State of Gujarat Vs. Narayan Traders

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Court : Gujarat

Decided On : Dec-21-1978

Reported in : [1979]43STC516(Guj)

Judge : B.K. Mehta and; P.D. Desai, JJ.

Acts : Bombay Sales Tax Act, 1959 - Sections 4, 15, 44, 46A, 46B and 61; Central Sales Tax Act, 1956 - Sections 12, 14 and 15

Appeal No. : Sales Tax Reference No. 21 of 1976

Appellant : State of Gujarat

Respondent : Narayan Traders

Advocate for Pet/Ap. : G.T. Nanavati, Assistant Government Pleader, i/b., H.V. Chhatrapati of Bhaishanker Kanga and Girdharlal

Judgement :

Mehta, J.

1. A few facts need be noticed in order to appreciate the point involved in the question referred to us by the Gujarat Sales Tax Tribunal (hereinafter referred to as 'the Tribunal') at the instance of the Commissioner of Sales Tax for our opinion under section 61 of the Bombay Sales Tax Act, 1959.

2. In the course of assessment of the period from 17th January, 1966, to Aso Vad 30 of S. Y. 2022 (corresponding date being 12th November, 1966), the assessee, who is opponent before us, had purchased cotton yarn worth Rs. 46,775 from registered dealers on payment of sales tax of Rs. 924.50 on the said purchases. The assessee then made inter-State sales of such cotton yarn purchased from registered dealers on which the sales tax was paid. The Sales Tax Officer had levied sales tax at the rate of 2 per cent. on the aforesaid inter-State sales under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act') and an amount of Rs. 947.20 was recovered from the assessee by way of Central sales tax. The assessee was, however, granted refund of the sales tax paid by the assessee to the registered dealers from whom he purchased cotton yarn under rule 47 of the Bombay Sales Tax Rules, 1959. The assessee had gone in appeal before the Assistant Commissioner of Sales Tax from the order of the Sales Tax Officer levying Central sales tax at the rate of 2 per cent. on the aforesaid inter-State sales. His contention in the course of appeal that no Central sales tax could be levied, found favour with the Assistant Commissioner, who directed the refund of the Central sales tax of Rs. 947.20 levied on inter-State sales of the yarn. The Assistant Commissioner, however, in exercise of his suo motu revisional powers, called upon the assessee to show cause why refund of the amount of the sales tax of Rs. 924.50 should not be withdrawn, since, in his opinion, the assessee was not entitled thereto as no Central sales tax was paid on inter-State sales by him. After hearing the assessee, the Assistant Commissioner withdrew the refund of the amount of sales tax of Rs. 924.50. The assessee, being aggrieved with this order of the Assistant Commissioner, carried the matter in revision before the Gujarat Sales Tax Tribunal.

3. It was contended before the Tribunal that inasmuch as section 44 of the Bombay Sales Tax Act, 1959, read with rule 47 thereunder, did not prescribe by way of condition precedent the payment of Central sales tax for the refund of the sales tax paid on the transactions in question at the earlier stage, the Assistant Commissioner was clearly in wrong in withdrawing the refund granted to the assessee. On behalf of the revenue this contention was sought to be repelled by relying on the amended provision contained in section 15(b), which has been made retropectively effective from 1st October, 1958, which, inter alia, prescribed

that a dealer would be entitled to refund of sales tax or purchase tax levied under the State Act on the transactions of sales or purchases of goods provided such goods are sold in the course of inter-State trade or commerce and tax has been paid under the Central Act on such inter-State Transactions. The contention of the revenue did not find favour with the Tribunal, inasmuch as the condition precedent of the payment of Central sales tax on a transaction of sale is not to be found either in section 44 of the Bombay Sales Tax Act, 1959, or rule 47 of the Rules framed thereunder for obtaining refund of sales tax of purchase tax on the same goods. In that view of the matter, the Tribunal set aside the order of the Assistant Commissioner withdrawing the refund of the amount of sales tax. The Commissioner of Sales Tax has, therefore, prayed for a reference which was granted by the Tribunal raising the following question for our opinion :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing Revision Application No. 24 of 1973 of the opponent and ordering refund of Rs. 924.50 paid by the opponent under the Bombay Sales Tax Act, 1959, by way of tax on the purchases made by him of cotton yarn from registered dealers, particularly when the sales made in the course of inter-State trade or commerce have not borne the tax under the Central Sales Tax Act, 1956 ?'

