(2006) 04 P&H CK 0129

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Regular Traders		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: April 25, 2006

Acts Referred:

- Central Sales Tax Act, 1956 - Section 5, 9
- Income Tax Act, 1961 - Section 256, 66

Citation: (2007) 10 VST 245

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Judgement

1. The petitioner has approached this Court by filing the present petition u/s 9(2) of the Central Sales Tax Act, 1956 (for short, "the 1956 Act") read with Section 22(2) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as, "the 1948 Act"), seeking reference of questions of law for opinion of this court, arising out of the order of the Sales Tax Tribunal, Punjab, dated March 27, 1991 for the assessment year 1973-74.

2. Even though, in the present petition, the petitioner has framed nine questions of law, but at the time of hearing he pressed only question No. 9, which is extracted below:

(ix) Whether, under the facts and circumstances of the case, this honourable Tribunal has erred, in point of law in disallowing the deductions to the petitioner to the tune of Rs. 2,86,900 u/s 5(2)(a)(vii) of the Punjab General Sales Tax Act and Rule 29(v) thereunder?

3. To buttress the arguments, the petitioner cited a Division Bench judgment of this Court in State of Haryana Vs. Liberty Foot Wear Company, to state that the question similar to one, which is sought to be raised by the petitioner in the present petition,

has already been answered in the abovesaid case in favour of the assessee and against the Revenue.

4. The petitioner is a dealer registered under the provisions of the 1948 Act. During the assessment year in question, he sought exemption in respect of turnover representing transaction of sale of goods to the State Trading Corporation of India (hereinafter referred as, "the STC") in the course of export outside India. This was disallowed by the authorities below on the ground that the sale by the dealer to the STC was not an export sale since the State Trading Corporation did not act as an agent of the assessee as the transaction between the assessee and STC was a completed transaction of sale in the course of inter-State trade and commerce having no relevance with the export. While rejecting the claim of the petitioner, the judgment of the honourable Supreme Court of India in Mod. Serajuddin v. State of Orissa [1975] 36 STC 136(ori) was relied upon.

5. Learned Counsel for the petitioner further submitted that the judgment in Serajuddin and Others Vs. The State of Orissa, is not applicable in the facts and circumstances of the case in view of Rule 29(v) of the Punjab General Sales Tax Rules, 1949 (hereinafter referred to as, "the 1949 Rules") which enabled a dealer to reduce from his taxable turnover value of any goods exported out of India whether by one transaction or by a series of transactions. Relevant facts noticed by the Assessing Authority in the order of assessment for the year in question framed under the 1956 Act are extracted below:

...the assessee-firm has entered into a contract of sale of hosiery goods for export to Russia with the STC on the terms and conditions of sales laid down in the contract a copy of which is placed on the file. The STC had entered into this contract with the assessee in order to fulfil its contracts with the foreign Russia buyers already executed independently....

6. The Sales Tax Tribunal while considering the appeal of the petitioner has recorded the following findings in para No. 5 of the order:

...The immediate cause of movement of goods and export out of India was the contract between Corporation and the foreign buyer and not the sale between the appellant and Corporation. The export out of India was occasioned by an independent contract of sale between the Corporation and foreign buyer. The appellant put the goods sold by them to Corporation on board mainly to facilitate the intended export by the Corporation. Thus the appellant was acting as agent and he was under obligation to do so under specific contract executed with the Corporation. Hence the contentions raised by the appellant have no force. The pleadings of the counsel for the State have weight and he has rightly pleaded that according to the facts of this case, there is no privity of contract between appellant and foreign buyer and there are two distinct sales one between appellant and Corporation and other between Corporation and Importer. It is on account of sale

between Corporation and Moscow dealer that goods have been exported. The sale between appellant and Corporation is a sale preceding export. As Section 3 has been introduced with effect from April 1,1976 so its benefit cannot be given to the appellant. Also Rule 29(v) of the Punjab General Sales Tax Rules, 1949 cannot be invoked to supersede and circumvent the explicit provisions of Section 5 of the Central Sales Tax Act, 1956....

