Supreme Court of India
State Of Rajashtan & Anr.Etc.Etc vs Sarvotam Vegetables Products ... on 9 April, 1996
Equivalent citations: JT 1996 (4) 53, 1996 SCALE (3)346
Author: V K.
Bench: Venkataswami K. (J)

PETITIONER:
STATE OF RAJASHTAN & ANR.ETC.ETC.

Vs.

RESPONDENT:
SARVOTAM VEGETABLES PRODUCTS ETC.ETC.

DATE OF JUDGMENT: 09/04/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
VERMA, JAGDISH SARAN (J)
BHARUCHA S.P. (J)

CITATION:
JT 1996 (4) 53 1996 SCALE (3)346

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY.J.

These appeals are preferred against the judgment of a Division Bench of the Rajasthan High Court allowing a batch of special appeals filed by the respondents-assessees. The special appeals were preferred against the common judgment of a learned Single Judge of that Court dismissing the writ petitions filed by them. The matter arises under the Central Sales Tax Act, 1956.

The respondents-assessees are manufacturers and/or dealers in edible oils and stainless steel sheets. During the relevant years, they effected a large number of inter- State sales to various dealers in Bombay and Gujarat. They obtained C-forms from the purchasing dealers and submitted them in their assessment proceedings. On survey and inquiry, it was found that many of the C-forms were either not valid or not genuine. Some of them were found to have been issued to dealers other than the respondents. Accordingly, antievasion proceedings were commenced against the respondents.

Notices were issued calling upon them to show- cause why additional tax and penalty be not levied and recovered from them. It is at that stage that the respondents approached the Rajasthan High Court by way of writ petitions contending that since the inter-State sales effected by them are covered by the Exemption Notifications dated 26th December, 1986/17th April, 1990 and because the said notifications do not require the production of a C-form as a condition for availing the exemption provided thereby, they were under no obligation to produce the same and no action can be taken against them for producing alleged invalid or spurious C-forms. It was, of course, their case that if the C-forms are found to be invalid or spurious, the responsibility lies upon the purchasing dealers who issued them and that they themselves were in no way responsible therefor. The learned Single Judge disagreed with the legal submission (based upon Exemption Notifications) put forward by the respondents and dismissed their writ petitions. On appeal, however, the Division Bench has upheld the respondents contention and allowed the special appeals (and the writ petitions) filed by the respondents.

Section 8 of the Central Sales Tax Act prescribes the rates of tax on inter-State sales. Sub-section (1) provides that "Every dealer, who in the course of inter-State trade or commerce - (a) sells to the Government any goods; or (b) sells to a registered dealer, other than the Government, goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which shall be- four percent of his turnover." Sub-section (2) says that inter-State sales not falling under sub-section (1) shall be liable to be charged at the higher rates mentioned therein. Sub-section (3) specifies the goods for the purposes of Clause (b) of Sub-section (1) of Section 8. It is sufficient to mention that sub-section (3) contemplates certain goods or class of goods being Specified the certificate of registration of the purchasing dealers, which are intended either for re-sale or for being used as raw-material for manufacturing other goods or for other purposes mentioned in the sub-section.

Sub-section (4) then states:

> "(4) The provision of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner -
>
> (a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed form obtained from the prescribed authority: or.
>
> (b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribe form duly filled and signed by a duly authorized officer of the Government.
>
> Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit."

Sub-section (5) confers upon the State Government the power of exemption. The power of exemption can be exercised both with reference to dealers as well as with reference to good. The

exemption can be granted either wholly or partially and subject to such conditions as may be imposed in that behalf. Sub-section (5) reads as follows:

"(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official Gazette, and subject to such conditions as may be specified therein, direct,

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) or sub-section (2) as may be mentioned in the notification:

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) or sub-section (2) as may be mentioned in the notification."

