

Saraswati Rice and General Mills v. State of Haryana and others
(V. Ramaswami, C.J.)

relief in the writ petition filed by him challenging the award of the Tribunal.

The petitioner thus has become disentitled from assailing the award by his own conduct, and we are not inclined to exercise extraordinary writ jurisdiction in the given facts and circumstances of the case.

5. The result is that preliminary objection holds good and the writ petition in hand is dismissed but without making any order for costs.

R. N. R.

Before V. Ramaswami, C.J. and G. R. Majithia, J.

SARASWATI RICE AND GENERAL MILLS,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 286^A of 1988.

December 2, 1988.

Haryana General Sales Tax Act (XX of 1973)—Ss. 6.15—Registered dealer supplying rice to government under Levy Order—Liability to pay sales tax on such supply—Non-collection of Tax by dealer—Relevancy of.

Held, that there are absolutely no grounds for the petitioner to claim that it was not liable to pay sales tax in respect of levy transaction. The Haryana General Sales Tax Act, imposes a liability on the dealer to pay tax on sales and purchases. It may be that it is entitled to pass on the liability to the purchaser in respect of the sales effected by it, but that is not to say that if the purchaser does not pay the sales tax, the dealer is absolved to pay sales-tax. The remedy against the purchaser is not the concern of the Government when levying sales-tax under the Act. Either the fact that the dealer had not collected the tax or even the non-collection of the tax on the basis of assumption of non-liability of the transaction for sales tax can absolve the dealer from payment of the sales tax. If there had been a *bona fide* dispute or doubt relating to the liability of the transaction for tax it may be relevant ground for imposing

or not imposing penalty but that has no bearing on the liability to tax itself. Even the fact that the purchaser is a Government and the liability to pay tax is on the Government, in our opinion, makes no difference. The liability to pay tax arises under the statute and it has to be complied with. If it has any remedy against the government, that cannot affect the liability to pay tax. In the circumstances, merely on the ground that the petitioner was not able to collect tax from the government, it is not open to it to say that it will not pay sales tax. (Para 5).

Petition under Article 226 of the Constitution of India praying that :—

- (i) *the records of the case be summoned and after perusing the same writ or direction be issued to Respondents No. 1 and 2 to expedite the payment and a writ in the nature of certiorari quashing order Annexure P-1 and the proceedings for assessment year 1985-86 so far as they relate to levy of tax on levy transactions and not to recover the same, and for assessment year 1984-85 the amount of Rs. 23,225-82 ps. be ordered to be refunded with interest.*
- (ii) *Any other writ or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case be issued ;*
- (iii) *the filing of the certified copy of Annexure P-1 be dispensed with ;*
- (iv) *In the facts and circumstances of the case the advance service of the writ petition be dispensed with ;*
- (v) *It is further prayed that pending the writ petition the recovery/imposition of tax for the assessment year 1985-86 be stayed ; and*
- (vi) *That the writ petition be allowed with costs.*

B. K. Jhingan, Advocate, for the petitioner.

S. C. Mohunta, A.G., Haryana, with S. K. Sood, D.A., Haryana, for the respondents.

JUDGMENT

V. Ramaswami, C.J.

(1) In this petition filed under Article 226 of the Constitution, the prayer is for the issuance of a writ of certiorari quashing the assessment order on the petitioner firm under the Haryana General Sales Tax Act, 1973, hereinafter called the Act, for the Assessment Year 1985-86 in so far as it related to levy of tax on the turnover

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relating to supply of rice to the District Food and Supplies Controller, Karnal, which supplies were made in compliance with the procurement orders issued under the Haryana Rice Procurement (Levy) Order 1985 hereafter referred to as the Levy Order, and for a direction to the State of Haryana and the District Food and Supplies Controller, Karnal (Respondents 1 and 2) to pay sales-tax payable in respect of supply of rice under the order issued under the Levy Order and for a declaration that until the State Government pays the sales-tax on the transactions of supply made in pursuance of the Levy Order, the assessing officers are not competent to recover the tax on these levy transactions.