7. The relevant paras of the division Bench judgment of this Court in Liberty Footwear''s case [2006] 145 STC 532 : [2005] 25 PHT 427 are extracted below (page 541):

21. I am unable to accept the view of the District Attorney that in fact the words used in Rule 27 of the 1949 Rules are identical with the words used in Section 5(1) of the Central Sales Tax Act, 1956 and that the Supreme Court while giving in the Mod. Serajuddin v. State of Orissa [1975] 36 STC 136(Ori) its interpretation of the aforesaid Rule 27 also to which Rule 29(v) must be considered sub-servient. Firstly, Rule 27 refers only to sale of goods ''in the course of inter-State trade or commerce or export out of the territory of India'' whereas Section 5 further qualifies this by clarifying that the sale of goods ''shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontier of India''. It is clear, therefore, that Section 5(1) of the 1956 Act contains a substantial qualifying and restrictive clause which nowhere finds mention in Rule 27 of the 1949 Rules. As a matter of fact it is clear from the Supreme Court judgment in Mod. Serajuddin v. State of Orissa [1975] 36 STC 136(ori) that to a considerable extent it has based its restrictive interpretation on the words ''occasions such export'' which are mentioned only in Section 5(1) of the Central Act and do not find any place in Rule 27 of the State''s 1949 Rules. Thus it appears to me that the intention of the State Government always was to give a more liberal tax exemptions with regard to goods designed to be exported out of the territory of India than the Central Government had intended. Rule 27 of the 1949 Rules is certainly more liberal than Section 5(1) of the Central Act and I find Rule 29 (v) even more liberal.
22. Further I find no grounds in support of the District Attorney''s view that Rule 29(v) is not an independent self-contained rule but is sub-servient to Rule 27 because if that were so, then each of the sub-rules of Rule 29 would be sub-servient to one or the other preceding rule. But this is not so. For instance, deductions from gross turnover mentioned in Sub-rules (iv), (vii) and (ix) of Rule 29 are not mentioned anywhere else either in the Act or in the Rules. Thus Rule 29 must therefore, be considered an independent and self-contained rule, which on its own, grants deductions from gross turnover on various counts. In this view of the matter Rule 29(v) which allows deductions from the gross turnover of all goods ''proved to be exported out of the territory of India whether by one transaction or by series of

transactions" must be deemed to give a substantial relief to all such dealers who can prove that the goods sold by them in any transaction have been exported out of the territory of India. The words "series of transactions" used in this rule can be interpreted in the context of the governing clause which makes it clear that such deductions from the gross turnover are permissible where the goods are exported out of India either by one transaction or by a "series of transactions" which means in effect whether the goods are exported directly by a dealer or indirectly through any other intermediary or through consecutive sales. In this case the goods in question have admittedly been exported out of the territory of India. Therefore, the appellant is entitled to deduct from his gross turnover the goods of the value of around Rs. 49.97 lacs, which have been exported out of India....

8. In view of the judgment of this Court in State ofHaryana v. Liberty Footwear Company [2006] 145 STC 532 : [2005] 25 PHT 427 and since the authorities below have wrongly applied Serajuddin and Others Vs. The State of Orissa, which is held to be not applicable to the facts of the case in hand, we find that the view taken by the authorities is erroneous and is not in conformity with law.

9. Now when on the facts found by the Tribunal and considering the settled position of law, as referred to above, the answer to the question is available, should this Court still give a direction to the Tribunal to make a reference to this Court as per Section 9(2) of the 1956 Act read with Section 22(2) of the 1948 Ad. In our view the same would not serve any purpose as it would result in avoidable loss of time and money without serving any public interest. As to whether this Court can answer the question straightaway in a petition filed seeking a direction to the Tribunal to refer the question of law to this court, authoritative pronouncement by a Division Bench of this Court is already there in the case of Malik Iron & Steel Rolling Mills v. State ofHaryana [2002] 126 STC 220 relevant paras of which are extracted below:

7. It is undoubtedly correct that if the provision is literally construed, it would be right to require the Tribunal to state the case and then take a decision. This would be the normal course. However, in the present case, there is no dispute on facts. The issue of law has been authoritatively decided by the apex court. Should this Court still issue a direction to the Tribunal to make a reference to this Court? Would it serve any purpose? We think not. It would only mean an avoidable loss of time and money. It would not benefit either the assessee or the Revenue. Nor would strict adherence to the letter of law serve any public interest. In view of these facts, it does not appear to be necessary to direct the Tribunal to state the case and make a reference to this court.