4. At the time of hearing of this reference, we have thought fit to reframe the question since the controversy involved between the parties and agitated before the Tribunal has not been clearly brought out in the aforesaid question. The question as reframed by us would read as under :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the refund of the sales tax of Rs. 924.50 paid by the assessee on purchase of cotton yarn from registered dealers, particularly the said goods when sold in inter-State trade or commerce, did not bear the Central sales tax under the Central Sales Tax Act, 1956 ?'

5. It would be profitable to advert to the material parts of the relevant provisions of law which have a bearing on the point involved in the said question. They are section 15 of the Central Act, section 46B of the Bombay Sales Tax Act, 1953,

section 44 of the Bombay Sales Tax Act, 1959, and rule 47 of the Bombay Sales Tax Rules, 1959. Section 15 of the Central Act has a chequered history. We need not go into the different vicissitudes from which the said section passed from time to time but we are concerned with the altered section as it emerged and placed on the statute book with effect from 1st October, 1958. Section 46B of the Bombay Sales Tax Act, 1953, was also simultaneously inserted in the Bombay Act by the Bombay Amending Act 71 of 1958 with effect from the same day as section 15 of the Central Act was put on the statute book, i.e., 1st October, 1958. Section 44 of the Bombay Sales Tax Act, 1959, came on the statute book with effect from 1st January, 1960, that is, the date on which the Act of 1959 came into force. Rule 47 of the Bombay Sales Tax Rules, 1959, was enacted in exercise of the powers conferred by the Bombay Act of 1959. Section 15 of the Central Act, so far as relevant for our purposes provided as under :

'15. Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) .....

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.'

6. Section 46B of the Bombay Sales Tax Act, 1953, which was simultaneously made effective by insertion of that provision in the Bombay Act provided as under :

'Where any declared goods are sold by a dealer in the course of inter-State trade or commerce and such dealer shows to the satisfaction of the Collector that a tax under this Act or under any of the enactments referred to in clauses (i) to (iv) of section 46A has been paid in respect of any earlier sale or purchase of such goods made in the State of Bombay on or after the date of the coming into force of section 15 of the Central Sales Tax Act, 1956, then an amount equal to the tax so

paid shall be refunded to such dealer in such manner and subject to such conditions as may be prescribed.'

7. We need not refer to the Rules that were framed in exercise of the powers conferred by the 1953 Bombay Act since at all relevant times we are concerned with the provisions contained in the Bombay Sales Tax Rules, 1959. We will refer to that particular rule 47 at the appropriate stage. Section 44 of the Bombay Sales Tax Act, 1959, also provided for refund of tax on declared goods on the sales in the course of inter-State trade or commerce and read as under :

'44. Where any declared goods are sold by a dealer in the course of inter-State trade or commerce, and such dealer shows to the satisfaction of the Commissioner that a tax under this Act or any earlier law has been levied in respect of any earlier sale or purchase of such goods made in the State after the date of the coming into force of section 15 of the Central Sales Tax Act, 1956, then an amount equal to the tax so levied shall be refunded to such dealer in such manner and subject to such conditions, as may be prescribed.'

8. Rule 47 of the Bombay Sales Tax Rules, 1959, prescribed the manner and the conditions of the refund. It reads as under :

'47. Refund in respect of declared goods. - In assessing the amount of tax payable in respect of any period by any dealer (hereinafter referred to in this rule as 'the claimant dealer'), the Commissioner shall grant to him in respect of declared goods resold by him in the course of inter-State trade or commerce, a refund of the following amounts, that is to say, -

(i) the amount of sales tax or as the case may be general sales tax recovered from him by a registered dealer on the purchase of declared goods made otherwise than against a certificate under section 12 : Provided that, no refund under this rule shall be granted to the claimant-dealer, if he had claimed in respect of the same declared goods, a drawback, set-off or, as the case may be, a refund under rule 43.'

