Before G. S. Singhvi & Ajay Kumar Mittal, JJ

M/S JAGDAMBA FOODS LTD.,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. No. 12366 OF 2004

11th October, 2004

Constitution of India, 1950—Arts. 226 & 286—Haryana General Sales Tax Act, 1973—Ss. 25 & 47—A dealer utilizing paddy for manufacturing rice—Export of rice out of India—Dealer failing to pay purchase tax—On demand by Assessing Authority the petitioner depositing the tax—Imposition of penalty u/s 47 of 1973 Act—S. 47 provides that if any dealer fails to pay tax due then the competent authority can impose penalty to the extent of one & a half times of the amount of tax to which he is assessed or is liable to be assessed under section 28 of the 1973 Act—Plea of petitioner not tenable that in view of the interim stay order passed by Supreme Court on 19th January, 1996 as that order was confined to subject matter of an earlier dispute—No illegality in the orders of the Assessing Authority imposing the penalty—Petition dismissed.

Held, that an analysis of the provisions of the Haryana General Sales Tax Act and Central Sales Tax Act makes it clear that a dealer who is liable to pay tax under the State Act or the Central Act, is duty bound to pay the amount of tax due before filing the return and if he fails to pay the tax due, then the Commissioner or any other person appointed to assist him can impose penalty to the extent of one and a half times of the amount of tax to which he is assessed or is liable to be assessed under Section 28 of the State Act.

(Para 10)

B. K. Jhingan and Avneesh Jhingan, Advocates, *for the petitioner.*

Vijay Dahiya, Assistant Advocate General, Haryana, *for the respondents.*

JUDGMENT

G.S. SINGHVI, J.

(1) This is a petition for quashing orders dated 8th October, 1996 (Annexure P.1), 29th January, 1998 (Annexure P.2) and 5th May, 2004 (Annexure P.3) passed by Excise and Taxation Officer-cum-Assessing Authority, Karnal (hereinafter described as 'the Assessing Authority') ; Joint Excise and Taxation Commissioner (A), Ambala (hereinafter described as 'the Appellate Authority') and Haryana Tax Tribunal (for short, 'the Tribunal') respectively under the Haryana General Sales Tax Act, 1973 (for short, 'the State Act').

(2) The petitioner, which was earlier a firm operating under the name and style of M/s Jagdamba Rice Mill, is now a limited company incorporated under the Companies Act, 1956. It is registered as dealer under the State Act and the Central Sales Tax Act,1956 (for short. 'the Central Act'). It is engaged on the business of manufacture of rice and sale thereof. It also exports rice out of India.

(3) In terms of Section 25 of the State Act, the petitioner was required to file quarterly returns. For the quarter ending on 30th June,1996, the petitioner filed return on 31st July, 1996 without paying tax as per the requirement of Section 25(3), but appended a note that no purchase tax was payable on the paddy utilised for manufacturing rice which was exported out of India.The Assessing Authority finalised the assessment,—*vide* order dated 12th August, 1996 and created demand of Rs.18,11,714/-. The petitioner deposited the tax in February, 1997.

(4) In the meanwhile, the Assessing Authority after issuing notice to the petitioner imposed penalty of Rs.27,00,000/- under Section 47 of the State Act. The appeal filed by the petitioner against the imposition of penalty was dismissed by the Appellate Authority,—*vide* order dated 29th January, 1998 (Annexure P. 2). Further appeal filed by it was dismissed by the Tribunal,—*vide* order dated 5th May, 2004 (Annexure P.3).

(5) The petitioner has questioned the levy of penalty by contending that the premise on which the Assessing Authority initiated action under Section 47 of the State Act was wholly erroneous

because no purchase tax was payable on the paddy utilised for manufacturing rice which was exported out of India. It has invoked Article 286 of the Constitution of India and Sections 5(1)(3), 14 and 15 of the Central Act and averred that purchase tax was not leviable on the rice exported out of India. It has also pleaded that after the insertion of Section 15(ca) in the Central Act,—*vide* Finance Act No. 2 of 1996, paddy and rice are to be treated as one commodity for the purpose of levy of tax and as such, no purchase tax was payable on the paddy purchased by it.

