(2009) 01 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No''s. 5159 of 2001, 10301, 17528, 17595 and 18323 of 2002, 1882, 1883 and 1884 of 2003, 14118, 15006, 15124, 15133, 15134 and 15187 of 2006, 3698, 15487, 15567, 16356 and 19594 of 2008 and S.T.C. No. 7 of 2003

Aggarwal Rice and General Mills	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision: Jan. 14, 2009

Acts Referred:

- Central Sales Tax Act, 1956 - Section 14, 2, 3
- Constitution of India, 1950 - Article 226
- Haryana General Sales Tax Act, 1973 - Section 13, 13B, 15(1), 17, 18
- Haryana General Sales Tax Rules, 1975 - Rule 24, 28A

Citation: (2010) 34 VST 231

Hon'ble Judges: M.M. Kumar, J; H.S. Bhalla, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.M. Kumar, J.
This order shall dispose of this bunch of 20 petitions. For putting the controversy in its proper perspective, facts are being stated from C. W. P. No. 15133 of 2006.

2. This petition filed under Article 226 of the Constitution challenges order dated March 30, 2006, passed by the Haryana Tax Tribunal (for brevity, "the Tribunal") upholding demand of purchase tax at the rate of four per cent, which the shelling units belonging to the petitioners were liable to pay as purchase tax. It is undisputed that all the dealers are running rice shellers in the State of Haryana and they purchase paddy from the grain markets of Haryana. The paddy was subjected to shelling process, which resulted into extracting rice and various other by products. Under the Haryana Rice Procurement Levy Order, 1985 (for brevity, "the Levy Order") the rice shelling units were under obligation to sell the finished product

known as rice to the District Food and Supplies Controllers (for brevity, "DFSC") to the extent of 75 per cent of total and the remaining part of the rice could be sold by them in the open market. All the petitioners in this batch of petitions are such units which are exempted u/s 13B of the Haryana General Sales Tax Act, 1973 (for brevity, "the Act") read with Rule 28A of the Haryana General Sales Tax Rules, 1975 (for brevity, "the Rules"). It is undisputed that various assessing authorities framed assessments in respect of these dealers for the assessment year 1996-97 on purchase of paddy and levied purchase tax on them at four per cent. The basic reason for levy of purchase tax at four per cent was that as per condition of exemption certificate they were exempted only from payment of sales tax but their liability to purchase tax at four per cent being the last purchaser would continue and the aforementioned amount has been collected from the DFSC being part of the price of the rice. It is appropriate to notice that the taxable event for imposition of purchase tax is milling of paddy because they are the last purchasers being paddy millers. It is also undisputed that the other taxable event in respect of rice is the sale of rice after the paddy is subjected to the process of milling. The component of four per cent purchase tax has been included in the levy price at which the miller is liable to sell the rice to the Government at specified rate as per Note 1 of the Levy Order. For the aforementioned reason the Assessing Officer assessed the dealers for making payment of four per cent of purchase tax which they were liable to pay and the unit was not exempt under Rule 28A of the Rules from the liability to pay purchase tax.

3. Feeling aggrieved the dealers filed appeals before the Joint Excise and Taxation Commissioner (Appeals) which were dismissed on July 31, 2000 or September 22, 2000 or on other dates. On appeal the matter was heard by a Full Member Tribunal, which after examining various contentions raised by the parties concluded as under:

In our opinion, it is quite clear from the Levy Order that the price of rice which was paid by DFSC to these dealers was inclusive of purchase tax ,etc, DFSC was not liable to purchase tax. Purchase tax is leviable on the purchase of paddy. These dealers were purchasers of paddy and therefore, they were liable to pay purchase tax. The dealers purchased paddy and sold rice to the DFSC. Receipt of purchase tax by the dealers from DFSC was not authorized, DFSC was required to pay sales tax to the dealers on the sale of rice made to him by the dealers. The purchase tax liability of the dealer cannot be adjusted towards notional tax liability of the dealers as dealers were given exemption only from payment of sales tax as suggested by the exemption certificate. They were not given exemption from payment of purchase tax. The dealers did not make any effort to secure rectification of the exemption certificate in the wake of amendment carried out in Section 13B on October 1, 1989 providing for exemption from payment of sales tax or purchase tax or both. Adjustment of purchase tax towards notional tax liability cannot be made. The view taken in 16 PHT 265 is per incuriam as the Tribunal did not advert to the definition of notional sales tax liability which is the tax payable on the sale of finished goods. No

