Supreme Court of India
Jagatjit Sugar Mills vs State Of Punjab on 4 October, 1994
Equivalent citations: 1995 AIR 597, 1995 SCC (1) 67
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
JAGATJIT SUGAR MILLS

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT04/10/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 AIR 597 1995 SCC (1) 67
JT 1994 (6) 534 1994 SCALE (4)516

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P JEEVAN REDDY, J.- Writ Petition (C) No. 382 of 1979 is instituted by Jagatjit Sugar Mills Co. Ltd. for the issuance of an appropriate writ, order or direction restraining the respondents (State of Punjab and the Assessing Authority, Sales Tax, Kapurthala) from giving effect to Annexure-C notice whereunder the second respondent has called upon the petitioner to show cause why penalty should not be levied upon it under Section 10(6) of the Punjab General Sales Tax Act, 1948 on account of its failure to pay the tax due under Section 10(4) of the Act.

2.The petitioner's case is: For the purpose of manufacturing sugar, it purchases sugarcane from the cane-growers and cooperative societies comprised of cane-growers. Sugarcane is an agricultural produce within the meaning of Item 39 of Schedule B to the Act and, therefore, exempt from tax. Inasmuch as the said sugarcane is sold to the petitioner's mills by growers of sugarcane themselves,

no sales tax or purchase tax is leviable on the sale or purchase of sugarcane. This position has been affirmed by a learned Single Judge of the Punjab and Haryana High Court in Malwa Sugar Mills Co. Ltd. v. Assessing Authority1. The decision was affirmed in Letters Patent Appeal. A special leave petition preferred by the State was also dismissed. Though the subsequent decision of the Division Bench in Babu Ram Jagdish Kumar & Co. v. State of Punjab2 was not concerned with sugarcane but with paddy alone which is one of the items mentioned in Schedule C and though the said decision did not even refer to the decision in Malwa Sugar Mills1, it was held erroneously by a Full Bench of the Punjab and Haryana High Court in Desh Raj Parshotam Lal v. State of Punjab3 that the said Division Bench had the effect of overruling the decision of the learned Single Judge in Malwa Sugar Mills'. This holding of the Full Bench is incorrect as a fact and untenable in law. No purchase tax is payable under the Act on the purchase of sugarcane by the petitioner's mills and hence, there is no question of the petitioner failing to pay the tax due within the meaning of Section 10.

1 (1976) 38 STC 39 (P&H)
2 (1976) 38 STC 259 (P&H)
3 (1978) 42 STC 429 (P&H)

3. The State of Punjab has filed a counter-affidavit denying and disputing the correctness of the several allegations made by the petitioner. The State maintains that purchase tax is leviable on the purchase of sugarcane by the petitioner under the provisions of the Act and that the impugned notice was rightly issued to it for its failure to pay the tax due.

4. The question that squarely arises in this writ petition is whether the petitioner-sugar mills is liable to pay the purchase tax on the sugarcane purchased by it from the growers of sugarcane?

5. For answering this question, it is necessary to refer to a few relevant provisions of Punjab General Sales Tax Act, 1948. Section 2 of the Act defines certain expressions occurring in the Act. Clause (d) defines "dealer" to mean "any person including a department of Government who in the normal course of trade sells or purchases any goods in the State of Punjab (The rest of the definition need not be set out herein, not being relevant for the purpose of this case.) The expression "goods" is defined by clause (e) to mean, "all kinds of moveable property and goods consumed at business premises other than newspapers, actionable claims, stocks, shares or securities and includes all materials, commodities and articles including the goods (whether as goods or in some other form) involved in the execution of a works contract or those goods which are used in the fitting out, improvement or repair of moveable property". The expression "purchase" is defined in clause (ff). Insofar as it is relevant, it reads: " 'Purchase' with all its grammatical or cognate expressions, means the acquisition of goods specified in Schedule C or of goods on the purchase whereof tax is payable under any provision of this Act for cash or deferred payment or other valuable consideration or otherwise The expression "sale" is defined in clause (h). Insofar as it is relevant, it reads: " 'Sale' means any transfer of property in goods other than goods specified in Schedule C for cash, deferred payment or other valuable considerations and includes "Turnover" is defined in clause

(i). It is an inclusive definition. Insofar as it is relevant, the definition reads: " 'Turnover' includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made

by any dealer during the given period less any sum allowed as cash discount and trade discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof."

