(2001) 03 P&H CK 0154

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 4085 of 2001

Jindal Oil and Fats Ltd.	APPELLANT
Vs	
State of Haryana and Another	RESPONDENT

Date of Decision: March 21, 2001

Acts Referred:

- Central Sales Tax (Registration and Turnover) Rules, 1957 - Rule 13
- Central Sales Tax Act, 1956 - Section 7(1), 8(3)
- Constitution of India, 1950 - Article 14
- Haryana General Sales Tax Act, 1973 - Section 15(1), 15A, 15A(1)

Citation: (2006) 143 STC 37

Hon'ble Judges: Nirmal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Ashok Aggarwal and Rajesh Bindal, for the Appellant;

Final Decision: Dismissed

Judgement

G.S. Singhvi, J.

Whether Clause (3) of notification No. S.O. 127/ H.A. 20/73/S. 15/A/2000 dated October 9, 2000 (annexure P. 1) issued by the Government of Haryana u/s 15-A of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act") is ultra vires to the power of the State Government or is violative of the doctrine of equality enshrined in Article 14 of the Constitution is the question which arises for determination in this petition filed by the petitioner.

2. For the purpose of deciding the above noted question, we may briefly notice the facts. The petitioner is engaged in the manufacture of edible and non-edible oil in its factory at Hissar. It has got power connection of 990 KVA from Haryana Vidyut Parsaran Nigam Ltd., and with the avowed object of avoiding stoppage of the manufacturing process, it has also installed six diesel generating sets (having total capacity of 2,830 KVS) through which electricity is generated by using high speed

diesel oil. The petitioner''s case is that high speed diesel used in the generation of electricity falls in the class of goods used for manufacture of oil and, therefore, in terms of Section 15-A of the Act, it is entitled to reduction or refund of tax paid at the time of purchase of high speed diesel, but this item has been arbitrarily excluded from the class of goods included in Clause (3) of annexure P. 1 depriving it of the said benefit.

3. Shri Ashok Aggarwal, Senior Counsel, appearing for the petitioner, argued that the impugned notification should be declared ultra vires to the power of the State Government because Section 15-A(1) does not empower it to exclude high speed diesel from the list of goods used for manufacture or processing of edible and non-edible oil by the dealer. Learned counsel submitted that high speed diesel used for generating the electricity should be treated as a raw material used for manufacturing edible and non-edible oil because the electricity is necessary for running the industry. In support of this argument, Shri Aggarwal strongly relied on the decisions of the Supreme Court in Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, and J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, . He further argued that exclusion of high speed diesel from the class of goods used by the petitioner for manufacturing the oil should be declared as vitiated due to violation of Article 14 of the Constitution because the distinction sought to be made between the high speed diesel and other lubricants is totally irrational and arbitrary and has no nexus with the object of calculating input tax for the purpose of Section 15-A(1) of the Act. He relied on the decision of the Supreme Court in Ayurveda Pharmacy and Another Vs. State of Tamil Nadu, and submitted that Clause (3) of the notification dated October 9, 2000 should be declared unconstitutional and struck down.

4. We have given serious thought to the arguments of the learned Counsel, but have not felt persuaded to agree with him. Section 15-A of the Act and extract of the impugned notification, which have bearing on the decision of this petition read as under :

Section 15-A(1) of the Act :

15-A : Reduction or refund of tax in certain cases.--(1) Subject to the provisions of Clause (iii) of proviso to Sub-section (1) of Section 15, the amount of tax paid or payable under this Act on the goods (except paddy) used in manufacture or processing by a dealer during a given period (hereinafter referred to as ''input tax'') producing goods including bye-products and waste products (hereinafter referred to collectively as ''manufactured goods'') shall be reduced from the tax paid or payable by him under this Act or the Central Sales Tax Act, 1956 (Act 74 of 1956), on the sale made by him during that period, of manufactured goods (hereinafter referred to as the ''output tax liability'') in full, or in part as the case may be, calculated by multiplying the input tax with a fraction, computed by such formula, applicable in such circumstances and subject to such conditions and restrictions, as

the State Government may, by notification, in the Official Gazette, taking into consideration the taxability and the manner of disposal of the manufactured goods, specify. Different formulae for computing the fraction and different conditions and restrictions for being entitled to reduction or refund of tax under this provision may be specified in different circumstances or for different class of dealers or for different goods or class of goods, used in manufacture or produced. If the input tax credit which is the amount of input tax multiplied by the fraction computed by the given formula exceeds the output tax liability for any period, then the excess amount, subject to a ceiling as the State Government may, by notification, in the Official Gazette, impose, can, at his option, be carried forward by the dealer to the next period or may be claimed as refund by him.

