Tenya Barahattay Ketya Matka Tantubaya Samabaya Samity Ltd. Vs Commercial Tax Officer, Berhampur Charge and Others

Writ Petition No. 9485 W of 2009

Court: Calcutta High Court

Date of Decision: Jan. 15, 2010

Acts Referred:
Central Sales Tax Act, 1956 â€" Section 8, 8(2)(c), 8(2A)

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Sumit Ghosh, Mr. Rajarshi Chatterjee, Mr. Avinaba Patra and Mr. Abhijit Dutta, for the Appellant; Seba Roy, for the Respondent

Final Decision: Dismissed

Judgement

Soumitra Pal, J.
This writ petition has been filed challenging the order dated 23rd May 2005 passed by the assessing authority, the order

dated 4th July 2007 passed in appeal by the Assistant Commissioner, Commercial Taxes, Beherampur Circle, respondent No.2 and the order

dated 22nd December, 2008 passed in revision by the Additional Commissioner, Commercial Taxes, West Bengal, Kolkata respondent No.3

rejecting the claim of the petitioner seeking exemption under the Central Sales Tax Act 1956 (for short ""the Central Act"").

2. Brief facts of the case are that the petitioner is an institution registered with Khadi and Village Industries Commission (hereinafter referred to as

KVIC"") carrying on business as a manufacturer of silk, spun and cotton khadi. It is registered under the West Bengal Sales Tax Act, 1994 (""the

State Act"" in short). Before the assessing authority the petitioner claimed exemption u/s 8(2)(c) of the Central Act since khadi silk fabric sold by

KVIC approved dealers are exempt from tax as per Serial No.44(d) of Schedule 1 under the State Act, which was rejected. Such rejection was

confirmed by the appellate as well as by the revisional authorities. Aggrieved the writ petition.

3. The matter was moved on 15th June 2009 when directions were issued for filing of affidavits. Affidavits have since been exchanged and are on

record.

4. Learned advocate for the petitioner submitted that the expression exempt only in specified circumstances or under specified conditions occurring

in the explanation to section 8(2)(c) of the Central Act means such circumstances or conditions the non-existence or non-performance of which

precludes the grant of exemption, so that if those circumstances do not exist or those conditions are not performed, then the sale of goods cannot

be exempted from tax even if they are effected by a class of dealers to whom exemption is granted. In terms of serial No.44 of schedule 1 of the

State Act, though the dealer manufacturing the goods is subject to qualification, the exemption is granted to the goods generally and without any

condition and circumstances. The specified circumstances or specified conditions referred to in the explanation should relate to the sale of the

commodity and it does not relate to the dealer. For the purpose of the said explanation, even though the manufacturers are qualified, goods are

generally exempt. Referring to column 3 of Schedule 1 of the State Act, it was submitted that conditions and exceptions do not form a composite

class. In serial No.44 of Schedule 1 of the State Act, the exceptions to the description of handloom woven goods have been mentioned but no

condition has been imposed. Thus, the exception is general in nature. Therefore, the petitioner being a manufacture of silk and cotton khadi and

registered with KVIC is generally exempted from tax since no condition has been imposed under the State Act and hence is eligible for exemption

under the Central Act. Relying on the judgment of the Supreme Court in Sree Raghuthilakathirtha Sreepadangalavaru Swamiji Vs. The State of

Mysore and Others, it was submitted that exception cannot swallow the general rule.

5. Learned advocate for the State referring to section 24 and Schedule 1 of the State Act and Section 8(2)(c) and the explanation in the Central

Act and relying on the affidavit in opposition submitted that from the explanation it is evident if the goods under the State Act are exempted from

tax generally, goods will also be exempted under the Central Act. However, if the goods are exempted from tax conditionally or in specified

circumstances or under specified conditions under the State Act, then it will not be exempted under the Central Act as has happened in the instant

case. Submission was statute does not stipulate that if the goods are exempted under the State Act then it will be automatically exempted under the

Central Act. Since goods mentioned in Serial No.44 of Schedule 1 under the State Act is tax-free conditionally, the petitioner is not entitled to the

reliefs as prayed for. Learned advocate for the respondent had referred to the judgments of the Supreme Court in Indian Aluminum Cables Ltd.

and Anr. v. State of Haryana reported in 38 STC 1008(SC) and Commissioner of Sales Tax, Jammu & Kashmir & Ors. v. Pine Chemicals Ltd &

Ors. reported in 96 STC 355 (SC) and the judgment of the Allahabad High Court in Commissioner, Trade Tax, U.P. Lucknow v. Bhartya

Charmodhyog Sangh reported in (2008)16 VST 67 (All) in support of her submission.

6. The question which requires consideration is since the goods are exempted under the State Act, whether same should also be exempted under

the Central Act.

7. In order to answer the issue it is necessary to refer to the relevant provisions of the State Act and the Central Act. Section 24 and the relevant

provision in the Schedule 1 of the State Act are as under:

Section 24. - Tax-free sale of goods.-No tax shall be payable under this Act on sale of goods specified in column (2) of Schedule 1, subject to the

conditions and exceptions, if any, set out in the corresponding entry in column (3) thereof.

Schedule I

(See section 24)

Goods on sale of which no tax is payable.