The scheme of Section 8, insofar as it is relevant herein is this: sub-section (1) of Section 8 prescribes a lower rate of Central Sales Tax on two types of inter-State sales viz.,

(a) sales to Government of any goods and (b) sales to registered dealers, other than the Government, goods of the description referred to in sub-section (3),which may be referred to hereinafter referred to as specified goods for the sake of convenience. The rate of tax in these two cases is 4 per cent. So far as the sales to Government are concerned, there is no restriction as to the type or nature of goods sold. All inter-State sales to Government of any goods whatsoever fall under clause (a) of sub-section (1). But so far as sales to registered dealers (other than Government) are concerned, they must be sales of specified goods only to become eligible to claim the lower rate in sub-section (1). The sales not falling under sub-section (1) are taxed at higher rates provided in sub-section (2). (We are not referring to sub-section (2-a) because it is not relevant for the present purposes.) Sub-section (3) specifies the goods for the purposes of Section 8 (1)(b). Sub-section (4) is really in the nature of a provision to sub-section (1). Sub-section (4) imposes a condition which must be satisfied by the dealer seeking to avail of the rate of tax provided by sub-section (1). The condition prescribed by sub section (4) is (a) if the goods are sold to a registered dealer, the selling dealer assessee should furnish to his assessing officer a declaration duly filled and signed by the registered dealer purchasing the goods containing the prescribed particulars in the prescribed form obtained from the prescribed authority. (b) if the goods are sold to Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorized officer of the Government should be furnished by the selling dealer assessee to his assessing authority. The Rules made under the Act prescribe the forms in which the aforesaid declaration and certificate, as the case may be, has to be issued by the purchasing dealer/Government. In the case of Government it is called D- form (certificate) and in the case of registered dealers it is called C-form (declaration) -

Vide Rule 12(1) of the Central Sales Tax (Registration and Turn-over) Rules, 1957. We shall refer to the contents of C-form alone. The C-form prescribed by the Rules is titled "Form C - Form of Declaration". These forms are supplied by the appropriate authority under the Act to the purchasing registered dealers. If this form, containing all the relevant particulars is issued by the purchasing dealer to the selling dealer, the latter will collect tax (passon tax) from the purchasing dealer only at the rate prescribed in Section 8(1): otherwise, he will collect tax at the higher rate, as may be applicable, prescribed by Section 8(2). The purchasing dealer must furnish all the particulars required by the said declaration/form. They include (1) name of the issuing State, office of issue, date of issue, name of the purchasing dealer alongwith his registration certificate No. and the date from which the registration is valid and - (2) particulars of the goods purchased, of the Bill/cash memo/challan concerning the purchase and the purpose for which the goods are purchased. It has to be signed by the purchasing dealer. The selling dealer must produce these 'C' forms in his assessment proceedings if he wishes to be taxed at the (lower) rate in Section 8(1). The purpose of the C-form is obvious: the parliament wants to tax specified goods purchased for specified purposes (sub- section (3) of Section 8) at a lower rate but anyone wishing to avail of the said lower rate must obtain from purchasing dealer the 'C' form and produce it before his assessing officer. Thus, clause (b) of sub-section (1), subsection (3) and sub-section (4) go together. (Similarly, Section 8(1)(a) and sub-section (4) go together. The reason why the 'C' form requires several particulars to be stated is to ensure that the concessional rate prescribed by Section 8(1)(b) is not misused or abused. With the help of those particulars, the appropriate authority or authorities can verify the truth and correctness of the transaction. Both the selling dealer and purchasing dealer are under an obligation to abide by the said requirements of law; otherwise the very scheme underlying the said provisions breaks down. This crucial significance of the 'C'form needs to be kept in mind.

Sub-section (5) of Section 8 confers the power of exemption upon the State Government. As is well-known, almost every taxing enactment contains such a provision. The exemption under Section 8(5) can be granted either with reference to dealers or class of dealers or with reference to goods or classes of goods. The exemption can be total or partial. It can also be subject to such condition as may be prescribed in that behalf.

In these appeals we are concerned with two exemption notifications issued under Section 8(5). They are dated 26th December, 1986 and 17th April, 1990 (which was issued in super-session of the notification dated 26th December, 1986). It would be appropriate to set out both the notifications:

"Notification No.F.4(92) FD/Br.IV/82-41 Jaipur dated 26th Dec. 1986.