(2) The petitioner is a registered dealer within the meaning of the Act and is also a licenced miller under the provisions of the Punjab Rice Millers Licensing Order. Under the Provisions of the Haryana Rice Procurement (Levy) Order, 1985, which was in force during the Assessment Year 1985-86, the petitioner is required to supply to the purchase officer or such agency as is appointed by the Haryana Government at the procurement price 90 per cent of each variety of common and fine and 75 per cent of each variety of superior fine rice or such percentage as may be specified by the Government from time to time. The Levy Order further stated that the supplier will be paid the price of rice as provided in the Schedule. Schedule III which fixed the procurement price of rice reads as follows :—

SCHEDULE III

Procurement price of rice

Sl. No.	Classification	Prices per quintal
1.	2.	3.
1.	Common (IR 8, Jaya)	Rs. 233.90
2.	Fine (Begmi HM 95)	Rs. 247.60
3.	Superfine [Parmal, Ratna, RP 5-3 (Sona) PR 106 Basmati (Terricot) Pusa 150]	Rs. 256.15

Note : (i) The above prices of rice are for net weight of naked grains inclusive of purchase tax, mandi charges on paddy and depreciation on gunny bags used for packing paddy but exclusive of post of gunny bags and taxes, if any, after ex-mill stage on rice.

(ii) The above prices are applicable to 1984-85 crop of rice.

(3) In the decision reported in *Shiam Lal and others v. The State of Haryana and others*, (1987) 66. S. T. C. 37, a Division Bench of this Court interpreted the Schedule and the Note and held that the price fixed is exclusive of cost of gunny bags and taxes, if any, and the dealers were entitled to add sales-tax payable under the Act to the procurement price so fixed under Schedule III. In fact this position was conceded in the earlier judgment by the Advocate General, Haryana, who appeared in that case and the Advocate General, who now appeared for the respondents in this case also. If there is no dispute that the procurement price fixed under Schedule III of the Levy Order is exclusive of taxes, then we fail to see how the petitioner can have any grievance at all because it will be entitled to add the sales-tax to the procurement price at which it is asked to deliver the rice under the Levy Order. We have already held in C.W.P. No. 1551 of 1988 that after the Constitution (Forty-Sixth Amendment) and the amendment of the Haryana General Sales Tax Act, 1973 by Act No. 11 of 1984, which came into force with effect from February 2, 1983, levy of tax on transactions of supply of rice to the procurement agencies in pursuance of Levy Orders issued by the Government are taxable sale transactions and the dealer is liable to pay sales-tax on the turnover.

(4) Under section 6 of the Haryana General Sales Tax Act, 1973, every dealer whose gross turnover during the year exceeds the taxable quantum shall be liable to pay tax on all sales and purchases effected after the coming into force of the Act. The petitioner is a miller. It is engaged in the business of sale and purchase of paddy and manufacture of rice and sale thereof and its by products. Accordingly, the purchase turnover of paddy and the sale turnover of rice are both liable to be taxed under the provisions of the Act and the liability is on the dealer. Proviso (iii) to section 15, however, provided that in the case of rice procured out of paddy on the purchase of which tax has been levied inside the State, tax leviable on such rice shall be reduced by the amount of tax levied on such paddy. It is this differential tax levied on the dealer in respect of the turnover relating to transactions of supply of rice to the District Food and Supplies Controller that is disputed in this writ petition. Now the question, therefore, which arises for consideration is, as to whether supply and delivery of rice to the Purchase Officer under the Levy Order 1985, is a sale within the meaning of the Haryana General Sales Tax Act, 1973, attracting liability to tax. In a series of decisions, the Supreme Court

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on the basis of the decision in *The State of Madras v. M/s. Gannon Dunkerley & Co. (Madras) Ltd.* (1) has held various transactions, which resemble, in substance, transactions by way of sales to be not liable to sales-tax. It was held in those cases that a transaction in order to be subject to levy of sales tax under Entry 92-A of the Union List or Entry 54 of the State List should have the following ingredients, namely, parties competent to contract, mutual assent and transfer of property in goods from one of the parties to the contract to the other party thereto, for a price. In *New India Sugar Mills Ltd. v. Commissioner of Sales Tax*, the Supreme Court took the view that the transfer of controlled commodities in pursuance of a direction under a Control Order, the element of volition by the seller of mutual assent is absent though it amounts to acquisition and, therefore, there is no sale as defined in the Sale of Goods Act, 1930. As a result of these decisions and some other subsequent decisions, the Constitution itself was amended by the Constitution (Forty-sixth Amendment) Act, 1982, amending Article 366 by inserting a new clause 29-A defining "tax on the sale or purchase of goods" among other things as including "a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration". By Haryana Act No. 11 of 1984, the Haryana General Sales Tax Act, 1973, was amended by making the sale or purchase of goods as including "transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration". The Amending Act was published on April 18, 1984. This amendment relating to sale and purchase was given retrospective operation and they were deemed to have come into force on February 2, 1983. There is no dispute as to the validity of the Amending Act No. 11 of 1984 and there could be no question of its validity either, as the State Legislature could impose a levy of sales-tax retrospectively,—vide the decision of the Supreme Court in *Hira Lal Rattan Lal v. Sales Tax Officer, Kanpur* (2). However, it was sought to be contended that even after the amendment, the levy transactions do not become or purchase on the basis of observation of the Supreme Court in *Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer and others*, (3) and *Associated Cement Co. Ltd. v. Commercial Tax Officer, Kota*

(1) A.I.R. 1958 S.C. 560.