(6) The respondents have filed written statement to contest the writ petition. Their stand is that the Assessing Authority had imposed penalty under Section 47 of the State Act because the petitioner deliberately did not deposit tax for the period from 1st April, 1996 to 30th June, 1996. According to the respondents, the issue relating to levy of the purchase tax on paddy used for manufacturing rice had been settled by judgment dated 17th August, 1995 of the Full Bench of this Court in **M/s United Riceland Limited** *versus* **The State of Haryana (1)**, and, therefore, the petitioner was duty-bound to pay tax before filing the return.

(7) Shri B.K. Jhingan argued that the order passed by the Assessing Authority for imposition of penalty should be declared illegal and quashed because in view of stay order dated 19th January, 1996 passed by the Supreme Court in S.L.P. (C) No. 176 of 1996, the petitioner was not required to pay purchase tax on the paddy used in the manufacture of rice. Shri Jhingan submitted that on account of pendency of the S.L.P. before the Supreme Court, the petitioner remained under the *bona fide* impression that it was not required to pay tax in terms of Section 25(3) of the State Act. He then referred to Finance Bill No. 7 of 1996 introduced in the Lok Sabha on 28th February, 1996, which led to the enactment of Finance Act No. 2 of 1996 and argued that once the peddy and rice have been treated as the same commodity for the purpose of Section 5(3) of the Central Act, no purchase tax could be levied on the paddy utilised for manufacturing the rice which was exported out of India. Learned counsel then submitted that penalty could not have been imposed on the petitioner because there was no intentional failure on its part to pay the tax due. In support of his arguments, learned counsel relied on the

(1) 104 STC 362

judgments of the Supreme Court in **J.K. Synthetics Limited** *versus* **Commercial Taxes Officer, (2) Frick India Limited** *versus* **State of Haryana and others (3),** and **Maruti Wire Industries Private Limited** *versus* **Sales Tax Officer, First Circle, Mattancherry and others, (4)** and of this Court in **Oswal Spinning and Weaving Mills Limited** *versus* **State of Punjab, (5)** Shri Jhingan also assailed the orders passed by the Appellate Authority and the Tribunal by arguing that the reasons assigned by them for confirming the penalty imposed by the Assessing Authority are legally unsustainable.

(8) Shri Vijay Dahiya, Learned Assistant Advocate General defended the impugned orders and argued that the Assesssing Authority did not commit any illegality by imposing penalty on the petitioner because it failed to pay the tax due before filing the return. He pointed out that the order of *status quo* passed by the Supreme Court on 19th January, 1996, which was modified on 29th November, 1996, did not entitle the petitioner to claim exemption from payment of purchase tax for the quarter ending on 30th June, 1996 because the same was confined to the subject-matter of dispute relating to the period prior to 15th October, 1990. Shri Dahiya then argued that in view of the law laid down by this Court in **M/s United Riceland Limited's case** *(Supra)* , which was, later on, partially approved by the Supreme Court in **Satnam Overseas (Export) through its partner and others** *versus* **State of Haryana and others, (6)** the petitioner was duty-bound to pay purchase tax in relation to the quarter ending on 30th June, 1996 and its omission to do so before filing the return was rightly treated by the Assessing Authority as a deliberate attempt to avoid payment of tax.