allowance could be given to the dealers as contemplated by Rule 24 (m) as the rule applied to the trader who effected sales to an exempted manufacturer like the appellants who had actually utilized the goods in the process of manufacture. Assuming that Rule 24(m) is applicable and the purchases of paddy were deductible from the turnover, there is no justification to allow the dealer to keep the amount of purchase tax on paddy with them which they received from the DFSC unjustly. The dealers have no business to retain the amount which they had received unjustly from the DFSC. The price received by them from the DFSC for rice sold to him (DFSC) was inclusive of purchase tax, mandi charges, etc. Relying on Sri Nagakrishna Filaments (P) Ltd. Vs. Government of Andhra Pradesh and Another, and Sri Parvati Parameswara Cables Vs. Government of Andhra Pradesh and Others, we feel that the creation of demand of the amount received by the dealers from DFSC by way of purchase tax was quite just. In this case the simple principle involved is that when the dealers had received something unjustly from the DFSC by way of tax they should repay that amount to the Revenue because taxes belong to the State. If the price paid to the dealers by the DFSC for levy rice was far less than the price at which rice was sold in market, that is of no concern to us as that was a matter of contract between the dealers and the Government and the dealers readily accepted it.

4. Mr. K. L. Goyal and Mr. Avneesh Jhingan, learned Counsel for the petitioners, have made two principal submissions before us. Their first contention is that the respondents have misconstrued note (i) of Schedule III referred to by clause 2(i) of the Levy Order. According to the learned Counsel, note (i) cannot be construed to mean that the petitioner-dealers have charged purchase tax from the DFSC by including the element of tax in the procurement of rice, which, in fact, is fixed by the Government under the procurement order issued in pursuance of the provisions of the Essential Commodities Act. The procurement order obliges the dealer to supply a substantial percentage of rice to the Government or its agencies at a fixed price which is lower than the market price. On the aforementioned basis it has been argued that to burden the dealer with the recovery of purchase tax would not be sustainable, especially when there is actual payment of purchase tax made to the petitioner-dealers.

5. The other submission made by the learned Counsel is that in any case once they are exempted u/s 13B of the Act from payment of sales tax then it cannot be presumed that they were not exigible to sales tax. According to the learned Counsel the grant of exemption would itself show that they were exigible to sales tax and an incentive has been given to them by exempting them. Therefore, it must be presumed that the sales tax has been paid, which has been paid back to them in the shape of incentive. In other words, the argument is that once the sales tax is presumed to have been paid then the liability to pay purchase tax would cease to exist by virtue of Section 27(1) read with the first proviso to Section 17 of the Act and Rule 24(m) of the Rules. In support of their submission, learned Counsel have placed reliance on a Constitution Bench judgment of the honourable Supreme Court

rendered in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, .

6. Mr. Sanjiv Kaushik, learned State counsel, however, has submitted that a perusal of note (i) of Schedule III patently shows that purchase tax has been recovered by the miller, although, it is shown to be a part of the price of the rice. According to the learned Counsel the tax event had come into existence as the miller is the last purchaser of paddy, which is to be subjected to milling and was actually milled. He has also submitted that they could have avoided payment of purchase tax had they paid the sales tax. Merely because the petitioners enjoy exemption u/s 13B of the Act does not mean that purchase tax is also exempted.