Serial No. Description of goods. Conditions and

exceptions

(1) (2) (3)

44. Handloom woven

(a) gamcha

(b)khaddar and khadi Except when sold by a

as defined in the West dealer who does not

Bengal Khadi and manufacture such goods

Village Industries in his khadi production

Board Act, 1959 Westunit approved or

Bengal Act XIV of certified by the Khadi

1959) except that madeand Village Industries

of silk yarn, Commission.

(c) garments made of

khaddar or khadi

referred to in sub-item

(b) and

(d) khaddar or khadi as

defined in the West

Bengal khadi and

Village Industries

Board Act 1959, made

of silk yarn.

Relevant provisions u/s 8 of the Central Act are as under:

8. Rates of tax on sales in the course of inter-State trade or commerce.

2 (c) - in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt

from tax generally shall be nil.

Explanation. - For the purpose of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the

sales tax law of the appropriate State if under that law the sale or purchases of such goods is exempt only in specified circumstances or under

specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of

the goods.

(Emphasis supplied)

8. Now section 24 stipulates no tax is payable under the State Act on the sale of goods specified in column 2 of the Schedule 1 subject to the

conditions and exceptions set out in the corresponding entry in column 3 thereof. Serial no. 44 in Column 3 of the Schedule makes out an

exception for the dealer. Therefore, exemption is conditional. Be it noted that u/s 8(2)(c) of the Central Act in the case of goods the sale or

purchase of which is, under the sales tax law of the appropriate State is exempt from tax shall generally be nil. However, explanation to section

8(2)(c) provides - for the purpose of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from the tax generally

under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or

under specified conditions. Hence, no exemption under the Central Act could be granted generally if exemption under the State Act is conferred in

specified circumstances or under specified conditions. It may be noted that the word ""generally"" occurring in section 8(2A) and in the explanation

of the Central Act has been interpreted by the Apex Court in Indian Aluminum Cables Limited (supra) where it has been held as under:

The explanation to section 8(2A) of the Central Act takes away the exemption where it is not general and has been granted in specified

circumstances or under specified conditions. ..... If the circumstances do not exist or if the conditions are not performed then the sales of

goods cannot be exempted from tax. General exemption means that the goods should be totally exempt from tax before similar exemption from the

levy of Central Sales tax become available Where the exemption from taxation is conferred by conditions or in certain circumstances, there is no

exemption from tax generally.

(Emphasis supplied)

Similarly in Commissioner of Sales Tax v. Pine Chemicals Ltd. (supra) following Indian Aluminum Cables (supra) it has been held as follows:

The idea behind sub section 2A of section 8 of the Central Sales Tax Act, which we have analyzed hereinbefore, is to exempt the sale/purchase of

goods from the Central Sales Tax where the sale or purchase of such goods is exempt generally under the State sales tax law. We must give due

regard and attach the due meaning to the expression "generally" which occurs in the sub section and which expression has been defined in the

Explanation. If the said expression had not been there, it could probably possible to argue that inasmuch as the goods sold by a particular

manufacturer - dealer are exempt from the state tax in his hands, they must equally be exempt under the Central Act. But sub section (2-A)

requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified

conditions. Can it be said that the goods sold by the dealers in this case are exempt from tax generally under the State sales tax enactment? The

answer can only be in the negative. Such goods are exempt from tax only when they are manufactured in a large or medium scale industrial unit

within 5 years of its commencement of production and sold within the said period, i.e., in certain specified circumstances alone. The exemption is

not a general one but a conditional one.

(Emphasis supplied)

9. Therefore, law is where exemption under the State Act is under specified conditions or in specified circumstances, there is no exemption from

the levy of central sales tax. In this regard it is appropriate to refer to the meaning of the word ""circumstances"" since it occurs in the explanation to

section 8(2)(c) of the Central Act. "Circumstance" means ""a fact or condition connected with or relevant to an event or action"" (Concise Oxford

English Dictionary). Thus, circumstances include a condition. In the instant case exception in Column 3 under Schedule 1 of the State Act itself is a

condition.

10. It is also to be borne in mind that Schedule cannot override the provisions in a section. Though section 24 speaks of ""Tax-free sale of goods

on the goods specified in column 2 of Schedule 1, however that is subject to the conditions and exceptions in the corresponding entry in Column 3.

Therefore, if there is an entry in Column 3, in that event it cannot be contended that there is a general exemption under the State Act. Where

exemption under the State Act ""is conferred by conditions or in certain circumstances, there is no exemption generally"" Indian Aluminum Cables

(supra). This becomes evident when Serial No.44 is compared to the goods in other serials having no entry in the corresponding Column 3. In

case of no entry in Column 3 the goods described in Column 2 are totally exempt. It is well settled that so far interpretation of revenue law is

concerned, Court has to examine what has been stipulated. There is no scope of any intentment. Language used has to be looked into. Regard has

to be for the strict letter of law. What is important is the intention of the legislature as reflected in the statute. In order to gather the intention,

interpretation has to be on the basis of the words used in the section. Thus, while ascertaining the exact meaning of the legislation only the language

used should be of prime consideration. Therefore, in view of the language used in the Central Act and the interpretation of the Apex Court in

Indian Aluminum Cables Ltd. (supra) and Commissioner of Sales Tax v. Pine Chemicals Ltd. (supra), the principles of law in R.S. Swamaji

(supra) relied on by the respondents are not applicable to the facts of this case. Hence, for the reasons as enumerated, the writ petition is

dismissed.