9. Section 15(b) was amended by the Central Sales Tax (Amendment) Act of 1972. By section 12(a) of the amending Act of 1972, the following words were added in clause (b) of section 15 after the words 'in the course of inter-State trade or commerce' :

'and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law'.

10. This amendment has been made applicable retrospectively with effect from 1st October, 1958. By section 12(b) of the amending Act of 1972, the words 'shall be refunded to such person' in clause (b) of section 15 were substituted by the words 'shall be reimbursed to the person making such sale in the course of inter-State trade or commerce'. This substitution was to be effective prospectively from 1st April, 1973. It is common ground that no amendment has been made in section 44 or rule 47 pursuant to the amendment made in clause (b) of section 15, as stated above.

11. It is in the context of this legal position that the dispute has arisen between the assessee and the revenue as to whether the assessee is entitled to refund of sales tax paid on the purchases of cotton yarn from the registered dealers when the inter-State sales of these goods did not bear any Central sales tax thereon. The assessee contended, and the Tribunal accepted, that since no amendment has been made in section 44 read with rule 47 of the Bombay Act and the Rules so as to incorporate the condition precedent prescribed in section 15(b) of the Central Act, as amended with effect from 1st October, 1958, that in order to get refund of the sales tax or purchase tax paid under the State law on the transactions of sale or purchase of goods, the goods should have borne the Central sales tax when sold in inter-State trade or commerce, the Assistant Commissioner was not justified in withdrawing the refund granted to him. On the other hand, the revenue has contended that since the condition precedent was inserted in clause (b) of section 15 with retrospective effect from 1st October, 1958, the effect would be that that condition precedent is a part of the statute from its inception and, therefore, would be an overriding condition subject to which section 44 of the Bombay sales Tax Act, 1959, read with rule 47 of the Bombay

Rules would operate. In other words, the retrospective insertion of the condition precedent in clause (b) of section 15 would override the provision contained in the substantive sections in the Act and the manner prescribed for the refund in the Rules. In the opinion of the Tribunal, section 44, as it stood at all the relevant times, merely referred to the date of the coming into force of section 15 of the Central Act for purposes of allowing refund paid under the earlier State Act if the same goods were sold in inter-State trade or commerce subsequently. The Tribunal was of the opinion that since neither in the State Act nor in the Rules any corresponding provision has been made so as to bring it in conformity with the amended provision contained in clause (b) of section 15 of the Central Act, the assessee would be entitled to refund provided he satisfies the conditions prescribed in the State Act and the Rules made thereunder. It is this view of the Tribunal which has been challenged by the revenue.

12. Avowedly, section 15 of the Central Act is designed to override and control the State power to tax transactions of sales and purchases of declared goods. This avowed object is clearly manifested on the plain reading of the opening part of section 15 of the Central Act. The twin purpose which is sought to be effected by placing section 15 on the statute is to prescribe the maximum rate of sales or purchase tax under a State law at one precise stage and also not to subject the same goods to tax under the State law and the Central law provided the goods are sold in inter-State trade or commerce. If this is the avowed object and, more particularly, the second object which we have pointed out above, as is clear from the very scheme of the section, we do not think that the Tribunal was justified in reaching the conclusion as it did that since the prescription of the condition precedent of payment of the Central sales tax in order to earn refund of the State tax is not inserted in the State Act or the Rules, the assessee would be entitled to the refund of sales tax provided he satisfies the conditions prescribed in the State Act. It cannot be gainsaid that the condition precedent prescribed by the amending Act of 1972 in clause (b) of section 15 is made retrospectively effective from 1st October, 1958. Where a section of a statute is amended with retrospective effect, the original section ceases to exist and the new section supersedes itself in its place and becomes a part of the law which is, as if the amendment had been always there. It is equally a well-recognised principle that the amended statute

