding the words "at the time of the purchases". [267E]

(3) The words "in respect thereof" are "colourless words", but in section 4-B they are, in their reference to the certificate, sufficiently, though non-specifically, wide enough to include a certificate obtained later but pertaining to the turnover in question. [267F-G]

(4) The rule which compels only its prospective operation might, not unreasonably, be held to be

inconsistent with the ultra vires of section 4-B. There is nothing unreasonable in this construction of section 4-B. Indeed, by the 1978 Amendment, this position has been made clear in the rule itself, which after the amendment, expressly provides that the certificate will take effect from the date of the application made by the dealer and not merely from the date of the issue. [267G-H; 268A]

Trustees v. IRC., [1946] 174 LT 133, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 768 (NT) of 1975.

From the Judgment and Order dated 3.1.1973 of the Allahabad High Court in Writ Petition No. 4225 of 1971.

S.C. Manchanda and A.K. Srivastava for the Appellants. NEMO for the Respondents.

The Judgment of the Court was delivered by VENKATACHALIAH, J. This appeal by certificate, preferred by the State of U.P. against the Judgment, dated, 3.1.1973 of the Allahabad High Court in W.P. No. 4225/1971, raises a short question whether the Rule 25-A(5) of the U.P. Sales Tax Rules 1948 (Rules) in so far as it stipulates that a 'recognition-certificate' issued for purposes of Section 4-B of the U.P. Sales Tax Act 1948 (Act) "shall take effect from the date of its issue" is inconsistent with does not carry-out the purposes of and, therefore, is ultra-vires Section 4-B of the U.P. Sales Tax Act 1948 (Act).

The full bench of the Allahabad High Court, by a majority, has, by the judgment under appeal, preferred this view.

2. So far as the declaration on the law on the point is concerned, the matter loses much of its edge in view of the relevant amendment brought about by the U.P. Taxation Laws (Amendment & Validation) Act 1978, which now provides that such a recognition certificate shall take effect from the anterior date of the presentation of the application by the dealer. By the same amendment, the certificate is rendered valid, for three successive assessment years at a time and the renewals shall also be for like periods.

3. The necessary and material facts are in a short compass and may briefly be stated: Respondent Haji Ismail Noor Mohammad & Co. a registered firm of partners was a "Dealer" registered under the Act. It, inter-alia, carried on the business of manufacture of oils from groundnuts and other oil seeds. The oil so manufactured was sold by the Dealer both intra-state; inter-state and by way of export.

Under Section 3-D of the Act, a dealer is liable to purchase-tax on oil seeds at 3% ad-valorem on the turnover of the purchases made by the dealer from the cultivators or other unregistered dealers.

Section 4-B of the Act, however, contemplates special reliefs to certain manufactures of notified goods, the relief being in the form of concessional rate of purchase tax or exemption there from, as the case may be, as notified by the State-Government if the "dealer holds a recognition-certificate issued under sub-section (2) in respect thereof."

On 10.2.1969, the State Government notified that oils of all kinds to be "notified goods" for purposes of Section 4-B and that the purchases by the dealer, liable to tax on the turnover of the first-purchases shall be entitled to a concessional rate of tax at 2% on the raw-material required for the manufacture of notified-goods.

The present controversy relates to the Dealer's entitlement to the concessional rate of purchase tax respecting the purchase turn-over of its first-purchases under the said notification.

4. On 21.3.1969, Respondent applied under Section 4- B(2) to the prescribed-authority, in the prescribed-form for the grant of a recognition certificate. The recognition certificate, for certain reasons, was granted only on 5.2.1969. There appears no dispute that the turn-over of the first-purchases of the Respondent, respecting which the claim for reduced-rate of tax was made, constituted raw- material required for the manufacture of notified goods and, therefore, satisfied the requirement of the notification. However, the relief was confined to the turnover of such first-purchases made only after 5.12.1969, i.e., the date of issue of the certificate and the relief in respect of the turnover prior to that date was refused on the basis of the condition in sub-rule 5 of Rule 25-A which provided that "such certificate shall take effect from the date of its issue".

Respondent, in its writ-petition before the High Court contended that this clause in Sub-Rule (5) of Rule 25-A is at cross-purposes with and did not carry out the objects of Section 4-B and is ultra-vires Section 4-B. The High Court, by majority opinion, has accepted this contention.

5. The provisions of Section 4-B and Rule 25A(5) may now be noticed:

"4-B. Special relief to certain manufacturers.

(1) Notwithstanding anything contained in sections 3, 3-A, 3-AA and 3-D:-

(a) where any goods liable to tax under section 3-D are purchased by a dealer who is liable to tax on the turnover of his first purchases under that section and the dealer" holds a recognition certificate issued under subsection (2) in respect thereof," he shall be liable in respect of those goods to tax at such concessional rate, or be exempt from tax, as may be notified in the Gazette by the State Government in that behalf;

(b) where any goods liable to tax under any other section are sold by a dealer to another dealer and such other dealer furnishes to the selling dealer in the prescribed form and manner a certificate to the effect that he holds a recognition certificate issued under sub-section (2) in respect thereof, the selling dealer shall be liable in respect of these goods to tax at such concessional rates, or be exempt from tax as may

be notified in the Gazette by the State Government in that behalf.