(9) We have given serious thought to the respective arguments and perused the record. Section 25 of the State Act provides for submission of return and payment of tax. Sub-section (1) thereof lays down that the tax payable under this Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed. Sub-section (2) lays down that every dealer who is liable to pay tax and who paid or was liable to pay tax including Central Sales tax according to the monthly or quarterly returns as the case may be, filed by him under this Act or the Central Sales Tax Act, 1956, for the period of

(2) AIR 1994 S.C. 2393
(3) (1995) 96 S.T.C. 289
(4) (2001) 122 S.T.C. 410
(5) (1996) 103 S.T.C. 491
(6) (2003) 1 S.C.C. 561

one year ending 31st March last or part thereof equal to or exceeding rupees one lakhs, shall pay tax including Central Sales tax by the 15th day of every month on his turnover of the previous month, in the manner prescribed. Proviso to this sub-section lays down that if the dealer is not liable to quantify his tax liability accurately by that time, he shall pay one-twelfth of the tax which he was liable to pay according to the monthly or quarterly returns, as the case may be, filed by him under the State Act and the Central Act for the period of one year ending 31st March last and in case he was not liable to pay tax for the full year or part thereof for which he has been liable to pay tax, and the balance, if any, he shall pay by the 25th day of the month and the excess, if any, he may adjust towards the tax payable in the next month or thereafter. Sub-section (3) lays down that before any dealer as mentioned in sub-section (2) furnishes the returns he shall, in the prescribed manner, pay into a Government Treasury or the Reserve Bank of India or the State Bank of India the full amount of tax due fron him under this Act according to such returns and shall furnish along with the returns receipt from such treasury or bank showing the payment of such amount. Section 47 provides for the consequences of the dealer's failure to pay the tax due. It lays down that if any dealer fails to pay the tax due as required by sub-section (2A) or sub-section (3) of Section 25, the Commissioner or any other person appointed to assist him under sub-section (1) of Section 3 may, after affording to the dealer a reasonable opportunity of being heard, impose a penalty not exceeding one and a half times the amount of tax to which he is assessed or is liable to be assessed under Section 28.

(10) An analysis of the above referred provisions makes it clear that a dealer, who is liable to pay tax under the State Act or the Central Act, is duty-bound to pay the amount of tax due before filing the return and if he fails to pay the tax due, then the Commissioner or any other person appointed to assist him can impose penalty to the extent of one and a half times of the amount of tax to which he is assessed or is liable to be assessed under Section 28 of the State Act.

(11) In **J.K. Synthetics Limited versus Commercial Taxes Officer *(Supra)***, the Supreme Court interpreted the expression "tax payable" appearing in Section 11B of Rajasthan Sales Tax Act, 1954 and laid down the following propositions :—

> "Where the assessee omitted to include freight charges in respect of sale of cement in original return filed under Section 7(2A) under *bona fide* belief that freight element did not

form part of sale price for payment of sales tax, however, subsequently, in view of decision reported in AIR 1978 SC 1496 holding that freight element formed part of price of cement and sales tax was leviable on the sale price inclusive of freight amount, the assessee, filed revised returns including freight charges and paid full amount of tax due on basis of return, the assessee is not required to pay interest under S. 11-B on additional sales tax which had to be paid on inclusion of freight amount in calculating the sale price. Under Section 11B before the 1979 amendment the liability to pay interest on unpaid tax amount accrued on the dealer in two situations only viz., (i) failure to pay the tax due under sub-sections (2) and (2A) of S. 7 and (ii) failure to pay the tax within the time allowed by the notice of demand or thirty days from the receipt of the notice by the dealer. Section 11B before its amendment nowhere provided for payment of interest on the unpaid tax amount as found on final assessment from the date of filing of the return under S.7 of the Act. If the amount of tax payable under sub-section (2) is paid on the basis of return, not on the basis of final assessment, there can be no question of payment of interest under clause (a) of section 11B.

Further when Section 11B(a) used the expression tax payable under sub-section (2) and (2A) of Section.7" that must be understood in the context of the aforesaid expressions employed in the two sub-sections. Therefore, the conjoint reading of Sub-sections7(1), (2) and (2A) and 11B of the Act leaves no room for doubt that the expression tax payable in Section 11B can only mean the full amount of tax which becomes due under sub-sections (2) and (2A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under Section 7 of the Act and, therefore, it would be difficult to hold that the tax payable by him is not paid to visit him with the liability to pay interest under clause (a) of Section 11 B. It would be a different matter if the return is not approved by the authority but that is not the case here. It

is difficult on the plain language of the section to hold that the law envisages the assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible."