should also be construed as if it had been originally passed in the amendment form since the amendment becomes a part of the original enactment (see Statutory Construction by Crawford, pages 110 and 618). The retrospective amendment of clause (b) of section 15 of the Central Act with effect from 1st October, 1958, which was the date on which section 15 was placed on the statute book, would compel us to read as if the amended provision as to the condition precedent of payment of sales tax to earn refund of the State tax was there in the original statute book from its inception (vide : Venkatachalam v. Bombay Dyeing & Mfg. Co. ([1958] 34 I.T.R. 143 (S.C.)). Section 46B in the 1953 Bombay Act as well as section 44 of the 1959 Bombay Act would clearly, therefore, be subject to the amended provision contained in clause (b) of section 15 of the Central Act since, as stated above, the avowed object of section 15 was to override and control the State power to tax the sales and purchases of declared goods. The Tribunal clearly overlooked the objects of inserting section 15 on the statute book and, therefore, fell in error that till the prescription of the condition precedent of payment of Central sales tax in order to earn the refund of the State tax paid on the same goods at an earlier stage is correspondingly inserted in section 44 and rule 47, the assessee cannot be deprived of the refund of the sales tax or purchase tax entitled to when the condition precedent was not there actually at the inception of the Central Sales Tax Act. It cannot be the intent of the Parliament when it placed section 15 on the statute book on 1st October, 1958, that even though the goods sold in inter-State trade or commerce did not bear the Central sales tax, even then an assessee would be entitled to claim the refund of the State tax merely because the declared goods have been sold in the course of inter-State trade or commerce. The legislative intent, as observed above, was to restrict the State power or taxing sales and purchases of the declared goods at more than one stage and beyond the prescribed maximum rate. It is no doubt true that section 46B in the 1953 Bombay Act and, for that matter, section 44 in the 1959 Bombay Act, provide for refund of the sales tax or purchase tax under the State Act on the declared goods if they are sold by a dealer in the course of inter-State trade or commerce after coming into force of section 15(b) of the Central Act subject to the manner and the conditions prescribed in rule 47 of the Bombay Sales Tax Rules, 1959. It is no doubt true that rule 47 of the aforesaid Rules does

not prescribe any such condition as we find in clause (b) of section 15 (as amended) of the Central Act, namely, entitlement of the refund of State tax only on condition of payment of the Central sales tax. The whole emphasis of the Tribunal in construing section 44 and rule 47 is, in our opinion, with respect, de hors the perspective of section 15 of the Central Act. Sections 14 and 15 of the Central Act should function effectively and purposefully with the provisions contained in the State Act or the Rules made thereunder. The background of sections 14 and 15 is too well-known to be emphasised here all over again. The rationale underlying section 15 is to avoid double taxation on the declared goods. The object cannot be that the declared goods, merely because they are sold in the course of inter-State trade or commerce, would altogether escape taxation. The mandate of the Parliament that the condition precedent of payment of Central sales tax before earning the refund of State tax borne on the same goods at an early stage inserted in clause (b) of section 15 retrospectively with effect from 1st October, 1958, would superimpose itself on section 44 in so far as it provides for prescription of the condition for earning the refund of State tax if the declared goods are sold in the course of inter-State trade of commerce and, therefore, it must be read as a part of the State Act. A somewhat similar question arose before the Supreme Court in Manickam and Co. v. State of Tamil Nadu ([1977] 39 S.T.C. 12 (S.C.)). The Supreme Court in that case was concerned with the construction and effect of the provision substituted in clause (b) of section 15 of the Central Act by section 12(b) of the Central Sales Tax (Amendment) Act, 1972, which, it should be noted, was made effective prospectively. It should be recalled that the original words in clause (b), namely, 'shall be refunded to such person ..... as may be provided in any law in force in that State', were substituted by the words, 'shall be reimbursed to the person making such sale in the course of inter-State trade or commerce'. The exact question before the Supreme Court was, whether the appellant-firm, a dealer in cotton yarn under the Tamil Nadu General Sales Tax Act (1 of 1959), who purchased yarn from local dealers and manufacturers and sold it by way of inter-State sale, was entitled to refund of the tax paid under the State Act on the yarn purchased by him when the dealer was assessed under the Central Sales Tax Act for the sale of yarn in the course of inter-State trade or commerce in accordance with section 15(b) of the Central Act and proviso to section 4 of the