8. It deserves notice that while dealing with the provisions of the Income Tax Act, 1922, their Lordships of the Supreme Court had considered a similar matter in the case of Commissioner of Income Tax, Punjab Vs. Jai Parkash Om Parkash Company Ltd., . It was held by their Lordships that while considering an application u/s 66(2) which corresponds to Section 256(2) of the 1961 Act, the High Court could not

decide the case and answer the question without calling upon the Tribunal to make a reference. Similar view was also taken by their Lordships of the Supreme Court in the case of Commissioner of Income Tax, Ernakulam Vs. Managing Trustee, Jalakhabai Trust, . In the light of these decisions, even the Kerala High Court had interpreted the law in similar terms in the case of COMMISSIONER OF Income Tax Vs. WANDOOR JUPITER CHITS (P.) LTD. (IN LIQUIDATION)., . In view of these authoritative pronouncements, we would have been normally bound to follow the course as required by the statute. However, we find that in two cases, their Lordships have made a slight departure. Reference in this behalf may be made to the cases of Commissioner of Income Tax, Lucknow Vs. Narang Dairy Products, Lucknow, and Commissioner of Income Tax, Madurai Vs. T.V. Sundaram Iyengar and Sons Ltd., . The honourable Supreme Court had given the decision without directing the High Court to call for the statement of the case.

9. Undoubtedly, their Lordships have much wider powers than this court. However, it appears that a similar course has also been adopted by the Delhi High Court in the case of COMMISSIONER OF Income Tax Vs. MAHARISHI VED VIGYAN VISHWA VIDYA PEETHAM., . It was held that it was not imperative to follow the "unnecessary and cumbersome part of the procedure" which in the opinion of their Lordships was "directory7. Thus, the court had proceeded to "straightaway answer the question". Similar view has also been taken by the Orissa High Court in State ofOrissa v. Mahabir Prasad Agrawalla [1990] 79 STC 163(ori) and Maharana and Maharana v. State of Orissa [1991] 82 STC 242(ori).

10. We are also of the view that while construing the provisions of a statute, the principle of "updating construction" should be adopted. It means that "a construction that continuously updates" the working of an on-going Act has to be followed. In other words, it means that "in its application on any date, the language of the Act though necessarily embedded in its own time is nevertheless to be construed in accordance with the need to treat it as current law". The principle has been quoted in [1999] 102 Tax 135 at page 141 by Mr. Sanjay Bansal as under:

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since, the Act"s passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the U.S. Constitution is regarded as "a living Constitution", so an ongoing British Act is regarded as "a living Act". That today"s construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

10. To the similar effect are the judgments of Delhi and Andhra Pradesh High Courts in COMMISSIONER OF Income Tax Vs. MAHARISHI VED VIGYAN VISHWA VIDYA PEETHAM., , City Dry Fish Company, Vijayawada Vs. Commissioner of Income Tax, Visakhapatnam, A.P., and Commissioner of Wealth Tax Vs. Ajay Kumar Sood, .

11. Respectfully following the above pronounciation of law, we find that since the issue raised in the case is covered by the Division Bench judgment of this court, it will not be in the fitness of things to direct the Tribunal to refer the question of law to this Court and keep the matter pending. To avoid unnecessary wastage of time, in our view it would be appropriate to answer the question straightaway by coverting the case into reference.

12. In view of the above discussions, the question raised by the assessee is answered in his favour and against the Revenue. We order accordingly.