(12) The ratio of the above-mentioned judgment was applied by the Supreme Court in **Frick India Limited** *versus* **State of Haryana and others** ***(supra)*** and **Maruti Wire Industries Private Limited** *versus* **Sales tax Officer, First Circle, Mattancherry and another** ***(supra)***. The facts of the latter case were that the appellant- company, a dealer, imported inedible tallow and supplied the same in April, 1983, to a factory. The appellant did not collect any amount of sales tax thereon: nor did it file a return of turnover relating to the transaction. The Sales Tax Officer completed the assessment on October 10th, 1984 and served demand notices on the appellant on March 4th, 1985, for payment of penal interest of Rs. 1,85,882.58 under Section 23(3) of the Act for the period May 20th, 1983 (the date by which the return of turnover ought to have been filed accompanies by proof of payment of tax due according to the return) to February 25, 1985. A learned Single Judge of Kerala High Court quashed the demand. On appeal, the Division Bench reversed the order of the learned Single Judge and upheld the demand created by the competent authority, Their Lordships of the Supreme Court took notice of the provisions of Section 23(3) of Kerala General Sales Tax Act, 1963 which provides for levy of penal interest if the tax or any other amount assessed or due under the Act is not paid by the dealer within the time prescribed therefor and held as under:—

"The liability of a dealer under the Kerala General Sales Tax Act, 1963, to pay sales tax can arise either by way of self-assessment on the return of turnover being filed, or else on an order of assessment being made. Failure to file the return of taxable turnover may render the dealer liable for any other consequences or penal action as provided by law but cannot attract the liability of penal interest under Section 23(3) of the Act."

(13) In **Oswal Spinning and Weaving Mills Limited** ***versus*** **State of Punjab** ***(supra)***, a Division Bench of this Court interpreted Sections 10 and 11-D of the Punjab General Sales Tax Act, 1948 and held as under:—

"Thus, an assessee is obliged to pay tax at two stages, once when the return is filed by him and thereafter when the

amount of tax is determined by the Assessing Authority. Payment of voluntary tax is, therefore, dependent on the furnishing of the return and is not independent of it. No time appears to have been prescribed for the payment of voluntary tax except that the tax is to be paid on or before the furnishing of the return. Thus, penalty could be imposed under Section 10(6) or interest could be charged under sub-section (1) of, Section 11-D of the Act when tax was not paid according to the return filed. Payment of tax is, therefore, linked with the filing of the return. Under the scheme of the Act, tax becomes due only when the return is filed or when the tax is assessed or quantified by the Assessing Authority and demand notice is issued."

(14) In the light of the above, we shall now consider whether the order passed by the Assessing Authority for imposing penalty on the petitioner is without jurisdiction and the orders passed by the Appellate Authority and the Tribunal confirming the same are vitiated by an error of law apparent on the face of the record. A perusal of order dated 8th October, 1996 (Annexure P.1) passed by the Assessing Authority shows that the petitioner had justified non-payment of tax by asserting that in the Bill presented before the Parliament, paddy and rice were to be treated as single commodity for the purpose of export and that it was not required to deposit tax in view of the stay order passed by the Supreme Court. The Assessing Authority rejected both the grounds by assigning the following reasons :—

"The contention of the dealer that the Bill has been presented in the parliament to amend the provisions of Section 15 of the CST Act as a result of which paddy and rice are to be treated a single commodity for the pupose of export, accordingly the dealer is entitled to get relief on this point. This contention of the dealer is not acceptable until and unless, the bill takes the form of Act which is only after it is passed by both the Houses of Parliament and the President of India gives assent. In the absence of it, the dealer could not claim any benefit and the claim of paddy will not be applicable. However, the contention of the party that tax has been deposited as per return is also wrong because if the dealer declares any turnover as tax free against the provisions of law, it does not become tax free and the dealer is not absolved of his responsibility to deposit the tax.

