

M/S. CHHOTABHAI JETHABHAI PATEL & CO.

1962
April 10.

v.

STATE OF UTTAR PRADESH

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, K. SUBBA
RAO, M. HIDAYATULLAH, N. RAJAGOPALA
AYYANGAR and J. R. MUDHOLKAR, JJ.)

Sales-tax—Notification by State Government exempting hand-made biris—Validity of order of assesment—Uttar Pradesh Sales Tax Act, 1948 (U. P. XV of 1948) s. 4(1)(b).

The appellant firm was a registered dealer in *biris* under the Uttar Pradesh Sales Tax Act, 1943. The Sales Tax Officer assessed it to sales tax provisionally for the quarter from April 1, 1958, to June 30, 1958. The appellant moved the High Court under Art. 226 of the Constitution but the petition was dismissed. It appealed to this Court by special leave and filed a petition under Art. 32 of the Constitution. Its case was that by the notification issued under s. 4(1)(b) of the Act on December 14, 1957, hand-made biris were exempted from sales tax and the order of assesment made by the Sales Tax Officer was based on a misconstruction of the same. The notification provided "that no tax shall be payable under the aforesaid Act with effect from December 14, 1957, by dealers in respect of the following classes of goods provided that the Additional Central Excise Duties leviable thereon from the closing of business on December 13, 1957, have been paid on such goods" and the classes of goods included "cigars, cigarettes, biris tobacco in any form x x x".

Held, (Subha Rao, J., dissenting) that for the reasons given in the majority judgment of this Court in *Ujjam Bai v. State of U. P.*, the writ petition must fail.

Ujjam Bai v. State of U. P., W. P. No. 79 of 1959, applied.

The exemption under the notification, properly construed, was conditional and applied only to goods on which additional Central Excise Duty was leviable and had been paid. Since no such duty was leviable on hand-made *biris* and none was paid, the condition precedent to exemption was not satisfied. The Sales Tax Officer had therefore correctly interpreted the notification and his order was correct.

ORIGINAL JURISDICTION : Petition No. 195 of 1959.

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Petition Under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

WITH

Civil Appeal No. 99 of 1961.

Appeal by special leave from the Judgment and order dated May 14, 1959, of the Allahabad High Court in Civil Misc. Writ No. 1: 84 of 1959.

G. C. Mathur, for the petitioners (in Petn. No. 195/59).

M. C. Setalvad, Attorney-General of India and *G. C. Mathur* for the appellants (in C. A. No. 99/61).

S. N. Sanyal, Additional Solicitor General of India and *C. P. Lal*, for the respondents (in both the petition, and appeal).

1962, April 10. The following Judgments were delivered

Kapur J.

KAPUR, J.—This judgment will dispose of two matters which arise out of the same proceedings under the U.P. Sales Tax Act (1) a petition under Art. 32 and (2) an appeal against the judgment and order of the High Court of Allahabad passed in proceedings taken under Art. 226 of the Constitution.

One of the questions that arises in these two matters is the same which arose and has been decided in W. P. No. 79 of 1959 in which the judgment has been delivered today.

The facts giving rise to these two matters are these: The petitioner firm is a partnership firm carrying on business of selling *biris* and although its principal office is at Nadiad (Bombay State) it has a branch office at Agra in U. P. where *biris* manufactured by it are brought and sold. The firm was registered as a dealer under s. 8 of the U.P. Sales

Tax Act (Act 15 of 1948) hereinafter called the 'Act' under which a notification giving exemption in regard to sales tax on certain articles was notified by a notification of December 14, 1957, which has been set out at another place in this judgment. On February 27, 1959, the Sales Tax Officer, Agra, passed a provisional order of assessment of sales tax for the quarter from April 1, 1958 to June 30, 1958. The tax so assessed was Rs. 62,500. It is alleged that no notice was given to the petitioner firm. The notice of demand was issued on the same date. An appeal was taken against this order of assessment to the Judge (Appeals) and an application was made to the Commissioner of Sales Tax for a stay of the realisation of the tax assessed. The Commissioner on April 28, 1959, directed that if half of the amount assessed was deposited by the petitioner by April 30, 1959, the payment of the remaining amount shall be stayed pending the final assessment. On April 30, 1959, the petitioner firm deposited half the tax assessed i.e. Rs. 31,250.

On April 28, 1959, the petitioner firm moved the High Court under Art. 226 of the Constitution for a writ of *certiorari* quashing the assessment order and the second notice of demand and for a writ of *mandamus* directing the taxing authorities to forbear from recovering the tax. This petition was dismissed by the High Court by an order dated May 14, 1959. An application for a certificate under Art. 133(1)(c) of the Constitution was dismissed by the High Court on October 23, 1959, and against the order of dismissal of the petition under Art. 226, special leave was granted by this Court on December 18, 1959. A petition under Art. 32 of the Constitution was also filed by the petitioner firm on December 16, 1959, and rule was issued thereon and that is how the appeal against the High Court order made in proceedings under Art. 226

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and the petition under Art. 32 of the Constitution have been brought to this Court.

