Khadi Mandir Vs. Cto

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Court : Rajasthan

Decided On : Jan-29-1991

Reported in : 1991(2)WLN153

Judge : K.C. Agrawal, C.J.

Appeal No. : S.B.S.T. Rev. Nos. 217, 368, 369, 486, 487, 488, 489, 497, 498, 499 and 500 of 1989

Appellant : Khadi Mandir

Respondent : Cto

Disposition : Petition dismissed

Judgement :

K.C. Agrawal, C.J.

1. This revision (along with other 10 revisions) under Section 15(1) of the Rajasthan Sales Tax Act, 1954 is directed against the order dated December 1, 1988, passed by the Rajasthan Sales Tax Tribunal, Ajmer in Revision Petition No. 584 of 1984 (71/85) ST/ Bikaner: M/s. Khadi Mandir v. CTO, Special Circle, Bikaner.

2. The petitioner M/s. Khadi Mandir New Public Park, Bikaner is a society registered under the Societies Registration Act, 1957 and is recognised by All

India Khadi & Village Commission. It is a registered dealer under Rajasthan Sales Tax Act, 1954 (hereinafter referred to as 'the State Act') as well as Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act').

3. For the assessment year 1977-78 (from 1-4-77 to 31-3-78) the Commercial Taxes Officer, Special Circle, Bikaner, assessed the petitioner under the provisions of the Central Act. The Commercial Taxes Officer held that sales of jerseys and sweaters made of Khadi were not generally exempt under the State Act, consequently, the petitioner's estimated inter-State sales of jerseys and sweaters made of Khadi was of Rs. 13,57,219/-. He imposed tax at the rate of 10 percent, on the said sales.

4. Against the assessment order, an appeal was filed before the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner, who affirmed the judgment and order of the Commercial Taxes Officer holding that the petitioner was not entitled to the benefit of Section 8 of the Central Act and found that on the inter-State sales of jerseys and sweaters tax was not exempt.

5. Feeling aggrieved by the aforesaid judgment the petitioner filed revision petition before the Board of Revenue, which was later on transferred to Rajasthan Sales Tax Tribunal. This revision was heard along with other similar revisions and was decided by a common judgment and order dated 1-12-1988. The Tribunal dismissed the revisions.

6. Against this decision of the Tribunal, the present revision under Section 15(1) of the State Act was preferred, inter alia, on the grounds that:

(i) because inter-State sales of jerseys and sweaters made of Khadi are exempt from tax under Section 8 of the Central Act on account of the fact that they are unconditionally exempt under Entry No. 6 of the Schedule annexed to the State Act, hence, the Tribunal as well as other authorities below erred in holding that the petitioner was not entitled to exemption;

(ii) because under a notification No. F5 (37) FDCT/66/1 dated 31-12-1966 issued under Section 4(2) of the State Act read with Section 8 of the Central Act Sales of jerseys and sweaters made of Khadi were exempt unconditionally and, consequently, covered by the expression 'generally exempted' under Section 8 of the Central Act;

(iii) because Entry No. 6 of the Schedule of the State Act being blank, the mentioning of the certain words in the description of goods for their identification did not amount any condition on the exemption inasmuch as the circumstances specified in Entry No. 6 of the notification dated 31-12-66 merely identification was described industry entitled to the exemption. Such a description could not be construed as a condition for exemption.

Notification No. 114: F. 5(37) FECT/66-1 dated 31-12-1966 reads as under:

In exercise of the powers conferred by Sub-section (2) of Section 4 of the RST Act, 1954, the State Govt. hereby exempts the sale of garments and other articles made of Khadi cloth, and hand-spun yarns when sold by Khadi Bhandar certified as such by the All India Khadi and Village Industries Board.

Section 4(2) of the State Act reads as under:

Where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, the State Government may, by notification in the official gazette (exempt whether prospectively or retrospectively) from tax the (sale or purchase) or any person or class of person on such conditions and on payment of such fee as may be specified in the notification.

7. The controversy in the instant case in whether the petitioner was entitled to the benefit of Section 8 of the Central Act. This provision deals with sales in the course of inter-State trade or commerce. The relevant provision of this Section, along with Explanation, is reproduced below:

Notwithstanding any thing contained in Sub-section (1A) of Section 6 or Sub-section (1) (or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sale tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than 4 (four percent) (whether called a tax or fee or by any other name, shall be nil or, as the case may be, shall be calculated at the lower rate).