(2) The Assessing Authority may, before reducing or refunding any amount under this section, call for such evidence in proof of payment of tax as, in his opinion, is necessary.

(3) Where the manufactured goods are sent on consignment transfer out of the State for sale or disposed of in any manner other than by way of sale, the value of such goods shall be taken as the price at which such goods are ordinarily sold ; and where the manufactured goods are sent on consignment transfer out of the State for captive consumption, the value of such goods shall be taken as the cost of production of such goods or the value shown in the consignment transfer note or chalan or any other similar document, whichever is higher.

Extract of the notification dated October 9, 2000.

Haryana Government Prohibition, Excise and Taxation Department Notification dated the 9th October, 2000.

No. S.O.127/H.A. 20/73/S. 15/A/2000--In exercise of the powers conferred by Sub-section (1) of Section 15A of the Haryana General Sales Tax Act, 1973 (Haryana Act 20 of 1973) and all other powers enabling him in this behalf, the Governor of Haryana being satisfied that it is necessary and expedient so to do in the public interest hereby specifies the following formula for calculating reduction or refund of tax under the said section with effect from the date of publication of this notification in the Official Gazette, namely :

Formula

Reduction or refund of tax paid or payable on inputs of manufacture.

(1) The reduction or refund of tax admissible to a dealer u/s 15A of the Act during a given period shall be computed as under :--

Input tax : Aggregate of tax paid by any person or payable by the dealer under the Haryana General Sales Tax Act, 1973 (Haryana Act 20 of 1973), on goods used in manufacture or processing by the dealer during the period.

. . .

(3) For the purpose of calculating input tax, the goods used in manufacture or processing shall be goods used by a dealer as raw material, processing material, tools, stores, spare parts, accessories, lubricants or fuel except high speed diesel in the manufacture or processing of goods for sale and shall include containers and packing materials used for packing of the goods manufactured or processed.

5. An analysis of Section 15-A(1) shows that the amount of tax paid or payable under the Act on the goods used in manufacture or processing by a dealer during a particular period for producing goods including bye products and waste products is liable to be reduced or refunded from the tax paid or payable by him under the Act or the Central Sales Tax Act, 1956 or the sale of manufactured goods during the relevant period. This reduction may be full or in part, as the case may be, calculated in accordance with the formula to be prescribed by the Government. In exercise of its power u/s 15-A, the State Government issued notification annexure P1 prescribing the formula for reduction/refund of tax. Clause (3) of the impugned notification lays down that for the purpose of calculating input tax, the goods used in or in the processing of manufacture shall be goods used by a dealer as raw materials, processing materials, tools, stores, spare parts, accessories, lubricants or fuel except high speed diesel used in the manufacture or processing of goods for sale include containers and packing materials used for packing of the goods manufactured or processed. The reason for excluding high speed diesel from the class of goods which constitutes raw material used for manufacture or processing goods appears to be that it is not used in the manufacture or processing, but is used for generating electricity which, in turn, is used for running the industry. The petitioner has not produced any evidence to prove to the contrary. The averments made in paragraph 3 of the writ petition also indicate that high speed diesel is used for generating electricity and not for manufacturing the product of the petitioner, i.e., edible and non-edible oil. Therefore, we are unable to agree with the learned Counsel that exclusion of high speed diesel from the listed goods used as raw material for manufacture or processing is ultra vires to the powers vested in the State Government u/s 15-A(1) of the Act.

6. The view which we have taken in the present case is supported by the ratio of the recent decision of the Supreme Court in Collector of Customs Vs. M/s. Presto Industries, . The facts of that case show that the appellant is engaged in the manufacture of fertilizers by using items including Low Sulphur Heavy Stock (for short, "LSHS") in respect of which exemption notifications had been issued. The appellant claimed total exemption in respect of the quantity of LSHS by contending that it was being used for the manufacture of fertilizers. The Revenue did not accept the appellant''s contention and asked it to pay duty on the premise that part of LSHS which had been used for producing steam could not be regarded as having been used as feed stock. After having remained unsuccessful before the CEGAT, the

appellant sought intervention of the Supreme Court for grant of total exemption. Their Lordships, after analysing the exemption notifications, held as under :

As is evident from hereinabove, LSHS has been used in two ways. Firstly, it had been used as feed stock in the oxidation process when along with furnace oil it came in contact with oxygen and steam which resulted in gas with soot which was ultimately subjected to further process before leading to liquid ammonia. Secondly, it was used for adding to the coal which was burnt for boiling water which resulted in the production of steam which was also an essential part of the process of manufacture of fertilizers but that by itself would not entitle them to the benefit of complete exemption from excise duty unless it can be shown that LSHS has been used as feed stock in the manufacture. The notification clearly indicate that it is only in respect of the limited use of LSHS as feed stock that complete exemption has been granted. LSHS used in the manufacture of fertilizers, but not as feed stock, was however subject to excise duty though at a lower rate.