The contention of the counsel of the party that the matter is pending before the Hon'ble Supreme Court of India is correct, but the Hon'ble Supreme Court of India has not granted any stay to recover the tax. The stay order of the Hon'ble Supreme Court of India dated 19th January, 1996 in the case of the dealer is only regarding past dues. The tax for the period 1st April, 1996 to 30th June, 1996 cannot be treated as past dues by any stretch of any imagination."

(15) In the appeal filed before the Appellate Authority, the petitioner reiterated the first ground taken before the Assessing Authority and also pleaded that it was not liable to pay tax because Section 15-A of the State Act was contrary to Section 15(C) of the Central Act. It further pleaded that in view of the law laid down by the Supreme Court in **J.K. Synthetics's case *(supra)***, penalty could not be imposed by presuming that non-deposit of tax was intentional. The Appellate Authority dealt with these points and rejected the same be recording the following reasons:—

"The record of the case shows that the appellant has reflected the purchase tax turnover of paddy in his returns but did not pay tax claiming it to be exempted from tax whereas on the other hand, he was liable to pay tax on these purchases in view of the clear decision of our High Court in the case of **M/s United Riceland Limited *versus* State of Haryana.** According to this judgment, no rebate is to be followed of tax paid on paddy, the resultant rice of which has been exported out of India. After this clear decision of the Hon'ble High Court, there was no scope of any doubt or confusion in the mind of the appellant. Since the position regarding the levy of tax on purchase of paddy used in the manufacture of rice exported out of India was clear at the time of filing of this quarterly returns. The appellant should have deposited the tax due on this turnover the appellant cannot be allowed to take shelter of the decision of the Hon'ble Supreme Court of India cited as 94 STC 422 as he had filed incorrect returns just to with hold the tax. It must be borne in mind that it is incumbent upon the appellant to file a true return. No adverse view should be taken in case of incorrect returns if filed under the *bona fide* belief. But if it stand proved that returns filed by the appellant is false, he cannot escape the levy of penalty. this view finds support from the

authority reported by the counsel himself, i.e., **M/s J. K. Synthetics Limited case,** wherein it was held :—

"Undoubtedly the information to be furnished in the return must be correct and complete that is true and complete to the best knowledge and belief, without the dealer being guilty of wilful omission."

The other judgements produced by the appellant are not applicable to the present case as the facts of these cases are different from that of the instant case.

In the present case, the appellant very well know at the time of filing of returns that tax was leviable on the purchase of paddy in view of the clear verdict of the Court. Even then he has filed returns claiming the purchases tax, turnover of paddy as expempt from tax. The appellant thus cannot plead that there was no tax due as per retuns. Since the information furnished by the appellant in the return was not correct and complete to the best of dealer's knowledge, the officer was justified in holding that the tax was due as per returns and since the appellant had failed to deposit that tax along with returns, he was liable for penal action under Section 47 of the State Act, 1973."

(16) Before the Tribunal, the petitioner resurrected the plea that it remained under a bona fide belief that the purchase tax was not paybale on the *paddy* utilised for manufacturing the rice which was exported out of India. Learned counsel appearing for the petitioner argued that on account of the pendency of appeals filed before the Supreme Court agaisnt the judgment of the Full Bench in **M/s United Riceland Limited's case** *(Supra),* the dealer was not liable to pay purchase tax. He further argued that the Assessing Authority had erred in imposing penalty by invoking its power under Section 47 of the State Act ignoring the law laid down by the Supreme Court in the cases of **J.K. Synthetics Limited** *versus* **Commercial Taxes Officer** *(supra)* and **Frick India Limited and another** *versus* **State of Haryana and others** *(supra).* He also claimed that there was a delay of only 7 months in depositing the amount of tax and the needful had been done immediately after the stay order was vacated by the Supreme Court. The Tribunal dismissed the appeal by making the following observations :—

"In this case, the dealer very well knew att he time of filing of return that tax was leviable on the purchase of paddy in

view of the clear decision of Hon'ble High Court in M/s United Receland Ltd. *(supra)* (104 STC 362). There was no occasion for the dealer to have withheld the payment of purchase tax when the Hon'ble High Court decision in M/s United Riceland Ltd. and others was very much there. The dealer should not have claimed exemption from payment of purchase tax in the face of the decision in case M/s United Receland Ltd. We do not find any reason to tone the amount of penalty as it was a deliberate and intentional act on the part of the dealer in withholding the amount of tax and its deposit only when there was no plausible reason for him withhold it."

