

A M/S KUMAR DISTRIBUTORS (P) LTD./BELTEK INDIA
v.
STATE OF BIHAR AND ORS.

AUGUST 17, 1995

B [J.S. VERMA AND K. VENKATASWAMI, JJ.]

Bihar Finance Act, 1981 :

C Ss.2(x), 6, 7(3), 21, Notifications No. S.O, 92 and S.O.94 dated 18.1.1988—Granting exemption from levy of sales tax/purchase tax on electric raw materials and to electronic units—Assessee claiming exemption from levy of additional tax payable under s.6—Held—Exemption Notifications do not cover charge of additional tax payable under s.6.

D The appellants were dealers and manufacturers of television sets, watches and mixers, in the State of Bihar. The State Government, with a view to encourage industries in the State, in exercise of powers under s.7(3) of the Bihar Finance Act, 1981 issued notifications no. S.O.92 and S.O.94 dated 18.1.1988, respectively, exempting from levy of sales tax/purchase tax, the sales of electronic raw materials to the owner of electronic units; and granting exemptions from levy of sales tax on sales of electronic goods manufactured by electronic industrial units, approved and registered by the department of Industries, Government of Bihar or the competent authority of Government of India, for a period of five years with effect from 1.9.1986 subject to conditions imposed therein.

F For the assessment year 1989-90, the appellants, relying upon the notifications, claimed exemption from the levy of additional tax payable under s.6 of the Act, which was refused by the assessing authority. The appellants challenged the orders by filing writ petitions under Articles 226/227 of the Constitution before the High Court, which dismissed the writ petitions holding that the appellants were liable to pay additional tax and were not entitled to claim exemption from payment of additional tax on the basis of exemption notifications issued under Section 7(3) of the Act. Aggrieved, the appellants filed the appeals by special leave.

G H It was contended by the appellants that in view of the definition of 'tax' in s.2 (x) and 'taxable turnover' in s.21 of the Act, the appellants were,

entitled to claim exemption from payment of additional tax under the notifications issued under Section 7(2) of the Act. A

Dismissing the appeals, this Court

HELD: The exemption notifications issued under Section 7(3) of the Bihar Finance Act, 1981, will not cover charge of additional tax payment under s.6, to enable the appellants to claim exemption from payment of additional tax. Section 6 of the Act makes it crystal clear that so far as charge of additional tax is concerned, this section is self-contained not only for charging additional tax but also for its exemption, in addition to s.7(3) which provides for exemption from levy of 'sales tax' and 'purchase tax'. The non obstante clause in Section 6 also overrides section 7(3) and Section 21 of the Act expressly. [794-B-D] B C

Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P) Ltd. Etc. Etc., [1992] Supp. 2 SCC 178 and *State of Karnataka v. Sunagar, Brothers*, [1993] 3 SCC 16 cited. D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7316-17 of 1995.

From the Judgment and order dated 16.12.92 of the Patna High Court in C.W.J.C. Nos. 622 & 1113 of 1992. E

Ranjit Kumar for the Appellant.

S.B. Sanyal and B.B. Singh for the Respondents.

The Judgment of the Court was delivered by F

K. VENKATASWAMI, J. Leave granted.

A common question of law arises for consideration in these two appeals. That question of law can be set out in the following words : G

Whether an exemption notification published under Section 7(3) of Bihar Finance Act, 1981 (hereinafter referred for short as the 'Act') will also cover exemption from charge of additional tax levied under Section 6 of the Act.

Brief facts are the following : H

A The appellant in the first case was a dealer in television sets, watches and mixers. The appellant in the second case is a manufacturer of television sets in the State of Bihar. The State Government with a view to encourage industries in the State from time to time announced various schemes granting incentives in the form of exemption from sales tax or purchase tax as the case may be. One such notification bearing No. S.O. 92 dated 18.1.88 was issued under the express provision of Section 7(3) of the act exempting from the levy of sales tax as well as purchase tax on the sales of electronic raw materials to the owner of electronic units approved and registered by the Department of Industries, Government of Bihar or the competent authority of Government of India for a period of 5 years w.e.f. 1.9.1986 subject to the conditions imposed therein; and another notification bearing No. S.O. 94 dated 18.1.1988 under the express provision of Section 7(3) of the Act granting exemption from the levy of sales tax on sales of electronic goods manufactured by electronic industrial unit approved and registered by the Department of Industries, Government of Bihar or the competent authority of Government of India for a period of 5 years w.e.f. 1.9.1986 subject to the condition mentioned there in was issued.

For the assessment year in question, namely, 1989-90, the appellants claimed exemption from the levy of additional tax payable under Section 6 of the Act. The assessing authority (Commercial Taxes Officer) refused to exempt 'additional tax' as claimed by the appellants. Aggrieved by that, the appellants moved the High Court of Patna under Articles 226/27 of the Constitution of India for grant of necessary relief/appropriate relief. A Division Bench of the Patna High Court after considering the scope and extent of the notifications referred to above with reference to the substantive provisions viz. Sections 6 and 7 of the Act held that the appellants are liable to pay additional tax and they are not entitled to claim exemption from payment of Additional tax on the basis of exemption notifications issued under Section 7(3) of the Act. Still aggrieved the present appeals are filed in this Court.