7. We have thoughtfully considered the submission made by the learned Counsel for the parties and are of the view that there is no merit in these petitions. In order to determine the question of liability of the petitioners to pay purchase tax, a reference would be necessary to the relevant provisions of Section 6, Section 17 and Schedule D to the Act, which are charging sections and read thus:

Section 6 of the Act:

Incidence of taxation.-(1) Subject to the other provisions of this Act, every dealer whose gross turnover during the year immediately preceding the 27th day of May, 1971 and every other dealer shall, on the expiry of thirty days after the date on which his gross turnover first exceeds the taxable quantum, be liable to pay tax under this Act on the sale or purchase of goods by him in the State at the stage hereinafter provided,-

(a) on declared goods at the stage specified u/s 17;

Section 17 of the Act:

Tax on declared goods.-Tax on declared goods shall be leviable and payable at the stage of sale or purchase, as the case may be, and under the circumstances specified against such goods in the Schedule D:

Provided that where the goods have not been subjected to tax at any of the stage of sale or purchase specified in Schedule D, the tax shall be levied on and paid by a dealer liable to pay tax under this Act at the stage of last purchase of such goods by him:

Provided further that the tax under this section shall be levied, charged and paid after providing deductions admissible u/s 27 of this Act.

(emphasis added)

Schedule D to the Act
(See Section 17)

S. No.	Name of declared goods	Circumstances under which tax to be levied	Stage of levy
1	2	3	4
1.	Cotton, paddy and oil seeds other than cotton seeds as are defined in section 14 of the Central Sales Tax Act, 1956	(i) when imported	First sale within t State by a dealer li to pay tax under the
		(ii) when purchased within the State	Last purchase within State by a dealer li to pay tax under thi Act.

(emphasis added)

8. A conjoint perusal of the aforementioned sections shows that every dealer is liable to pay tax under the Act on the sale or purchase of goods by him in the State at the stage provided by Section 17 in respect of declared goods. The expression "declared goods" has been defined by Section 2(d) of the Act to have the same meaning as has been assigned to it by Section 2(c) of the Central Sales Tax Act, 1956 (for brevity, "the CST Act"). On a reference to Section 2(c) of the CST Act we find that the "declared goods" would be such goods which are listed in Section 14 of the CST Act. A perusal of Section 14 shows that it includes paddy (Oryzasativa L) and rice (Oryzasativa L).

9. Section 17 of the Act in terms defines that the tax on declared goods is leviable and payable at the stage of sale or purchase and under the circumstances specified against such goods in Schedule D, which in terms states that paddy when purchased within the State would be subjected to tax at the last purchase by a dealer who is liable to pay tax under the Act. It appears that the taxing event would occur when the miller has purchased paddy being the last purchaser for the purposes of subjecting it to the process of milling. The taxable event would come into play when the purchase has been made being the last purchaser because when the process of milling of paddy is undertaken then it is concluded finally that the miller is the last purchaser of paddy and he would become liable to pay tax under the Act.

10. The question concerning the taxable event in such circumstances has been subject-matter of consideration of the honourable Supreme Court in the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, , which took the view that the taxable event would not be the stage when the goods have been purchased by a taxable person being the last purchaser. However, the view taken in

the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, did not find approval of the three-judge Bench of the honourable Supreme Court in the case of Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., . The rationale for doing so is discernible from para 91 and the relevant extracts reads as under (at page 142 of 88 STC):

91 Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, takes only the last eventuality and holds that the taxable event is the removal of goods from the State and since such removal is to dealers'' own depots/agents outside the State, it is consignment, which cannot be taxed by the State Legislature. With the greatest respect at our command, we beg to disagree. The levy created by the said provision is a levy on the purchase of raw material purchased within the State which is consumed in the manufacture of other goods within the State. If, however, the manufactured goods are sold within the State, no purchase tax is collected on the raw material, evidently because the State gets larger revenue by taxing the sale of such goods. (The value of manufactured goods is bound to be higher than the value of the raw material). The State Legislature does not wish to-in the interest of trade and general public-tax both the raw material and the finished (manufactured) product. . .

