

Vasantha and Co. Vs. the State of Madras

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Court : Chennai

Decided On : Apr-04-1963

Reported in : [1963]14STC696(Mad)

Judge : Jagadisan and ;Srinivasan, JJ.

Appeal No. : Tax Case No. 4 of 1962

Appellant : Vasantha and Co.

Respondent : The State of Madras

Advocate for Def. : G. Ramanujam, Adv. for ;Government Pleader

Advocate for Pet/Ap. : K. Ramagopal, Adv.

Disposition : Suit allowed

Judgement :

Srinivasan, J.

1. The petitioner is a dealer in sugar and arecanut. It returned a net turnover of Rs. 52,094 for the assessment year 1958-59. Exemption under the head of 'inter-State sales' to the extent of Rs. 21,616 was refused by the Joint Commercial Tax Officer. In respect of sales of sugar candy, it was taxed on a turnover of Rs. 83,901 which was the estimated sale value of the total quantity of sugar purchased

by it inclusive of the quantity, also estimated as having been omitted from the accounts. Its appeal to the Appellate Assistant Commissioner failed. On further appeal to the Tribunal, the contention was advanced that the sale of sugar was totally exempt from tax during the year of assessment and that this exemption accorded to sugar must necessarily extend to sugar candy in which the assessee dealt. In support of this contention, reliance was placed upon a notification issued by the Government and it was claimed that sugar candy is essentially nothing more than sugar, the only difference between the two being that one was of the crystalline structure and the other was practically in powder form. The Tribunal took the view that while the sale of sugar was liable to be exempted from tax during the year in question, it was not established, nor could it be accepted, that sugar candy would come within the description of sugar.

2. This is the only contention that has been urged in this revision petition. Before dealing with the question, we may set out the steps in the argument advanced by the learned counsel, Mr. Ramagopal, for the assessee. The Central Government enacted Act 58 of 1957, the Additional Duties of Excise (Goods of Special Importance) Act. This Act was intended 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 of such duties among the States and to declare those goods to be of special importance in inter-State trade and commerce. By Section 2(c) of the Act, the expression 'sugar' was declared to have the same meaning assigned to it in the relevant item of the First Schedule to the Central Excises and Salt Act, 1944. Section 4 of the Act made provision for the distribution to the State of a part of the net proceeds of the additional duties, in accordance with the provisions of the Schedule to the Act. Section 7 of the Act declared sugar among others to be goods of special importance in inter-State trade and commerce. It further stated that the 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 the declared goods, be subject as from the 1st day of April, 1958, to the restrictions and conditions specified in Section 15 of the Central Sales Tax Act, 1956. In the Second Schedule, the mode of distribution of the net proceeds of the excise duty was set out. The payment to any State was however made dependent upon the following condition :

Provided that if during that financial year there is levied and collected in any State specified in the Table a tax on the sale or purchase of sugar by or under any law of that State, no sums shall be payable to that State under Sub-clause (ii) or Sub-clause (iii) of Clause (b) in respect of that financial year, unless the Central Government by special order otherwise directs.

3. It follows from the above that before a State could become eligible for its quota of distribution of the net proceeds of the additional duty of excise, it shall not have collected any tax on the sale or purchase of sugar by or under any law of that State. Section 15 of the Central Sales Tax Act placed certain restrictions and conditions upon the imposition of a tax under the State sales tax law on the sale or purchase of declared goods. It is unnecessary to refer to this except to mention that certain maximum rates of tax were fixed in respect of declared goods and the provisions of Sections 14 and 15 of the Central Sales Tax Act are virtually reiterated in Section 7 of the Additional Duties of Excise (Goods of Special Importance) Act.

4. In view of the prohibition enacted in the Second Schedule of the last-mentioned Act against the levy of any sales tax on the purchase or sale of sugar, if the State was to qualify for a part of the net proceeds of the additional duties of excise, the State of Madras issued two notifications in the exercise of the powers conferred upon it by Section 6 of the Madras General Sales Tax Act. Section 6 of this Act confers power upon the State Government to notify exemptions and reductions of tax. By G. O. 4585, Revenue, dated 12th December, 1957, the State of Madras passed two orders, one of which exempted sugar from the tax payable under Section 3(1) of the Madras General Sales Tax Act and the other whereunder sugar was exempted from the tax payable under Section 3(2) of the Act. Section 3(2) of the Act provided for a tax on the first sale of certain goods, one of which is sugar. This exemption was however to be granted only if in respect of such goods 'an additional excise duty has already been levied under the provisions of the Additional Duties of Excise Levy and Distribution Bill, 1957, introduced in the Parliament on the 13th December, 1957'. In both of these exemption notifications, the goods in question is described as sugar.

5. Mr. Ramagopal, learned counsel for the assessee, points out that this exemption which was granted by the State Government from the operation of the General Sales Tax Act in respect of sugar was the result of the Additional Duties of Excise Act, which made it imperative that the State Government should grant the exemption from the local sales tax law, if the State was to obtain a share in the net proceeds of the additional duty of excise imposed by that Act. He also points out that sugar has been defined in a particular manner by this Central Act, that is to say, that that expression shall have the same meaning as that ascribed to it in the Central Excises and Salt Act. Item 8 in the Schedule to this Act defines sugar thus :

Sugar means any form of sugar containing more than 90 per cent, of sucrose.