State Act read with rule 23 thereunder. The sales tax authorities upheld partially the claim of refund. The Appellate Tribunal, following the decision of the Madras High Court in M. A. Khader & Co. v. Deputy Commercial Tax Officer ([1970] 25 S.T.C. 104), rejected the balance claimed by the dealer. The Madras High Court also confirmed the order of the Appellate Tribunal. In appeal before the Supreme Court, it was urged on behalf of the dealer that in accordance with clause (b) of section 15 of the Central Act, the proviso to section 4 of the State Act and rule 23 of the Madras General Sales Tax Rules, the sales tax under the State Act in respect of the yarn, which was the subject-matter of inter-State sale, should have been paid to the appellant. Khanna, J., speaking for the court, referred to the earlier decision of the Madras High Court in M. A. Khader's case ([1970] 25 S.T.C. 104), where the assessee sought a writ of certiorati to quash the assessment made under the Central Act in respect of the transactions which were admittedly inter-State sales. The Madras High Court had observed in the course of its judgment in M. A. Khader's case ([1970] 25 S.T.C. 104) that refund of sales tax can be claimed only by a person who himself had earlier paid the tax and not by a person who had not himself paid such tax. The Supreme Court set out the amended clause (b) of section 15 of the Central Act, the part of which, regarding the condition precedent of payment of Central sales tax, had come into force retrospectively and the part of which, regarding the person to be reimbursed, had come into effect prospectively. The Supreme Court, in that context, ruled as under :

'The amended provision makes it plain beyond any pale of controversy that the tax levied under the State Act in respect of declared goods has to be reimbursed to the person making sale of those goods in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in the law in force in that State. According to the notes explaining the different clauses appended to the statement of objects and reasons of the Bill, which emerged as the amending Act, the amendment made in clause (b) makes it clear that local sales tax would be reimbursed to the person making the sale in the course of inter-State trade and commerce. The amendment made in clause (b) can thus be taken to be an exposition by the legislature itself of its intent contained in the earlier provision. We are not impressed by the argument of the learned

Additional Solicitor-General that the amendment made in clause (b) was intended to mark a departure from the position in law as it existed before the amendment. The fact that the amendment of clause (b) of section 15 was not like some other provisions given retrospective effect, would not materially affect the position. As already mentioned above, the legislature as a result of the amendment, clarified what was implicit in the provisions as they existed earlier. An amendment which is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision, even though such amendment is not given retrospective effect. We may refer in this context to the observations of page 147 of Craies on Statute Law (Sixth Edition), which read as under : '.... In Cape Brandy Syndicate v. Inland Revenue Commissioners ([1921] 2 K.B. 403 at 414), Lord Sterndale, M.R., said : 'I think it is clearly established in Attorney-General v. Clarkson ([1900] 1 Q.B. 156) that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier.' '

13. Looking to all the facts, we are of the view that the appellant-firm is entitled to be paid the amount of sales tax levied under the State Act in respect of the goods sold by it in the course of inter-State trade provided the appellant has paid the sales tax under the Central Act in respect of those sales. We accordingly accept the appeal ....'

14. The Supreme Court, therefore, read the subsequent amending legislation which was made effective prospectively for purposes of clarifying the ambiguity prevailing in the earlier legislation and ruled that the subsequent amendment was merely clarificatory in its nature and the law was from the beginning as it was expounded in the amending legislation. The position with which we are concerned is on a firmer ground than the one which was in the Supreme Court decision ([1977] 39 S.T.C. 12 (S.C.)). The amending provision has been inserted in the original clause (b) of section 15 retrospectively with effect from the date of insertion of section 15, that is, 1st October, 1958. In other words, the provision

which was sought to be introduced by the amending Act, has to be read as if it existed from its inception. If that is so, and if the avowed object of section 15 is to restrict the power of the State to tax declared goods, we do not think that the Tribunal was justified in upholding the claim of refund of the assessee.

15. The result is, therefore, that we must accept this reference of the Commissioner of Sales Tax and we answer the question (as reframed) in the negative, that is, in favour of the revenue and against the assessee. Since the assessee has not thought it fit to file appearance either in person or through an Advocate, there should be no order as to costs in this reference.

16. Reference answered in the negative.