The very process of manufacture indicated hereinabove shows that LSHS, as a result of chemical reaction, becomes gas which is subsequently purified resulting in liquid ammonia which can be regarded as feed stock in contra-distinction to LSHS which is burnt and as a result whereof steam is generated which in turn is used in the process. In the abovementioned second case, LSHS is used in the manufacture of ammonia but not as a feed stock. As such, benefit of notification No. 127 of 1988 would be available to the appellants in respect of LSHS which has been used for generating steam and this will be with effect from 1st March, 1988. In respect of the earlier period, it is only that part of LSHS which will be entitled to 100 per cent exemption from excise duty by virtue of Notification No. 147 of 1974 and Notification No. 75 of 1984 which has been used as feed stock and not for the purpose of generating steam.

7. We may now refer to the two decisions relied upon by Shri Aggarwal. In Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, , their Lordships of the Supreme Court examined the provisions of Section 8(3)(b) of the Central Sales Tax Act, 1956 (for short, "the Central Act") and Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957 in the context of the appellant''s claim for registration of various goods under the Central Act. The facts of that case were that the Superintendent of Sales Tax had issued certificate of registration without specifying certain categories of goods which the Corporation claimed should be specified u/s 8(3)(b) of the Act. The High Court partly allowed the writ petition. This did not satisfy the appellant which moved the Supreme Court. Their Lordships partly allowed the appeal and held as under :

We are also of the opinion that in a case where a dealer is engaged both in mining operations and in the manufacturing process--the two processes being inter-dependent -- it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory

where the manufacturing process starts. It appears that the process of mining ore and manufacture with the aid of ore copper goods is an integrated process and there would be no ground for exclusion from the vehicles those which are used for removing goods to the factory after the mining operations are concluded. Nor is there any ground for excluding locomotives and motor vehicles used in carrying finished products from the factory. The expression ''goods intended for use in the manufacturing or processing of goods for sale'' may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage. If this be the correct view, the restrictions imposed by the High Court in respect of the vehicles and also the spare parts, tyres and tubes would not be justifiable. We are, therefore, of the opinion that the Corporation was entitled to specification as set out in the petition and explained in annexure B-2 to the petition in respect of items (i), (ii) and (vi).

The statutes relating to factories and mines impose upon the owner of the factory and the mine obligation to maintain effective health services for the benefit of the workmen. But it cannot on that account be said that the goods purchased for the hospital such as equipment, furnishings and fittings are intended for use in the manufacture or processing of goods for sale or in the mining operations. The mere fact that there is a statutory obligation imposed upon the owner of the factory or the mine to maintain hospital facilities would not supply a connection between the goods and the manufacturing or processing of goods or the mining operations so as to make them goods intended for use in those operations.

. . .

''Stationery'' also is not intended for use in the manufacture or processing of goods for sale or for mining operations. Use of stationery undoubtedly facilitates the carrying on of a business of manufacturing goods or of processing goods or even mining operations ; but the expression ''intended to be used'' cannot be equated with ''likely to facilitate'' the conduct of the business of manufacturing or of processing goods or of mining.

Those cane baskets which are intended to be used by the sanitary department for collecting refuse to protect the health and cleanliness of the colony and the workmen employed in the manufacture of goods, cannot, on the test set out earlier, be specified in the certificate of registration. But we are unable to agree with the High Court that the cane baskets which are required for carrying ore and other materials used in mining or in the manufacture of goods are not intended for use in the process of manufacturing or mining operations.

8. The facts of the second case, i.e., J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, shows that the company was engaged in the manufacture of cotton textiles, tiles and other commodities. On June 21, 1957, it applied for registration as a dealer u/s 7(1) of the Central Act and prayed that the

following goods may be specified in the certificate :

Cotton staple fiber, yarn, wastes, coal, petrol, machinery, electricals, spares, hardwares, dyes and colours, chemicals, auxiliaries, oils, lubricants, tallows, starches, woollen clothings, gums, clays, salt, beltings, bobbins, shuttles, wooden accessories and other mill stores for manufacturing cloth, yarn, tiles and paints, etc.