6. The learned counsel points out that sugar candy is, according to its normal connotation, nothing more than sugar clarified and crystallized by slow evaporation. He refers to the dictionary meaning of the expression contained in the Shorter Oxford English Dictionary. By this process of reasoning learned counsel contends that having regard to the purpose for which the exemption was granted by the State of Madras, which purpose must be related to the provisions contained in the Central Act relating to the levy of the additional duties of excise, it is manifest that all varieties of sugar are comprehended within the expression 'sugar' as used in the exemption notifications. If that is so, it is argued, the State must necessarily have intended that the tax leviable on this commodity under Section 3(1) and 3(2) of the General Sales Tax Act was withdrawn in order to conform to the general purpose underlying the Central Act.

7. Before the Tribunal, however, this line of approach was not indicated in the arguments addressed to it. At that stage, a notification relating to the Sugar Movement Control Order was relied upon, wherein sugar was defined as any form of sugar containing more than 90 per cent, of sucrose, including khandsari sugar, sugar candy and bura sugar and any sugar of crystalline structure. Sugar candy was specifically mentioned in that Control Order, but the Tribunal held that the definition was for the specific and limited purpose relating to movement of sugar from one State to another and would not make sugar candy synonymous with

sugar for purposes of the exemption notification under the General Sales Tax Act.

8. The question we have to consider now is whether having regard to the several provisions to which we have made reference, it is proper to hold that sugar candy was included within the term 'sugar' mentioned in the exemption notification. After giving careful consideration to this question, we are satisfied that it is so included. It is not denied that sugar in any form, including the form of sugar candy, was subject to the Additional Duties of Excise Act, and part of such duties was distributable to the several States in accordance with the formula set out in the Schedule to that Act. That Schedule further made it a condition that the State should exempt that commodity from its local taxes on the sale or purchase. The exemption notification exempts the tax payable under Section 3(2) of the Madras General Sales Tax Act, if in respect of such goods an additional excise duty had already been levied under the provisions of the Central Act referred to. It not being denied that the Additional Duties of Excise Act is applicable to sugar candy, for the Act applies to sugar in any form, the exemption notification of the State Government clearly extends to the sales tax payable on the sale of sugar candy. Having regard, therefore, to the underlying purpose of the issue of these notifications and that purpose being linked to that set out in the Central Act relating to the levy of additional excise duty, the State must necessarily have intended that the exemption should cover sugar candy as well; and that is so, even apart from the question whether sugar as generally understood includes sugar candy within its scope or not.

9. We may now refer to a decision of the Mysore High Court in *Abdul Malik and Co. v. Commercial Tax Officer* [1963] 14 S.T.C. 214. The petitioner in that case was a firm manufacturing sugar candy. By entry 34 in the Second Schedule to the Mysore Sales Tax Act, sugar was taxable. By an amended entry 31-B of the Fifth Schedule, sugar candy was taken out of the category of sugar, which was exempted from tax. Sugar was one of the goods subject to the sales tax under the Mysore Act as item 34 in the Second Schedule. There was no separate entry relating to sugar candy under any of the Schedules to that Act. After the passing of the Central Act 58 of 1957, that is, the Additional Duties of Excise Act, the State Legislature enacted the Mysore Sales Tax Amendment Act. A new Sub-section

was added to Section 8 of the principal Act whereby sugar among other goods was made exempt from the tax payable under the Sales Tax Act, if in respect of those goods excise duty levied by the Central Government had been paid. This amendment, as is apparent, was made so as to conform to the requirements of the Central Act. Upto that stage there was no dispute but that sugar was goods in respect of which excise duty had been levied. Subsequent thereto, the State Government included entry 31-B in the Fifth Schedule, whereby they purported to take out sugar candy from the scope of the expression 'sugar'. Notwithstanding this, the learned Judges of the Mysore High Court held that sugar which was accorded the exemption by the Amending Act continued to include sugar candy within its scope. Even apart from that, the learned Judges observed thus on general considerations :

It cannot be seriously disputed that 'sugar candy' is a purer form of 'sugar'. In the opinion of the National Sugar Institute at Kanpur (an Institution run by the Government of India) 'sugar candy' is a purer form of 'sugar'....It was urged by the learned Government Pleader that the Central Act 58 of 1957 merely mentions 'sugar' and not 'sugar candy'; and there is nothing in that Act to show that the Parliament intended to bring within the ambit of that Act 'sugar candy' also; it may be that according to the legislative practice adopted by the Parliament 'sugar candy' is dealt with separately from 'sugar'. There is no basis for these contentions. Ordinarily 'sugar' includes 'sugar candy'. 'Sugar candy' is not separately dealt with in the Central Act 58 of 1957. Now coming to the legislative practice, in the Finance Act No. 13 of 1960, it is mentioned that 'sugar' means any form of sugar containing more than ninety per cent, of sucrose'; the word 'sugar' means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 1050 Centigrade, would be more than ninety.' Hence I have to conclude that both 'sugar' and 'sugar candy' were the subject-matter of legislation in Central Act 58 of 1957....

11. We are in full agreement with the view taken by the Mysore High Court upon this question. We have also expressed our independent conclusion upon the matter, that is to say, that sugar which was exempted by the notifications of the State Government did in the context in which the exemption was granted take in

sugar candy.

12. The petition is accordingly allowed. The petitioner will be entitled to its cost. Counsel's fee Rs. 100.

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