(2) A dealer who requires any goods referred to in sub-section (1) for use as raw material for the purposes of manufacture in the State of Uttar Pradesh of any notified goods, and such notified goods are intended to be sold by him in the State or in the course of inter-state trade or commerce or in the course of export out of India, may apply within such period, and in such form and manner, as may be prescribed, to the assessing authority for the grant of recognition certificate in respect thereof and if the applicant satisfied such requirements and conditions as may be prescribed, the assessing authority shall grant to the dealer in respect of such goods a recognition certificate in such form and subject to such conditions as may be prescribed."

Sub-Rule 5 of Rule 25-A provides:

"25-A(5). The recognition certificate shall ordinarily be issued within 30 days of the presentation of the application to the Sales Tax Officer. If, however, it may not be possible to issue the certificate within the time specified above, the Sales Tax Officer shall obtain the approval of the Assistant Commissioner (Executive) of his range for an extension of time, after stating the reasons for which it is not possible to issue the certificate in time. Such certificate shall take effect from the date of its issue."

(underlining supplied) In reaching such conclusion on the point as it did the reasoning that commended itself to the High Court was this:

".... The efficacy of the recognition certificate under clause (a) aforesaid becomes material and relevant at the time of the quantification of the purchase tax, i.e., when the assessment order is being drawn up. It is in the assessment proceedings that the liability to pay tax at a concessional rate is fructified. A dealer would be entitled to the concessional rate if he holds a recognition certificate....."

"..... The language of clause (b) does not make it a condition precedent or a necessary obligation that the purchasing dealer must at the time of the purchase produce the recognition certificate. If the purchasing dealer, subsequent to the transaction of purchase, furnishes to the selling dealer the certificate that he holds a recognition certificate, the requirements of clause (b) are fully satisfied."

The High Court also took into account that sub-Rule 5 of Rule 25-A while rightly recognising the need for the issue of the certificate with due despatch and within a time bound schedule, could not, consistently with the scheme and purpose of Section 4-B, provide that the certificate shall take effect only from the date of its issue.

6. Shri Manchanda, learned Senior Advocate appearing in support of the appeal, contended that the interpretation placed by the High Court runs in the teeth of the express statutory language which stipulates that "the dealers holds a recognition certificate" and the interpretation placed on it by the

High Court, if accepted, would have the effect of adding something to the language of the section which is not in the Section. Learned Counsel said that the High Court had, by the judgment, virtually introduced a fiction that under certain circumstances where there had been a delay in issuing the certificate, the dealer must be deemed to have held the certificate.

Shri Manchanda submitted that the clear intendment of the provision was that the dealer should hold the 'recognition-certificate' at the time of the purchases and that it would not be sufficient compliance with the statute if the dealer comes to hold it subsequently. He accordingly commended the view that found favour with the learned judge in the minority in the High Court.

We did not have the benefit of the arguments from the side of the respondent, which has remained unrepresented.

7. It is really a matter of construction of the language of Section 4-B; whether the dealer should hold a recognition certificate at the time the purchases were made or whether the requirements of the 'Section should be held to be satisfied if the dealer holds such a "recognition certificate" at the time of the assessment of the turnover in question. The High Court has held that the requirements of the Section are substantially complied with if the certificate is available to the dealer at the time the liability to tax of the turnover in question is sought to be determined, subject to the requirement that the turnover is after the date of the application filed by the dealer for issue of a certificate. According to the High Court, the date of actual issue of the certificate should not be held to be material and that the benefit for the concessional rate of tax should be available to the dealer if the dealer, at the time of the assessment, holds a recognition certificate "in respect thereof". According to the High Court the language of Section 4-B does support the extreme construction that the recognition certificate should be held at the time of the purchases themselves.

8. On a consideration of the matter we are persuaded to the view that the construction placed on the provision by the High Court is an eminently plausible one. There is nothing basically wrong in the approach of the High Court that the statutory language does not insist upon the contemporaneity of the holding of the certificate with the purchases and that it is sufficient if the dealer, subsequently, comes to hold certificate "in respect thereof". It seems possible to say that to insist upon a contemporaneity of the purchases and the certificate would also amount to qualifying the word 'holds' in the section by adding the words "at the time of the purchases".

It is true, the words "in respect thereof" as Lord Greene M.R. said are "colourless words", See *Trustees v. IRC*, [1946] 174 LT 133 but in Section 4-B, they are in their reference to the certificate, sufficiently, though non- specifically wide enough to include a certificate obtained later but pertaining to the turnover in question. If this is the scheme of Section 4-B in that it does not exclude from its contemplation the efficacy and sufficiency, for its purpose of a certificate issued subsequently, then, the rule which compels only its prospective operation might, not unreasonably, be held to be inconsistent with and ultra- vires of Section 4-B. We find therefore nothing unreasonable in this construction of Section 4-B. Indeed by the 1978 Amendment, this position has been made clear in the rule itself which, after the amendment, expressly provides that the certificate will take effect from the date of the application made by the dealer and not merely from the date of

the issue.

9. In this view of the matter, the judgment of the High Court does not call for interference. The appeal is dismissed. However, there will be no order as to the cost.

R.S.S.

Appeal dismissed.