

(2010) 12 CAL CK 0016

Calcutta High Court

Case No: W.P.T.T. No. 7 of 2009 with W.P.T.T. No. 9 of 2009

Prime Impex Ltd.

APPELLANT

Vs

Commercial Tax Officer, Park
Street Charge
 Kundan Rice
Mills Ltd. Vs Tax Officer, Ezra
Street Charge

RESPONDENT

Date of Decision: Dec. 23, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 227, 245, 246
- Customs Tariff Act, 1975 - Section 3
- West Bengal Sales Tax Act, 1994 - Section 14, 15, 17(1), 18, 2(C)

Citation: (2011) 4 CHN 646

Hon'ble Judges: Kalyan Jyoti Sengupta, J; I. P. Mukerji, J

Bench: Division Bench

Advocate: Saktinath Mukherjee, Chandrima Bhattacharyya and Prithu Dudharia, for the Appellant; Prasenjit Basu, Seba Roy, Boudhayan Bhattacharyya for the Respondent Nos. 1 to 4, for the Respondent

Final Decision: Dismissed

Judgement

I. P. Mukerji, J.

The application W.P.T.T. No. 7 of 2009 (Prime Impex Ltd. & Anr. vs. Commercial Tax Officer, Park Street Charge & Ors.) was argued along with other matter namely W.P.T.T. 9 of 2009 (Kundan Rice Mills Ltd. vs. Tax Officer, Ezra Street Charge & Ors.) and it was decided earlier that common judgment will be delivered. Unfortunately the second matter is not appearing in the list published today. By consent of all the parties, appearing before us, we treat the left out matter as on day's list and a common judgment is also delivered.

2. These are applications under Article 227 of the Constitution of India against judgments and orders all dated 10th April, 2008 passed by the West Bengal Taxation Tribunal.
3. By the said judgments and orders the challenge of the petitioners to assessment orders, consequential demand notices and Trade Circular No. 1 dated 1st August, 2000 that the amendment to the West Bengal Sales Tax Act 1994 had retrospective effect, was dismissed.
4. The petitioner in each of the above applications is an importer of sugar. They make such importation from various countries, like China, Pakistan, Thailand and Brazil.
5. The arguments made before us have been confined to a very short compass. These petitioners say that the sales tax levied on the sugar imported by them is 4% whereas there is no tax on such tax on sugar produced and manufactured in India. They claim identical treatment as given to sugar producers and manufacturers in India.
6. Since questions of law are identical in the above applications we have heard them compendiously and are disposing of them by this common judgment.
7. Entry 92(A) and (B) of List I of the Seventh schedule to the Constitution of India permits Parliament to impose taxes on inter-state sale of goods, the general power to make such law being contained in Articles 245 and 246 of the Constitution of India. In exercise of this power the Central Sales Tax Act, 1956 was enacted with effect from 21st December, 1956. It declared by section 14 read with section 2(C) of the Act some goods which included sugar, to be goods of special importance in inter-state trade or commerce. Section 15 prohibited the State to impose any tax on these goods above 4% of their Bale or purchase price.
8. By virtue of the aforesaid powers of taxation conferred by our constitution, the State legislature has the competence to impose taxes on the sale or purchase of goods (Entry 54 of List (II) of schedule 7 of the Constitution of India).
9. In exercise of this power the West Bengal Legislature enacted The West Bengal Sales Tax Act, 1994. u/s 24 of that Act read with entry No. 79 of the first schedule thereto sugar manufactured or made in India is exempt from payment of any tax. This Act came into operation from 1st May 1995. By virtue of Section 17(f) read with serial No. 1 of the 7th Schedule of the Act 4% sales tax was payable on imported sugar. By a subsequent amendment this rate of taxation was increased to 12% on such sugar. This led to litigation between importers of sugar and the Government. The West Bengal Taxation Tribunal decided that the State could not charge more than 4% as sales tax. The legislature inserted serial 70A in schedule IV of the Act with retrospective effect from 1st May 1995 but did not issue a notification u/s 18 till 1st April 1999 declaring 4% as rate of tax on sale of imported sugar. In one of the above

proceedings which reached our Court it held that no sale tax could be levied or collected on imported sugar from 1st May, 1995 to 31st March, 1999. The State legislature amended section 18 of the 1994 Act by the amending act of 2000 conferring on the State Government power to fix rate of tax with retrospective effect from 1st May 1995 being the date of coming into force of the Sales Tax Act 1994. By the said amendment Serial No. 70A of schedule IV was omitted with retrospective effect from 1st May 1995.

10. A trade circular No. 1 of 2001 dated 01.08.2001 was issued by the respondent authority stating that tax on imported sugar would be @4% from 01.05.1995 to 31.03.1999 u/s 17(1)(f) of the West Bengal Sales Tax Act 1994 read with entry No. 1 of schedule (vii) and from 01.04.1999 onwards @4% u/s 17(1)(c) of the West Bengal Sales Tax Act, 1994 vide serial No. 137 of schedule IV.

11. The impugned assessment orders really did not have any retrospective effect viewed by the judgment of our High Court discussed above. In any event retrospectivity of the 2001 amendment and circular have not been urged before us. The only point which is urged before us is that if domestic sugar is exempt from payment of sale tax then imported sugar should also be so exempt and the 2001 amendment and the consequent trade circular dated 1st August 2001 were challenged to this limited extent.