6. Section 4 is the first and the main charging section. Sub-section (1) reads thus:

> "(1) Subject to the provisions of Sections 5 and 6, every dealer except one dealing exclusively in goods declared tax-free under Section 6 whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958..."

7. Sub-section (2-A) [inserted by way of Amendment in 1960] says that notwithstanding anything contained in sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act." Sub- section (5) defines the expression "taxable quantum" occurring in sub-section (1). Section 5 prescribes the rates of tax. Subsection (1) says that "subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding seven paise in a rupee as the State Government may by notification direct". (The rate earlier was six paise. Later, it appears to have been enhanced to eight paise.) Proviso to sub- section (1) says that in case of goods specified in Schedule A, which were at one time called 'luxury goods', the tax can go up to ten paise in a rupee. Sub-section (2) of Section 5 defines the expression "taxable turnover". Sub-section (3) prescribes the rate in the case of declared goods. Section 6 carries the heading "Tax-free goods". Sub-section (1) says that "no tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section". Sub-section (2) empowers the State Government to make additions to or to effect deletions from Schedule B in the prescribed manner.

8. Item 39 of Schedule B reads as follows:

"SCHEDULE B

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(1) (2)

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39. Agricultural or horticu-

ltural produce sold by a person or a member of his family grown by himself or grown on any land in which he has an interest whether as owner or usufructuary mortgagee, tenant or otherwise."

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9. Item 62 in Schedule B is 'sugarcane'. Column (2) against Item 62 is blank just as in the case of Item 39.

10. Section 4-B was introduced by Amendment Act 3 of 1973 with effect from 15-11-1972. It is necessary to set out the section in full:

> "4-B. 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."

11. Schedule C specifies certain goods for the purpose of Section 2(ff). Item 9 in this schedule is paddy while Item 8 is rice.

12. It is on the above provisions that we have to determine the question at issue in this writ petition. Section 4(1) makes it clear that subject to the provisions of Sections 5 and 6, every dealer (except a dealer dealing exclusively in goods declared tax-free under Section 6) whose gross turnover during the preceding year exceeds the taxable quantum, shall be liable to pay tax under the Act "on all sales effected after the coming into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958". The tax is thus levied both on sales and purchases. It is, however, unreasonable to presume that the legislature wanted to tax both the seller and purchaser in respect of the same transaction an aspect manifested in part by sub-section (2- A) which says that notwithstanding anything contained in sub-section (1), no tax on the sale of any goods shall be levied if a tax on the purchase is payable under the Act. The policy of law is to tax every transaction of sale, either at the point of sale or at the point of purchase, unless specifically exempted from the tax altogether. Where the seller is not taxed, the purchaser is taxed. By the same

token, where the seller is taxed, the purchaser is not.

13. Section 6 exempts the sale of goods mentioned in Schedule B from tax, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column of the said schedule. Undoubtedly, sugarcane is an agricultural produce within the meaning of Item 39 of Schedule B. Such agricultural produce is exempt from tax on its sale when it is sold by a person or a member of his family who had grown the said produce himself or has grown it on any land on which he has any interest whether as an owner or usufructuary mortgagee, tenant or otherwise. The writ petitioner no doubt says that the entire sugarcane purchased by him is sold by growers of sugarcane themselves but that is a matter upon which no opinion can be expressed in this writ petition since it is a question of fact. It is sufficient to clarify that Item 39 of Schedule B operates to exempt the sale of agricultural produce from tax only where it is sold by the grower himself. This means that sugarcane is exempt from tax on its sale. The question is whether its purchase is also exempt from tax?