11. The honourable Supreme Court also opined on the State policy of taxation, namely, when the manufactured goods are not sold within the State but are yet disposed of or where the manufactured goods are sent outside the State otherwise than by way of inter-State sale or export sale, the tax has to be paid on the purchase value of the raw material. In the event of non-payment of purchase tax, the Revenue is likely to suffer because it would neither be paid sales tax nor the purchase tax in respect of manufactured goods which are disposed of otherwise than by sale within the State or are sent out of State like consigned to dealers own depots or agents. In such like situation, law does not permit bearing of purchase tax. Giving detailed reasoning to conclude that the taxing event is the purchase of raw material like paddy in the present case, the honourable Supreme Court has observed as under (at page 143 of 88 STC):

...The object is to tax the purchase by a manufacturer of goods whose existence as such goods is put an end to by him by using them in the manufacture of different goods in certain circumstances. The tax is levied upon the purchase price of raw material, not upon the sale price-or consignment value-of manufactured goods. Would it be right to say that the levy is upon consignment of manufactured goods in such a case? True it is that the levy materialises only when the purchased goods (raw material) is consumed in the manufacture of different goods and those goods are disposed of within the State otherwise than by way of sale or are consigned to the manufacturing-dealer''s depots/agents outside the State of Haryana. But does

that change the nature and character of the levy? Does such postponement-if one can call it as such-convert what is avowedly a purchase tax what is on raw material (levied on the purchase price of such raw material) to a consignment tax on the manufactured goods? We think not. Saying otherwise would defeat the very object and purpose of Section 9 and amount to its nullification in effect. The most that can perhaps be said is that it is plausible (as pointed out by Ranganathan, J. in his separate opinion) to characterise the said tax both as purchase tax as well as consignment tax. But where two interpretations are possible, one which sustains the constitutionality and/or effectuates its purpose and intendment and the other which effectively nullifies the provision, the former must be preferred, according to all known canons of interpretation...

12. It is worthwhile to mention here that the honourable Supreme Court in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., has also affirmed the view taken by a Full Bench of this Court in the case of Des Raj Pushap Kumar Gulati v. State of Punjab [1985] 58 STC 393 that the taxing event is the act of purchase of goods which are used in the manufacture of end-products and not the act of despatch or consignment.

13. Once the aforesaid principles are clear then there is no escape from the conclusion that the petitioner-dealer becomes liable to pay purchase tax when they purchase the raw material like paddy being the last purchaser. It is a different matter that the payment of purchase tax is deferred till it is found that the manufactured goods are not to be subjected to sales tax. Therefore, the petitioners cannot escape the liability to pay purchase tax as no sales tax is levied on the rice extracted by them by milling the paddy which has been waived by virtue of exemption granted to them u/s 13B of the Act. It is on the basis of sound taxation policy of the State in respect of the declared goods that if sales tax is paid on the manufactured goods then the purchase tax on the raw material like the paddy would not be payable but if sales tax is not paid then the liability to pay purchase tax is to continue.

14. The aforesaid policy has been incorporated by legislation in order to avoid double taxation and to keep the price of rice within the reach of a common man as it is a staple diet of the common man. An indication in that regard has been given in the last proviso to Section 17 of the Act itself, which states that the purchase tax is to be levied, charged and paid after providing deductions admissible u/s 27. Accordingly, it would be profitable to make a reference to Section 27 of the Act, which reads thus:

Section 27 of the Act:

Taxable turnover.-(1) In this Act, the expression, ''taxable turnover'' means that part of a dealer''s gross turnover during any period which remains after deducting therefrom his turnover during that period:

...

(b) on account of purchase of goods which are specified in Schedule C or Schedule D and are liable to tax at the stage of last purchase as specified in Schedule C or Schedule D or the first proviso to Section 17:

(A) ...

(i) and (iii) ...

(iv) to a dealer who is exempt u/s 13 of this Act;

(B) ...

(C) On account of purchase of goods, other than those mentioned in Clause (b) above.

(A) which are sold during the year:

(i) in the State; or

(ii) in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956...

15. The further reflection of the aforesaid policy is also evident from the perusal of Section 15(1)(b), proviso (iii), which reads thus:

Section 15(1)(b)(iii) of the Act

Rate of tax.-(1) 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:

(a) ...