Explanation-

For the purposes 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 purchase of such goods is exempt only in specified circumstances or under specified condition or the tax in levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods:'

Under the Explanation appended to Section 8 of the Central Act, for its purposes, a sale or purchase shall not be deemed to be exempt from tax generally if under that law the sale or purchase of such goods is exempt only in specified circumstances or specified condition (emphasis supplied by me). In the instant case the Tribunal took the view that the condition for availing exemption granted by 1966 notification is dependant on two conditions, namely, (i) Khadi cloth must have been sold by Khadi Bhandar and (ii) Certified as such by the All India Khadi and Village Industries Board. As the exemption was dependant on the fulfillment of the conditions, the exemption under the State Law was not blanket and as such the petitioner could not get the benefit of Section 8 of the Central Act. In other words, the submission of the Department was that if the notification dated 31-12-1966 would have provided for the general exemption from tax, Section 8 of the Central Act would have come into operation and the petitioner would have not been subjected to tax under the Central Act. But on a perusal of the notification, a different situation arises. Uncertified Khadi Bhandars have been excluded from the ambit of the exemption.

8. Counsel for the assessee urged that the description of garment and other articles made of Khadi mentioned in Entry No. 6 of the notification of the year 1966 could not be construed as a condition imposed for availing the benefit of exemption, and, as such, the Tribunal must have held that the petitioner was entitled to it.

9. Reference may be made to the decisions given in The Deputy Commissioner of Agricultural Income-tax and Sales Tax v. N.S. Moos 1975 STC (36) p. 169 and Indian Aluminium Cables Ltd. and Anr. v. State of Haryana 1976 STC (38) p. 108.

10. In these decisions, Section 8 and Explanation appended to the same has been interpreted and the exemption having been found not to be generally, the Courts held that the dealer was not entitled to benefit of exemption.

11. Counsel for the assessee relied on the decisions reported in Commissioner of Sales Tax, Madhya Pradesh v. Kapoor Dori Niwar & Co. Gwalior 1968 STC (22) p. 152 and Hidustan Safety Glass Works (P) Ltd. v. The State of Uttar Pradesh and Anr. 1974 STC (34) p. 209 in support of his arguments. These cases are distinguishable.

12. Analysing the notification of the year 1966, under which the benefit is being claimed, two conditions were necessary to be satisfied. The first is that is must have been made of Khadi cloth and the second is that it must have been sold by Khadi Bhandar, which has also to be further certified by the All India Khadi & Village Industries Board. These are the conditions which prevent the exemption going into operation unless they had been fulfilled. The exemption is, therefore, not general in nature as was the case found by the Madhya Pradesh High Court in 1968 STC (22) p. 152 and by the Allahabad High Court in 1974 STC (34) p. 209 (supra).

13. Facts of these cases are distinguishable. These cases were considered by the Supreme Court in 1976 STC (38) p. 108 (supra) and it was observed, 'The goods should be totally exempt from tax under the State Act before similar exemptions from the levy of Central Sales-tax can become available.'

14. Section 8 of the Central Act was amended in 1972 and an attempt was made by the learned Counsel for the assessee to argue that Section 8 should not be construed as one limiting or restricting ambit of the main section. The definition of the section, as it stood before amendment and after, was considered by a Division Bench of the Kerala High Court in Hindustan Paper Corporation Ltd. v. Government of Kerala 1986 STC (61) p. 93 and it was held that:.there is no

material alteration in the content or core of that provision after such amendment. The reframing of the provision is only meant to make it more clearly understandable. The emphasis both before and after the amendment of Section 8 of the Central Act by the Amendment Act of 1972, is to 'the sale of goods', the sale or purchase of which is generally exempted from the sales tax under the State Act.

15. Consequently, the submission of the learned Counsel for the assessee that there is no requirement for general exemption for availing the benefit of Section (2A) of the Central Act cannot be accepted.

16. For the view taken, I am supported by the decision reported in Industrial Cables (I) Ltd. and Anr. v. Assessing Authority and Ors. 1987 STC (64) p. 349, wherein the Supreme Court held that since the two conditions required for getting the benefit of Section 8 of the Central Act were not established the assessee was not entitled to exemption under Section 8 of the said Act.

17. For what I have said above, I find no merits in this revision and dismiss the same with costs.