12. As discussed earlier, this exemption of domestic sugar from taxation is the cause of the controversy in these applications by persons who are all importers of sugar.

13. Mr. Saktinath Mukherjee, learned Senior Advocate for the appellant after drawing our attention to the above position of law showed us the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Now, in this Act, sugar produced and manufactured in India is subject to 4% duty. The title to the above Act narrates as follows:

An Act to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission in its (Second report dated the 18th December, 1990)

14. The Central Sales Tax Act 1956 the purpose of which as stated in the title which is as follows:

An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter- State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws

imposing taxes on the sale or purchase of such goods of special importance shall be subject.

15. Since the Central Government was collecting Sale Tax, it appears to us that section 15 was specially enacted to ensure that goods of special importance like sugar, declared by section 14 of the Act were not subjected to excessive taxation by the State and so section 15 put a restriction on the State to impose sales tax.

16. Mr. Mukherjee has submitted that since the purpose of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was to distribute a part of the tax collected among the states, the imposition of sales tax was to be exempted by the State.

17. Further he submits that customs duty is leviable on imported sugar together with additional duty at the rate of excise duty u/s 3 of the Customs Tariff Act 1975. Now this additional duty is akin to the additional duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Since this additional duty is being paid by importers of sugar which is akin to the additional duty payable by the domestic manufacturers, importers also, should like wise be exempted from sales tax.

18. Mr. Saktinath Mukherjee, learned Advocate for the petitioner has cited the case of [A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another](#), to contend that he was claiming a writ of certiorari to quash the impugned order of the Tribunal and in such an action the plea of alternative remedy is no bar. Further, he has cited [Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar](#), to contend that when the remedy was discretionary as is the remedy under Article 226 of the Constitution of India availability of an alternative remedy should not stand as a bar, in exceptional cases, to issue the writ, particularly when a the writ of certiorari was claimed.

19. Mr. Prasenjit Basu, the learned Counsel for the respondents has cited Province of Madras vs. Boddu Paidanna & Sons, Sales Tax Cases Vol. I) 104 and Tata Iron & Steel Co. Ltd. vs. State of Bihar, AIR 1958 SC 452 to contend that excise duty and sales tax are different types of taxes and stand separately and that because excise only was levied exemption from sales tax was warranted, is not a good argument. Further he has cited case Prime Impex Limited & Anr. vs. Assistant Commissioner of Commercial Taxes & Ors., (Vol. 127), Sales Tax Cases, Page 23 to submit that retrospective levy of sales tax on imported sugar had been upheld by this Court which decision was affirmed by the Hon"ble Supreme Court of India.

20. We have considered the rival submissions of the parties.

21. The manufacturers of sugar in India have to pay excise duty and Additional Excise duty under the 1957 Act. This Act clearly says that this imposition is in addition to Excise duty. Roughly corresponding to excise duty the importers have

been made liable to pay the additional duty under the Customs Tariff Act 1975. As this Act states, the additional duty levied is more or less akin to excise duty and not the additional duty under the 1957 Act. Whereas, the domestic manufacturer has to pay the Additional Excise Duty under the 1957 Act, the importer has to pay no such duty. He pays only customs duty. The Sales Tax for domestic sugar is nil while for imported sugar is 4%.

22. In other words, the domestic manufacturer has to pay both excise duty under the Excise Act and Additional Excise Duty under the 1957 Act. Now this Additional Excise Duty is not payable by the foreign importer. As we have noted above, the purpose of collection of the Additional Excise Duty is to distribute a portion of the same in the states. Therefore, we find logic in dispensing with sales tax for sugar manufactured in India, as the manufacturer of sugar has already paid Additional Excise Duty.

23. We are unable to appreciate how an importer has been discriminated as regards the domestic manufacturers.

24. True a domestic manufacturer is exempt from payment of sales tax whereas an importer of sugar has to pay 4% tax. But this kind of differentiation which the State has made between the importer and the domestic manufacturer is very reasonable. There is a rational basis for making this differentiation. This protection has been given to domestic manufacturers to save them from unnecessary harsh competition by foreign suppliers or importers, so as to protect the domestic sugar market. And this protection given to the domestic sugar market, in our opinion, is in public interest and is fully justified.

25. As far as the decisions cited by Mr. Saktinath Mukerjee, it is now well established that availability of alternative remedy is no bar in proper circumstances to filing of a writ application, not only for issuance of a writ of certiorari but for issuance for other writs as well.

26. Further we may note that after the decision in the case of [L. Chandra Kumar Vs. Union of India and others](#), the High Court in the exercise of its jurisdiction under article 227 of the Constitution of India is the right forum for challenging the impugned decision of the Tribunal.

27. As far as the decisions cited by Mr. Prasenjit Basu concerned we need not deal with the same because the scope of this application was restricted to the validity of taxing imported sugar @4%, only. Retrospectivity of the legislation was not challenged.

28. For those reasons, the above applications are dismissed and the order of the Tribunal is affirmed.

29. Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

K.J. Sengupta, J.

I agree.