14. The contention of the learned counsel for the petitioner is this: Section 4-B, which levies purchase tax, expressly excludes the goods mentioned in Schedule B from its purview. In other words, Schedule B goods are exempt from tax on their sale by virtue of Section 6 and exempt from tax on their purchase by virtue of Section 4-B. The emphasis is upon the opening words of Section 4-B which reads: "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..... We find it difficult to agree. The said argument, in our opinion, is based upon an incorrect premise that purchase tax is levied by Section 4-B in the Act and not by any other provision. The said argument also ignores the fact that Section 4 levies tax not only upon " all sales effected" but also on "purchases made". If the assumption underlying the argument of the learned counsel for the petitioner were to be accepted then no purchase tax was leviable on Schedule C goods prior to introduction of Section 4-B. Similarly, no purchase tax should be leviable even now on Schedule C goods (Schedule C, even according to the counsel for petitioners, mentions goods subject to purchase tax) inasmuch as Section 4-B does not refer to Schedule C nor does Section 4-B levy purchase tax on the purchase of goods in Schedule C. In our opinion, the purpose of Section 4-B is altogether different. It is designed really to identify and affirm in a broad sense, create the levy of purchase tax in some cases and to provide for exemption from purchase tax in certain other specified situations. This is done in the interest of manufacturers-dealers, consuming public and other dealers a common feature in almost all the sales tax enactments, as we shall presently demonstrate. To explain what we say, let us analyse the section. For attracting the levy of purchase tax under Section 4-B, the following requirements must be satisfied:

(a) A dealer (liable to pay tax under the Act) purchases goods other than those specified in Schedule B from any source;

(b) No tax is payable on the purchase of such goods under any other provisions of the Act;

(c) The goods so purchased are used/disposed of etc. in one of the modes mentioned in clauses (i), (ii), (iii) or (iv).

15. Now let us take each of the clauses (i) to (iv) and see what do they say:

16. Clause (i) says that purchase tax shall be leviable on the purchase of goods (other than those in Schedule B) if such goods are used in the manufacture of goods specified in Schedule B. Schedule B goods are not taxable at sale point. Since the goods manufactured by the dealer are exempt from tax on their sale, the legislature sees no reason to exempt the raw material (goods purchased by such manufacturer- dealer) from the liability to purchase tax. Accordingly, Section 4-B retains and affirms the tax on the goods purchased by such manufacturer-dealer i.e., it taxes the raw material in the hands of the purchaser manufacturer-dealer.

17. Clause (ii) which continues the idea behind clause (i) says that where the manufacturer-dealer uses the goods purchased by him (raw material) in manufacture of goods other than the goods in Schedule B (i.e., where the manufactured goods are taxable at the sale point) but sends the goods so manufactured outside the State in any manner other than by way of inter-State sale or export sale, he shall be liable to pay tax on the purchase of raw material. The object is again the same. If the manufactured goods, which are taxable on sale point are sent out of the State, the State does not get any income. If, on the other hand, they are taken out of the State as a result of inter-State sale, the State gets the tax by virtue of Article 269 of the Constitution. In case of export sale, the State forgoes the tax but it does so because it serves the national interest of promoting exports. [See Hotel Balaji v. State of A.P 4 in this regard.] In other words, according to this clause, if the manufactured goods are taken out of the State in such a manner that State does not derive any tax (nor the national interest aforesaid is served), the purchase of raw material is taxed. Conversely, if the manufactured goods are sold within the State or sold in the course of interState trade or commerce or sold in the course of export sale, the raw material is exempted from purchase tax. In case, however, the manufactured goods are those mentioned in Schedule B not taxable on sale. point clause (i) does not concern itself with their manner of disposal. From the point of revenue, it makes no difference whether such goods are sold within the State or sold in the course of inter-State trade or commerce or sold in the course of export; in any of the situations, the State does not derive any revenue.