S.O.153 - In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and in supersession of Finance Department Notification No.F.2(8) FD/Gr.IV/75-15, dated July 1, 1975, the State Government being satisfied that it is necessary so to do in the public interest hereby directs with immediate effect that the tax payable under sub-section (1) of the said Section by any dealer, having his place of business in the course of Inter-

state trade or commerce, of all edible oils excluding - (1) Hydrogenated oils (including 'Vanaspati'), (2) Palm Oil whether refined or not, and (3) Refined coconut oil shall be calculated at the lower rate, as in clause (a) below, on the condition namely

(a) 1-1/2% where the assessing authority satisfied that oilseed purchased for the manufacture of such oil have been subjected to tax in accordance with Section-SC of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954) or 2-

1/2% were the assessing authority is satisfied that oilseeds purchased for the manufacture of such oil have been subjected to tax in accordance with Section SCC of the Rajasthan Sates Tax Act, 1954 (Rajasthan Act 29 of 1954);

(b) Claim regarding partial exemption under Finance Department Notification No.F.4 (72) FD/-

Gr.IV/81-18, dated May 6, 1986 shall not be made and allowed.

(Pub. in Raj. Gaz. Ext. Part IV-

C(II), dated 26.12.1986) Note:- This Notification was superseded by Notifications No.F.4(90) FD/Gr.IV/82-101 dated 17.4.1990 (S.No.218)."

"Notification No.F.4(90) FD/Gr.IV/82-101, Jaipur dated 17th April, 1990 "S.O.4 - In exercise of the powers conferred by sub-section(5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956),and in supersession of this department notification No.F.4(TS) FD/Gr.IV/82-41, dated 26th December, 1986, the State Government being of the opinion that it is expedient in the public interest so to do, hereby directs with immediate effect that the tax payable under sub-section (1) of the said section by any dealer, having his place of business in the State in respect of sale by him, from any such place of business in the course of inter-state trade or commerce, of all edible oils excluding (i) Hydrogenated oil (including vanaspati) (2) Palm oil whether refined or not, and (3) refined coconut oil shall be calculated at the rate of 1-1/2% on the following conditions:

(1) That such dealer proves to the satisfaction of the Assessing Authority that the oil seeds used in the manufacture of such edible oil have already been suffered tax under tax Act 3% within the state of Rajasthan;

(f) That such dealer shall not be entitled claim partial exemption under Finance Department Notification No.F.4(72) F. 81-18, dated 6th May, 1986 and as from time to time.

(Pub. in Raj.Gaz. Ext.Part IV-C(II) dated 18.4.1990)"

A reading of the notification of 26th December, 1986 shows that the exemption granted under the notification is not total but partial. As against 4 per cent leviable under Section 8(1) the notification provides that the tax shall be paid at the rate of 1-1/2%. or 2-1/2% as the case may be. The exemption applies to and extends to all edible oils excluding those oils as are specified in the

notification. Furthers the exemption is subject to a condition viz., that the dealer claiming the exemption imposed satisfies the assessing authority that the oil seeds purchased for the manufacture such oil have been subjected to tax in accordance of with Section 5-C of the Rajasthan Sales Tax Acts 1954 in which cases the sales tax will be charged at the rate of 1-1/2%; in case the oil seeds purchased for the manufacture of such oil have been subjected to tax under Section 5-CC of the Rajasthan Act then the rate of tax leviable on the inter-State sale of edible oils would be 2- 1/2% There is yet another condition mentioned in clause (b) of the said notification with which we are not concerned in these appeals and hence is not being referred to by US.

The Notification dated 17th April,1990 was issued in supersession of the aforementioned notification. This notification too exempts inter-State sales of all edible oils excluding certain oils mentioned therein. As against the tax payable at the rate of 4% under section 8(1), the Notification prescribes a single rate of 1-1/2% provided the two conditions mentioned therein are satisfied. The first condition is that the dealer proves to the satisfaction of the assessing authority that the oil seeds used in the manufacture of such edible oil have already suffered tax under the Act at the rate of 3 per cent within the State of Rajasthan We need not refer to the second condition since we are not concerned with it in these appeals.