On September 29, 1959, the Sales Tax Officer issued another notice calling upon the petitioner firm to submit returns for the period from December 13, 1957, to March 31, 1958. On October 1959, a further notice was issued under s. 15(i)(a) to show cause why a penalty should not be imposed. This matter was not before the High Court as the petition in that Court was filed earlier but it has also been challenged in the petition under Art. 32 of the Constitution. For reasons given in W.P. No. 79 of 1959 this petition under Art. 32 is dismissed.

The appeal which the petitioner firm had filed before the Judge (Appeals) was dismissed and a revision taken against that order was also dismissed but these orders have not been challenged in any proceedings so far.

The appellant firm's contention in the appeal was that the order of the Sales Tax Officer limiting the excess Central Excise Duty had been paid was erroneous. It will be opposite at this stage to trace the history of the exemption which is claimed by the appellant firm. Because of the difficulty experienced in regard to inter-State sales on a large scale of certain articles the Central Government with the concurrence of the State Governments imposed an enhanced Central Excise Duty on the sales tax levied upon them, and the sum so collected by the imposition of the enhanced Central Excise Duty on those articles was to be distributed by the Central Government to the State Governments concerned and they (the State Governments) agreed to exempt those articles from sales tax. As a result of this arrangement. The Additional Duties of Excise (Goods of Special Importance) Act (Act 58

of 1957) was passed by Parliament. In this judgment it will be called 'Central Act 58 of 1957'. By this Act additional Central Excise duty was levied on tobacco but no such duty was levied on *biris*. Even under the Central Excise and Salt Act (Act 1 of 1944), hereinafter called 'Central Act 1 of 1944', no Central Excise Duty was imposed on handmade *biris* although excise duty was levied on machine-made *biris* but the object of imposing that duty was to protect the handmade *biris* industry. In pursuance of the abovementioned arrangement for the exemption from sales tax of certain articles the U. P. Government issued notification No. ST-4485/X dated December 14, 1957, under s. 4(1)(b) of the Act which will be quoted at another place in this judgment. Liability to sales tax arises under s. 3 (1) of the Act which provides:—

S. 3(1) "Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rate of (two naya paise per rupee) on his turnover of such year, which shall be determined in such manner as may be prescribed".

and provision for exemption for sales tax is made in s. 4(1)(a) and (b) which provides:—

S. 4(1) "No tax shall be payable on—

(a) the sale of water, milk, salt, newspapers and motor spirit as defined in the U.P. Sales of Motor Spirit (Taxation) Act, 1939, and of any other goods which the State Government may be notification in the official gazette exempt :

(b) the sale of any goods by the All-India Spinners' Association or Gandhi Ashram Meerut, and their branches or such other persons, or class of persons as the State Government may from time to time exempt on such

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conditions and on payment of such fees, if any not exceeding (eight thousand rupees) annually as may be specified by notification in the Official Gazette”.

The U.P. Government on December 14, 1957, issued the following notification under s. 4(1)(b) of the Act :—

“No. ST-4485/X dated Lucknow Dec. 14, 1957 (Published in U.P. Gazette Extraordinary, dated December 14, 1957).

In partial modification of notifications No. ST-905/X dated March 31, 1956 and ST-418/X 902(9)-52 dated January 31, 1957 and exercise of the powers conferred by clause (b) of sub-section (1) of sec. 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948) as amended upto date, Governor of Uttar Pradesh is pleased to order that no tax shall be payable under the aforesaid Act with effect from December 14, 1957 by the dealers in respect of the following classes of goods provided that the Additional Central Excise Duties leviable thereon from the closing of business on December 13, 1957 have been paid on such goods and that the dealers thereof furnish proof to the satisfaction of the assessing authority that such duties have been paid.

(1)-----

(2)-----

(3) Cigars, cigarettes, biris and tobacco, that is to say any form of tobacco, whether cured or uncured and whether manufactured or not and includes the leaf, stalks and stems of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth”.

This is the notification, which, it is submitted, by petitioner, has been misconstrued and misapplied and has resulted in the infringement of the petitioner's right Art. 19(1)(g) of the Constitution.

It was contended that under the Central Act 58 of 1957 additional Central Duty of Excise had been paid on tobacco as defined in the Central Act 1 of 1944. In the 4th item in the 1st Schedule of Central Act 1 of 1944 tobacco is defined as follows :—

“ ‘Tobacco’ means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth”.

The notification expressly states that it is made under s. 4(1)(b) of the Act and therefore the exemption was conditional and properly read it applies only to those goods on which additional Central Excise Duty was leviable and had been paid. No such duty was leviable on hand-made *biris* and it was not paid. The condition of the exemption therefore cannot be said to have fulfilled and the sales of the petitioners did not fall within the exemption covered and given by the notification. In our opinion therefore the Sales Tax Officer correctly interpreted the notification and it has not been shown that his determination was in any way erroneous. On this ground also the petition must fail.

The appeal against the order of the High Court of Allahabad is therefore dismissed but the parties will bear their own costs.

SUBBA RAO, J.—It is common case that the appeal and the writ petition would be governed by our decision in the connected writ petition viz.,

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Writ Petition No. 79 of 1959. For the reasons mentioned therein, the writ petition and the appeal are allowed with costs.

BY COURT:—In accordance with the judgment of the majority, Civil Appeal No. 99 of 1961 and Writ Petition No. 195 of 1959 are dismissed, but the parties are left to bear their own costs.