(b) twelve paise in a rupee in the case of other goods as the State Government may by notification, direct, subject to the conditions and restrictions, as it may impose in this behalf:

Provided that:

(i) and (ii) ...

(iii) In the case of rice procured out of paddy on the purchase of which a tax has been levied inside the State, tax leviable on such rice shall be reduced by the amount of tax levied on such paddy.

(emphasis added)

16. It would also be necessary to notice Rule 24(m) of the Rules, which reads thus:

Rule 24 of the Rules

Deductions of gross turnover (section 27)

In calculating the taxable turnover, a dealer may deduct from his gross turnover,-

(a) to (1) ...

(m) the value of goods (except those liable to tax at the first stage of sale or purchase u/s 17 or 18 of the Act) purchased by a dealer who is exempt from the payment of tax u/s 13B of the Act provided that the goods are used by him in the manufacture of any other goods in the State for the purpose of sale.

17. The aforesaid provision and the observations made by the honourable Supreme Court in Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., would show that the petitioner-dealers are liable to pay purchase tax on the procurement of paddy being the last purchaser irrespective of the fact whether they have recovered it from the DFSC or not. The obligation to pay has arisen on the event of procurement of paddy by the petitioner-dealers being the last purchaser.

18. We find no merit in the contention raised on behalf of the petitioner-dealers that the interpretation of Note (i) in Schedule III of Clause (2) of the levy order could not be construed to mean that the petitioner-dealers have not recovered any purchase tax from the DFSC. In order to appreciate their contention, Schedule III along with Notes (i) and (ii) is reproduced hereunder, which reads thus:

Schedule III
[See clause 2(i)]

Procurement price of rice

Sr. No.	Classification	Price per quintal raw rice	Sela
1	Common (IR8, Jaya)	671.70	675
2	Fine (Begmi, HM95, PR 107 (Sita)	696.10	699
3	Superfine (Parmal, Ratna, RP 5-3 (Sona), PR 106, Basmati (Terricot) Pusa-150, Pusa-33, Punjab No. 1, HKR 120, Pusa Basmati-1)		

Note : (i) The above prices of rice are for net weight of naked grains inclusive of purchase tax and mandi charges of paddy and depreciation of gunny bags used for packing paddy but exclusive of cost of gunny bags and taxes, if any, after ex-mill stage of rice.

(ii) The above prices are applicable to 1996-97 crop of rice with effect from October 1, 1996.

19. The argument that no purchase tax is deemed to be recovered while recovering the payment of rice would be wholly without substance because the obligation to pay purchase tax is not dependent on anything else but on the event to pay purchase tax. Such an event arises, as already noticed, when the petitioner-dealers purchase paddy being the last purchaser. The miller is to mill the paddy, which is raw material for extracting rice and other allied products. Even otherwise the costing sheet, etc., always keep the element of purchase tax in view which is ordinarily reimbursed to the miller. Therefore, the argument is wholly misconceived and is, thus, liable to be rejected. The rice sold to DFSC by the petitioner-dealers has not attracted the payment of sales tax and, therefore, the petitioner-dealers cannot avoid payment of purchase tax.

20. The other contention of the petitioner-dealers that in the eyes of law they are deemed to have paid sales tax is equally devoid of merit because once the sale transactions of the petitioner-dealers are exempted u/s 13B of the Act from payment of sales tax then it would not amount to granting exemption in respect of purchase tax as well. In law it cannot be presumed, as suggested, that sales tax has been paid by the petitioner-dealers.

21. The judgment of the honourable Supreme Court in the case of Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, is not attracted and no argument could have been raised that since the petitioner-dealers have not recovered the purchase tax, therefore, they are not liable to pay. The petitioner-dealers being last purchasers have to pay purchase tax. In other words, the petitioner-dealers cannot be heard to say that no assessment could be framed. The argument is wholly misconceived and we have no hesitation to reject the same.

22. As a sequel to the above discussion, these petitions are devoid of merit and accordingly dismissed.