(2) (1973) 31 S.T.C. 178.

(3) (1978) 42 S.T.C. 31.

and others, (4). Both are prior to the amendment of the Constitution and Haryana Act No. 11 of 1984 and no reliance can be placed on those judgments. We also find that a similar argument was rejected by this Court in *Shiam Lal Sunder Lal and others v. The State of Haryana and others*, (5). We do not find any force in the argument after the amendment of the Haryana Act No. 11 of 1984 and this argument has to be rejected. Therefore, there are absolutely no grounds for the petitioner to claim that it was not liable to pay sales-tax in respect of the levy transaction for the Assessment Year 1985-86 which covers the period from April 1, 1985 to March 31, 1986. Therefore, all those writ petitions relating to Assessment Year 1985-86 and subsequent Assessment Years are liable to be dismissed.

(5) We have already pointed out that the Act imposes a liability on the dealer to pay tax on sales and purchases. It may be that it is entitled to pass on the liability to the purchaser in respect of the sales effected by it, but that is not to say that if the purchaser does not pay the sales tax, the dealer is absolved to pay sales-tax. The remedy against the purchaser is not the concern of the Government when levying sales-tax under the Act. Either the fact that the dealer had not collected the tax or even the non-collection of the tax on the basis of assumption of non-liability of the transaction for sales-tax can absolve the dealer from payment of the sales-tax. If there had been a *bona fide* dispute or doubt relating to the liability of the transaction for tax it may be a relevant ground for imposing or not imposing penalty but that has no bearing on the liability to tax itself. Even the fact that the purchaser is a Government and the liability to pay tax is on the Government, in our opinion, makes no difference. The liability to pay tax arises under the statute and it has to be complied with. If it has any remedy against the Government, that cannot affect the liability to pay tax. In the circumstances, merely on the ground that the petitioner was not able to collect tax from the Government, it is not open to it to say that it will not pay sales-tax. Nor, can we direct the Government to pay the money to the petitioner in these proceedings. We may, however, state that it appears that the petitioner made a representation to the State Government and the Central Government and the Food Corporation of India has decided to reimburse the

(4) (1981) 48 S.T.C. 466.

(5) (1987) 66 S.T.C. 37.

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payment of differential sales-tax on levy rice to the millers wherever the assessing authorities have finalised assessments subject to the following conditions :—

- (1) The D.F.S.C. concerned is required to submit their claims for reimbursement of the differential tax on levy rice, party-wise, duly supported by the (i) Assessment order, (ii) tax paid receipt, and (iii) a certificate from the Haryana State Taxation Department indicating *inter alia* (a) The tax paid by the dealer on paddy and differential amount of tax levied on him on levy rice as also on levy free rice and (b) the quantity and price of paddy procured by the dealer and the quantity and value on which levy rice was delivered by the dealer to the State Government.
- (2) Penalty/penalties imposed by the Assessing Authority, if any, is not be reimbursed.
- (3) The element of incidentals included in the computation of tax is to be ignored as no tax is to be paid on it.
- (4) The reimbursement of tax would be to the extent of differential tax paid by the dealers on the levy price only.
- (5) No interest due to delay in the reimbursement/payment of the differential tax on levy rice is to be paid.

We have no doubt that if the conditions are fulfilled, the dealers will be reimbursed the differential tax paid in respect of the Assessment Year 1985-86 and subsequent Assessment Years. So far as penalty, interest and liability of sales-tax on *bardana* is concerned, which are also raised in this petition, we are of the view that the petitioner shall exhaust its remedies under the Act by way of appeal and revision and come to this Court on reference if it have not got any remedy, but we cannot interfere with these matters in a petition filed under Article 226 of the Constitution. In fact the Sales Tax Act is a compendious code itself and the remedies provided thereunder are effective and we cannot encourage this practice of coming direct to this Court without exhausting the remedies provided under the Act. The reliefs relating to the same are, therefore, relegated to the remedies under the Act.

(6) For the foregoing reasons, this writ petition fails and is dismissed. However, there will no order as to costs.

S. C. K.