

Supreme Court of India

The Commercial Taxes Officer 'D' ... vs Gordhandass Giddomal And Co., ... on 4 October, 1971

Equivalent citations: (1972) 4 SCC 446, 1972 29 STC 167 SC, 1972 (4) UJ 219 SC, 1971 (4) WLN 95

Bench: A Grover, H Khanna, K Hegde

JUDGMENT

1. After getting an adverse order from the Board of Revenue and after the Board of Revenue rejected his application for a reference of a question of law to the High Court, the Commercial Taxes Officer, 'D' Circle, Jaipur, moved the High Court of Rajasthan under Section 15 of the Rajasthan Sales Tax Act requesting the High Court to direct the Board of Revenue to submit the question "whether on the facts and circumstances of the case the sales of cotton yarn and staple fibre yarn made to various dealers in Jaipur and other parts of Rajasthan by the respondent firm by endorsing the Railway Receipts in their favour, are taxable under Section 3(b) read with Explanation I of the Central Sales Tax Act " to the High Court for getting the opinion of the High Court. The High Court rejected that application summarily observing: "Heard Learned Deputy Government Advocate. We are not satisfied prima facie, that this is a fit case for making a reference because it cannot be said that the Board of Revenue has gone wrong in holding, in the circumstances of the case, that the non-applicant in this case was liable to pay tax. It may be that the view taken by the Board of Revenue regarding the interpretation on Section 3(b) of the Central Sales Tax Act may not be quite correct.

The application, is, therefore, rejected.

2. From the order of the High Court it is clear that the High Court was not satisfied about the interpretation of Section 3(b) of the Central Sales Tax Act by the Board of Revenue but, yet, surprisingly the High Court has summarily rejected the application of the Commercial Taxes Officer.

3. The material facts of the case are these : The assessee is a dealer in cotton yarn. They import cotton yarn from the Madurai Mills. The modus adopted by the assessee is to endorse the Railway Receipts in favour of other dealers in yarn in Jaipur and in other parts of the state. For their consolidated returns, they wanted that no sales tax should be levied in respect of the whole of the yarn brought into the State as according to them they were sales within the State of Rajasthan. Sale of yarn is exempted from payment of sales tax under the State's sales tax law but liable to be taxed under the Central Sales Tax Act The Deputy Commissioner held that only those sales which were made to dealers outside Jaipur would be inter-State sales and other sales would be intra State sales. Aggrieved by that order, the assessee moved the Board of Revenue in seeking to get exemption in respect of all the sales effected by them. The Commercial Taxes Officer filed a cross-revision application challenging the correctness of the Deputy Commissioner's Order to the extent it went against him. The Board of Revenue accepted the contention of the assessee and held that the turnover relating to the sales in question is not liable to be taxed Thereafter the Commercial Taxes Officer moved the Board of Revenue for referring the question mentioned earlier to the High Court for obtaining its opinion.

4. In our opinion the question of law, the appellant wanted the Tribunal to refer to the High Court did arise from the order of the Board of Revenue and the Board of Revenue was not justified in refusing to refer that question to the High Court. We are also of the opinion that the High Court was not justified in rejecting the application of the appellant.

5. In the result this appeal is allowed. The Board of Revenue is directed to refer the question set out earlier to the High Court of Rajasthan for obtaining its opinion on that question.

Respondent is ex-parte.

There will be no order as to costs in these appeals.