Now the contention of the respondents-dealers, which has found favour with the Division Bench of the High Court is this: the notifications and sub-section (5) of Section 8 whereunder it has been issued are self-contained notifications/provision. Section 8(5) empowers the State Government to grant exemption subject to such conditions as they may deem fit to impose in public interest. The notifications do impose certain conditions. They do not provide that production of a 'C' form is essential for availing the benefit of the notification. If so, no such condition should be read into notification. The only condition which a dealer seeking to avail of the benefit of the notification is to satisfy are those mentioned in the notification and no other. In other words, the condition mentioned in sub-section (4) of Section 8 cannot be insisted upon as a condition for obtaining the benefit under the notification. We are of the opinion that the said contention is misconceived and that the Division Bench of the High Court has erred grievously in accepting it.

Sub-section (5) of Section 8 is an integral part of Section 8 and the Act as such. The said power has to be exercised in public interest. The power of exemption and its exercise is to be guided by and be consistent with the provisions of the Act. More important, the levy of central sales tax and the prescription of rate is not by the notifications but by the Act itself. Section 8(1) prescribes the rate and sub-section (4) the condition that has to be satisfied for availing of the rate in sub-section (1). What the notifications do is to reduce the rate prescribed by Section 8(1) further, subject to certain conditions. The conditions prescribed by the notifications are the conditions prescribed for availing the further reduction of rate provided by the notification. The notifications merely reduce the rate of tax; they do not do away with the levy altogether. All that the notifications have done is to reduce the rate of tax from 4% to 1-1/2% (2-1/2%, as the case may be). Separate conditions are prescribed for availing the rate (which itself is a concessional rate) prescribed in Section 8(1) and for availing the further reduction provided by the Notification. Those two sets of conditions are prescribed by Section 8(4) and by the notifications respectively. One cannot conceive of the said notifications independent of, or apart from section 8(1). They merely reduce the rate in Section 8(4) as already

mentioned. One must first satisfy the condition in section 8(4) to become eligible for the concessional rate in Section 8(1). It is only thereafter that he can claim the benefit of the said notifications, for which purpose again he has to satisfy the conditions prescribed in the Notifications. It is therefore wrong to think that Section 8(5) or the notifications are self-contained and operate de hors the other provisions of the Act/Rules. The Division Bench has unfortunately failed to appreciate the Notifications in their correct perspective. We are of the opinion that the judgment under appeal is unsustainable in law and it is accordingly set aside. The learned Single Judge was right in dismissing the writ petitions.

So far as the merits are concerned viz., the validity and genuineness of C-forms produced by the dealers, we express no opinion. That is a matter to be gone into by the appropriate authorities under the Act in the proceedings which are yet to be concluded.

We are unable to see how the decision of this Court in McDowell And Company v. Sales tax Officer (29) S.T.C. 163= 1972 (4) S.C.C. 365) is of any help to the respondents/dealers. In that decision, it was held that since the appellant therein did not comply with the condition prescribed in the notification, it was not entitled to its benefit. The appellants' case was that it effected sales to dealers in Pondicherry and Goa and that at the relevant time the Central Sales Tax Act had not been extended to Pondicherry and that, therefore, the purchasing dealers there could not issue C-forms. The appellant contended that in such a situation, he cannot be compelled to produce C-forms in respect of sales to dealers in Pondicherry. The said contention was rejected holding that since he had not produced the declaration prescribed by Section 8 of the Act and the notification, he was not entitled to the benefit of Section 8(1) and the notification. So far as sales to dealers in Goa were concerned, the benefit of the notification was denied on the ground that the C-forms were not filled within the time prescribed.

Sri Harish N.Salve, the learned counsel for the respondents-dealers submitted that in case this Court does not affirm the decision of the Division Bench of the High Court, this Court may extend the time for filing the C- forms. We do not think that any such direction is called for at this stage. The proviso to sub-section (4) of Section 8 has been interpreted and explained by this Court in State of Andhra Pradesh & Ors. v. M/s.Hyderabad Asbestos Cement Production Limited & Ors. (1994 (5) S.C.C.100). It is obvious that the said decision shall guide the authorities in the matter. So far as the validity or genuineness of those forms is concerned, that is a question fact to be decided in each given case. No direction can be given in that behalf.

The appeals are allowed accordingly. The appellants shall be entitled to their costs which are quantified at the rate of Rs. 5,000/- in each appeal.