G Learned counsel appearing for the appellants submitted that a look at the definition of 'tax' in Section 2(x) and taxable turnover in Section 21 will go to show that the exemption notifications issued under Section 7(3) will come to the aid of the appellants to claim exemption from payment of additional tax. Learned counsel placed reliance on two judgments of this H Court reported in *Deputy Commissioner of Sales Tax v. Aysha Hosierey*

Factory (P) Ltd. Etc. Etc., [1992] Supp. 2 SCC 178 and *State of Karnataka v. Sunagar Brothers*, [1993] 3 SCC 16 to support his contention that sales tax will include additional tax. We can at once of this contention by stating that there is no dispute that 'tax' includes additional tax in as much as Section 2 (x) of the Act is clear and unambiguous on this issue. A

But the question is whether the exemption notifications issued specifically under Section 7(3) of the Act would extend to exemption from payment of additional tax charged under Section 6 of the Act when the provision for exemption from payment of additional tax is made in Section 6(2). B

For considering the issue on hand, it is necessary to set out certain provisions in the Act. We till now set out Section 2(x), Section 6, Section 7(3) and Section 21: C

"Section 2 (x) : "Tax" includes the sales or purchase tax levied under Section 3 as also additional tax levied under Section 6 of this part. D

Section 6 : Charge of additional tax - Notwithstanding anything contained in sub-section (3) of section 7 or sections 11, 12, (13) and 21 or in any notification issued thereunder every dealer having a gross turnover exceeding the specified quantum' as laid down in Section 3 shall, with effect from a date to be specified by the State Government by a notification published in Official Gazette, pay an additional tax at such rate, not exceeding two percentum of his gross turnover (excluding the sales the sales or purchase of goods which have taken place either in the course of interstate trade or commerce, or outside the State, or in the course of import of goods into, or export of goods out of the territory of India) as the State Government may, from time to time by notification in the Official Gazette, fix : E F

Provided that State Government may fix different rates within the ceiling rate of 2 percentum on the gross turnover of different goods : G

Provided further that in the case of declared goods, as defined in the Central Sales Act, 1956 (Act LXXIV of 1956) -

(i) where the tax payable under Section 3 or section 4 equals the maximum amount of tax permissible under section 15 of the Act, no additional tax shall be payable under this section : H

(a) (ii) Sale price on account of sales exempted under Section 7: A

(b) amount of Sales tax actually collected as such, if any along with the sale prices received or receivable in respect of sales of goods;

(c) Sale prices on account of sales to a registered dealer other than a dealer liable to pay tax under sub-section (8) of section 3 of goods mentioned in sub-section (4) of Section 11 specified in his registration certificate as being required for re-sale by him inside Bihar or in course of inter-State trade or commerce; B

Provided that in the case of such sale a declaration in the prescribed form duly filled up and signed by the registered dealer to whom the goods are sold or by his manager declared under Section 15 is furnished in the prescribed manner by the selling dealer; C

(d) sale prices at the subsequent stages of sales such goods as are specified by a notification issued under sub-section (1) of Section 11 as being subject to tax at the first point of sale in Bihar, if necessary evidence as required by sub-section (2) of Section 11 are produced in the prescribed manner before the prescribed authority. D

(1A) Where any dealer claims that he is not liable to pay tax on any part of his gross turnover in respect of any goods by reason of transfer of such goods by him to any other dealer or to his agent or principal, as the case may, for sale, the burden of proving this claim shall be on the dealer and for this purpose along with other evidences he shall furnish before the prescribed authority a declaration in the forms and in the manner prescribed. E F

(2) Where any goods or sales exempted from the levy of tax by a notification issued by the State Government in this behalf under sub-section (3) of Section 7 are purchased by a dealer after furnishing a declaration as mentioned in or provided by the notification or where any goods specified in the certificate of registration of a dealer are purchased by him after furnishing a declaration as provided in clause (c) of sub-section (1) but are utilised by him for any purpose other than those specified in such a notification or specified in clause (c) of sub-section (1), as the case may be, the sale price of the goods so purchased shall, without prejudice to any action which is or may be taken under Section 49, be deducted from the H

A gross turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer."

B From a careful reading of Section 6, it would be crystal clear that so far as charge of additional tax is concerned, this section is self-contained not only for charging additional tax but also for its exemption. Therefore, the exemption notifications specifically issued under Section 7(3) will not cover charge of additional tax to enable the appellants to claim exemption from payment of additional tax. Even though the position is so clear, the learned counsel for the appellants argued that in the light of Section 21, the turnover will be nil and therefore, there is no scope for charging additional tax. This argument is based on a misconstruction of Section 6 of the Act. We have pointed out that Section 6 is self-contained and there is an inbuilt provision for exemption from levy of 'additional tax' therein, in addition to Section 7(3) which provides for exemption from levy of 'sales tax' and 'purchase tax'. The non obstante clause in Section 6 also overrides Section 7(3) and Section 21 expressly. The position is, therefore, clear in this Act.

D For the foregoing reasons, we find no substance in these appeals and High Court was right in dismissing the writ petitions. Accordingly these appeals are dismissed with costs.

R.P.

Appeals dismissed.