18. Clause (iii) says that where the goods purchased are used for a purpose other than resale within the State or in the course of inter-State sale or export sale, tax shall be levied on the purchase of such goods. This means that if the very goods purchased are resold within the State, no purchase tax shall be leviable on their purchase. Similarly, if the goods purchased are sold in the course of inter-State trade/commerce or in the course of export sale, again no tax will be levied on the purchase of such goods by the purchasing dealer. The idea is again the same. In the case of resale within the State and inter-State sale, the State gets the tax and, therefore, purchase of such goods is exempted from tax. Where goods are sold in the course of export, though the State does not get any tax, national interest is served. In these three situations, the purchase of such goods is not taxed.

19. Clause (iv) reiterates more or less the same idea as in clause (iii). According to it, if the goods purchased are sent out of the State otherwise than by way of inter-State sale or export sale, then the purchase of such goods will be taxed.

20. The above analysis shows up the object and purpose underlying Section 4-B. Clauses (i) and (ii) deal with situations where the goods purchased are used as raw material while clauses (iii) and (iv) provide for situations where the very goods purchased are dealt with in certain specified 4 1993 Supp (4) SCC 536 :(1993) 88 STC 98 modes. Though put in a negative form, Section 4-B is really intended (a) to avoid taxing the raw material where the manufactured goods are taxable and are sold within the State or sold in the course of inter-State trade or commerce in both of which situations, they fetch revenue to the State or where they are sold in the course of export, which does not fetch any revenue to the State but promotes national interest in promoting exports; and (b) to avoid taxing the purchase of the goods where the very goods are resold within the State so as to fetch tax on their sale (it must be remembered that the goods dealt with by Section 4 are goods other than the goods in Schedule B and hence taxable at sale point) or are sold in the course of inter-State sale (in which event too the State gets the revenue by virtue of Article 269) or where they are sold in export trade (in which event though no tax is realised by State, yet the national interest aforesaid is served.)

21. It would be thus clear that Section 4-B is, broadly speaking, actuated by the same idea as is underlying Section 6-A of the Andhra Pradesh General Sales Tax Act, Section 7-A of the Tamil Nadu General Sales Tax Act, Section 5-A of the Kerala General Sales Tax Act and Section 7 of Madhya Pradesh General Sales Tax Act among others, all of which are dealt with and explained in Hotel Balaji4 and Devi Dass Gopal Krishan (P) Ltd. v. State of Punjab5. Indeed, Section 4-B was so understood in the latter decision.

22. It is, therefore, idle to contend that Section 4-B imposes purchase tax or is the only provision imposing purchase tax. As analysed hereinbefore, it is mainly designed to affirm or exempt, as the case may be, the purchase of certain goods from purchase tax in certain specified situations. It, of course, does not deal with the goods specified in Schedule B. Its object is to ensure inter alia that purchase of raw material is not taxed where the sale of manufactured goods brings in tax to the State or serves the national interest, as explained hereinbefore. If, however, manufactured goods are so disposed of as not to bring in tax to the State nor so as to serve national interest aforementioned, then the purchase of goods (broadly referred to as raw material in this judgment), the State retains and collects the purchase tax on raw material. Similarly, where the very goods are sold in such a manner as to bring in revenue to State by way of tax on their sale, (i.e., sale within the State, inter-State sale or export sale, as the case may be) then again the purchase of such goods is exempt from tax as explained and elaborated hereinabove.