(17) In our opinion, the impugned orders do not suffer from any jursdictional infirmity or error apparent warranting interference by this Court under Article 226 of the Constitution of India. The petitioner's plea that in view of stay order dated 19th January, 1996 passed by the Supreme Court, it remained under a *bona fide* impression that no purchase tax was paybale on the paddy utlised for manufacturing the rice which was exported out of India is clearly misconceived and is liable to be rejected. In this context, it is appropriate to mention that in the appeal filed against order dated 24th November, 1995 passed by this Court in C.W.P. No. 12776 of 1993 **M/s Jagdamba Rice Mill** *versus* **State of Haryana,** their Lordships of the Supreme Court, while issuing notice on 19th January, 1996, passed the following order :—

"In the meantime, status *quo* as obtaining on this the 19th day of January, 1996 with regard to past dues of the petitioner/ appellant herein which was the subject matter of dispute before the Punjab and Haryana High Court at Chandigarh in Civil Writ Petition No. 12776 of 1993 shall be maintained." (Emphasis added).

(18) A bare reading of the above reproduced order shows that the interim direction given by the Supreme Court was confined to past dues which were subject-matter of litigation before the High Court in C.W.P. No. 12776 of 1993. To put it differently, the stay order passed by the Supreme Court on 19th January, 1996 had nothing to do with the tax payable by the petitioner in future. Therefore, the petitioner's plea that it had laboured under a *bonafide* belief that the purchase tax was not payable in respect of the period from 1st April, 1996 to

30th June, 1996 is wholly untenable and the same cannot be made basis for holding that it was not liable to pay tax on the paddy purchased by it.

(19) The question whether the tax was due on the paddy purchased by the petitioner which was utilised for manufacturing the rice was not debatable in view of the plain language of the relevant provisions of the State Act and in any case, the same was unequivocally answered in the affirmative by the Full Bench in the case of M/s United Receland Limited 's case *(supra)*, which was decided on 17th August, 1995. The Full Bench repelled the challenge to Section 15-A of the State Act and held that the purchase tax was payable on the paddy utilised for manufacturing the rice. In **Satnam Overseas's case** *(supra)*, their Lordships of the Supreme Court partailly reversed the judgement of the Full Bench of this Court, but made it clear that in terms of Section 9(1)(b) of the State Act, the assessee will not be liable to pay tax in the assessment years ending before 1st April, 1991. It is, thus, clear that the Supreme Court had approved the view taken by the Full Bench that purchase tax was payable on the paddy purchase by the dealer on or after 1st April, 1999. Therefore, it is not possible to accept the justification offered by the petitioner for not paying tax due before filing the return for the quarter ending on 30th June,1996.

(20) We are further of the view that the omission on the petitioner's part to pay tax due on 30th June, 1996 amounted to its failure to pay tax within the meaning of Section 47 of the State Act and the Assessing Authority did not commit any illegality by imposing the penalty.

(21) The argument of the learned counsel that the petitioner did not pay the amount of tax in view of Finance Bill, 1996 introduced in the Parliament is wholly unacceptable. In our opinion, the petitioner could not have imagined the final shape of the Act to be enacted by the Parliament and refrain from paying tax by assuming that its liability to pay tax would be liquidated by the amended provision.

(22) No other point has been argued.

(23) In the result, the writ petition is dismissed. However, we leave the parties to bear their own costs.

R.N.R.