9. The Sales Tax Officer granted the certificate which was later on modified and certain more goods were added to it. Thereafter, vide notice dated July 19, 1961, the Sales Tax Officer cancelled the specification in respect of coal and gave notice to the appellant as to why drawing instruments, photographic materials, building materials including iron, steel, cement and lime and certain goods covered under the term "electricals" may not be excluded from the certificate. After considering the reply of the appellant, he excluded certain items from the certificate. The High Court of Allahabad upheld his order but, in appeal, their Lordships of the Supreme Court substantially reversed that order by holding that the view taken by the High Court on the interpretation of the expression "in the manufacture of goods" appearing in Section 8(3)(b) was not correct. Some of the observations made in that decision are reproduced below :

It is true that under Rule 13, read with Section 8(3)(b), mere intention to use the goods in the manufacture or processing of goods for sale, will not be a sufficient ground for specification : the intention must be to use the goods as raw materials, as processing materials, as machinery, as plant, as equipment, as tools, as stores, as spare parts, as accessories, as fuel or as lubricants. A bare survey of the diverse uses to which the goods may be intended to be put in the manufacture or processing of goods, clearly shows that the restricted interpretation placed by the High Court is not warranted. The expression ''in the manufacture of goods'' should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression ''in the manufacture of goods''....

...The expression in the manufacture'' takes in within its compass, all processes which are directly related to the actual production. Goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. Drawing and photographic materials falling within the description of goods intended for use as ''equipment'' in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use ''in the manufacture of goods.''

Building materials including lime and cement not required in the manufacture of tiles for sale cannot, however, be regarded within the meaning of Rule 13, as raw

materials in the manufacture or processing of goods or even as ''plant''.

. . .

The expression ''electricals'' is some what vague. But in a factory manufacturing cotton and other textiles, certain electricals equipment in the present stage of development would be commercially necessary. For instance, without electric lighting it would be very difficult to carry on the business. Again electrical humidiffers, exhaust fans and similar electrical equipment would in the modern conditions of technological development normally be regarded as equipment necessary to effectually carry on the manufacturing process. We are not prepare to agree with the High Court that in order that ''electrical equipment'' should fall within the terms of Rule 13, it must be an ingredient of the finished goods to be prepared, or ''it must be a commodity which is used in the creation of goods''. If, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment would be regarded as intended for use in the manufacture of goods for sale and such a test, in our judgment, is satisfied by the expression ''electricals''. This would of course not include electrical equipment not directly connected with the process of manufacture....

10. In our opinion, neither of these decisions support the petitioner''s claim that exclusion of high speed diesel from the class of goods used in the manufacture of edible and non-edible oil is arbitrary, irrational and unjustified.

11. The plea of discrimination raised by the petitioner also merits rejection because the distinction made between the goods which are used in the manufacture of the final product by the dealer and the goods not used for that purpose cannot be termed as irrational or arbitrary. Rather, the two categories of goods constitute separate classes. Therefore, it is not possible to hold that Clause (3) of the impugned notification is violative of Article 14 of the Constitution.

12. The judgment of the Supreme Court in Ayurveda Pharmacy and Another Vs. State of Tamil Nadu, , on which reliance has been placed by Shri Aggarwal is clearly distinguishable. A careful reading of that decision shows that arishtams and asavas which fall within the category of ayurvedic preparations were subjected to levy of tax at the rate of 30 per cent is as against other ayurvedic medicine which were subjected to levy of 7 per cent. The appellant''s challenge to the levy of different rates of taxes was upheld by the Supreme Court with the following observations :

It is open to the legislature, or the State Government if it is authorised in that behalf by the legislature, to select different rates of tax for different commodities. But where the commodities belong to the same class or category, there must be a rational basis for discriminating between one commodity and another for the purpose of imposing tax. Consideration of economic policy constitute a basic for

levying different rates of sales tax.... Arishtams and asavas, are medicinal preparations, and even though they contain a high alcohol content, so long as they continue to be identified as medicinal preparations they must be treated, for the purposes of the sales tax law, in like manner as medicinal preparations generally, including those containing a lower percentage of alcohol.

13. In our opinion, the ratio of the aforementioned decision has no bearing on the facts of this case because, as already mentioned above, the high speed diesel oil and other lubricants constitute different classes.

14. For the reasons mentioned above, we hold that Clause (3) of the notification dated October 9, 2000 does not suffer from any legal or constitutional infirmity warranting interference by the High Court.

15. Hence, the writ petition is dismissed.