23. If so, the question arises which is the provision which levies the purchase tax? The answer is Section 4(1) itself. Section 4(1) not only levies tax on all sales but also levies tax on all purchases as well. Of course, in no case will both the sale point and purchase point of the same transaction be taxed, which feature is indicated in sub- section (2-A) of Section 4 also. It is, therefore, obvious that where the sale of certain goods is exempt from tax by virtue of Section 6, their purchase will be taxed and conversely where the Act expressly taxes the purchase of certain goods their sale simultaneously 5 1994 Supp (2) SCC 59 : JT (1994) 3 SC 239 will not be taxed subject, of course, to any express provisions providing exemptions. In the case of sugarcane, it being an agricultural produce and in cases where it is sold by the grower himself such sale is exempt from tax by virtue of Section 6 read with Schedule B. If so, the purchaser thereof is liable to pay tax on its purchase by virtue of Section

4(1). That is the position in the cases before us. Since Section 4-B does not apply to Schedule B goods, the said provision is not relevant to the petitioners. The purchase tax on sugarcane is levied by Section 4(1), since it being an agricultural produce, and said to be sold by growers themselves, is exempt from tax on its sale under Section 6.

24. The learned counsel for the petitioner sought to argue that only the goods mentioned in Schedule C are subject to purchase tax and no other goods. This argument is sought to be sustained with reference to the definition of "purchase" in Section 2(ff). The said definition, which we have set out hereinbefore, defines the purchase as meaning "acquisition of goods specified in Schedule C or of goods on the purchase whereof tax is payable under any provisions of this Act". Firstly, clause (ff) in Section 2 is not a charging section. It only defines "purchase". Secondly, the definition not only includes the purchase of Schedule C goods but purchase of other goods which are subject to purchase tax under any other provisions of the Act. The fact that the words "or of goods on the purchase whereof tax is payable under any provisions of this Act" were inserted in this definition by the same Amendment which introduced Section 4-B into the Act does not mean that the said words are confined to Section 4-B. If that were the intention, the legislature would have used appropriate words to that effect. Moreover, as explained by us hereinbefore, Section 4-B is designed for a different purpose. The said definition cannot, therefore, be read in derogation of Section 4(1) nor can the levy created by Section 4(1) be curtailed or cut down in any manner by the said definition.

25. A subsidiary question arises as to why does Section 4(1) exempt a dealer "dealing exclusively in goods declared tax-free under Section 6" from its operation. On the basis of these words, it was suggested that the goods referred to by Section 6 and mentioned in Schedule B are exempt both from sales tax and purchase fax. We do not think that the said contention is well founded. To determine what precisely is exempted under Section 6, one must have regard to the language of Section 6. Section 6, as pointed out hereinbefore, only exempts the sale of the goods in Schedule B from tax thereon. There are no words in Section 6 which serve to exempt the purchase of such goods also from tax. It, therefore, follows that when Section 4 speaks of "every dealer except one who is dealing exclusively in goods declared taxfree under Section 6", the exception refers to a dealer who is engaged exclusively in the sale of goods mentioned in Section 6 read with Schedule B and not to any other dealer.

26. The view taken by us accords with the view taken by the Punjab and Haryana High Court over the last two decades as indicated in the Full Bench decision in Desh Raj Parshotam Lal3. A discordant note was no doubt struck in Malwa Sugar Mills1 (decided in December 1975) but the decision of the Division Bench soon thereafter in Babu Ram Jagdish Kumar2 and other decisions referred to in the aforesaid Full Bench decision had always taken the view consistent with the one indicated by us hereinabove. As a matter of fact, this was how Section 4-B was understood by this Court in Devi Dass Gopal Krishan5.

27.In Writ Petition (C) Nos. 846 of 1979 and 7015 of 1982, the very same question arises and, therefore, they too are covered by this decision.

28.The writ petitions are accordingly dismissed with costs. Respondent's costs quantified at Rs 10,000 consolidated.

29.The interim orders made in these writ petitions are vacated. The tax, the collection whereof may have been stayed by interim orders of this Court, can now be collected according to law by the State. The bank guarantees and securities furnished, if any, can be encashed and enforced for the said purpose, if necessary.