

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5712 OF 2009

(Arising out of S.L.P. (C) No. 9713 of 2008)

Food Corporation of India

.... Appellant(s)

Versus

State of Punjab

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) Leave granted.

2) This appeal by Food Corporation of India (in short “FCI”) is directed against the judgment and order of the High Court of Punjab & Haryana at Chandigarh dated 08.02.2007 in G.S.T.R. No. 16 of 1991 by which the High Court disposed of the reference made by the Sales Tax Tribunal. It returned the first question unanswered and answered the second question in favour of the assessee.

3) The appellant, a Statutory Corporation, engaged in the purchase and sale of foodgrains, is an assessee registered under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as "the Act") at Amritsar. The appellant filed its quarterly returns in forms ST-XIII and ST-VIII-A showing gross turnovers at Rs.76,26,49,211.19 and Rs.5,88,00,715.78 respectively. Deductions were claimed in respect of sales of tax free goods and sales made to the registered dealers. Dissatisfied with the returns filed, the Assessing Authority issued statutory notice in form ST-XIV under Section 11(2) of the Act requiring the appellant to produce their accounts. In response to the said notice, the appellant appeared before the Assessing Authority and produced the accounts. After examining the accounts, the Assessing Authority, Amritsar, vide its order dated 20.1.1983 rejected the same and issued an additional demand of Rs.1,84,58,291/- including the penalty. Against the order of the Assessing Authority, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner. By order dated 16.11.1983, the Deputy Excise and Taxation Commissioner partly allowed the appeal and

remanded the case to the Assessing Authority for a fresh decision after affording reasonable opportunity of being heard to the appellant. Dissatisfied with the said order, the appellant filed an appeal before the Sales Tax Tribunal. The Sales Tax Tribunal vide its order dated 22.11.1984 dismissed the same. The appellant filed a further petition before the Tribunal under Section 22(1) of the Act for referring the questions involved to the High Court for its opinion. On 4.11.1986, the Tribunal rejected the petition of the appellant on the ground that the matter was already under consideration of the High Court and the decision taken on this point would become applicable on all such cases. Feeling aggrieved, the appellant filed a petition under Section 22(2) of the Act before the High Court praying to direct the Tribunal to refer the questions to the High Court for its opinion. Vide its order dated 27.09.1988, the High court directed the Tribunal to send the case and refer the questions for its opinion. In compliance of the said order, the Tribunal by order dated 15.09.1989 referred two questions of law for the opinion of the High Court which are as under:

- “1) Whether in the facts and circumstances of the case, the expenses incurred by the State or Agencies of the Food Corporation of India after acquiring or purchasing the goods before delivery to the petitioner-dealer could form part of gross turnover and be subjected to tax?
- 2) Whether in the facts and circumstances of the case, could the market fee be included in the purchase turnover in view of (1980) 46 STC 477 **(Anand Swarup Mahesh Kumar vs. Commissioner of Sales Tax)?”**

The High Court by the impugned order dated 08.02.2007 concluded that the first question did not emerge from the order of the Tribunal there being no factual basis available, returned the question unanswered. In respect of the second question, the High Court concluded that the same was covered by the judgment of this Court in **State of Punjab & Ors. vs. Guranditta Mal Shauti Prakash & Ors.**, (2004) 136 STC 12 and accordingly answered the question in favour of the assessee. Aggrieved by the said order, the appellant – FCI preferred this appeal by way of special leave before this Court.

4) We heard Mr. Y. Prabhakara Rao, learned counsel appearing for the appellant and Mr. Ajay Pal, learned counsel appearing for the respondent.

5) Since the second question of law referred to the High Court is covered by the judgment of this Court and not disputed by both sides, we are left with the first question being referred to the High Court. As said earlier, the High Court by the impugned order, after finding that the first question does not emerge from the order of the Tribunal there being no factual basis returned the same unanswered. Learned counsel appearing for the appellant pointed out that the High Court committed an error in returning the first question referred to it by the Tribunal unanswered when the said question was referred by the Tribunal on the specific direction of the High Court in Sales-Tax case No. 4 of 1987 dated 27.09.1988. He also pointed out that such reference was made on a specific direction by the earlier Bench under Section 22(2) of the Act and therefore the High Court ought not to have avoided or declined the said question. The counsel also pointed out that enough material/factual basis was available in the order passed by the Assessing Officer as well as the Tribunal, hence, the High Court erred in observing that there was no factual basis for the first question. On the other hand, learned

counsel appearing for the respondent – State of Punjab supported the decision of the High Court and prayed for dismissal of the appeal.

6) It is relevant to mention that when the FCI filed an application for reference, pointing out certain questions of law for adjudication to the High Court arising out of the order of the Sales Tax Tribunal dated 22.11.1984, by order dated 04.11.1996, the Sales Tax Tribunal dismissed the said application holding that these questions need not be referred to the High Court. Aggrieved by such decision, the FCI moved the High Court in STC Case No. 4 of 1987 praying to direct the Sales Tax Tribunal to refer to the High Court the questions of law which arose out of the aforesaid order of the Tribunal. Pursuant to the said petition, the High Court, by order dated 27.09.1988, passed the following order:-

“V. Ramaswami, C.J. (Oral)

We are satisfied that the following questions of law do arise out of the order of the Tribunal and accordingly we direct the Tribunal to state a case and refer the questions for its opinion:-

1. Whether in the facts and circumstances of the case, the expenses incurred by the State Agencies of the Food Corporation of India after acquiring or purchasing

the goods before delivery to the petitioner-dealer could form part of gross turn over and be subjected to tax?

2. whether in the facts and circumstances of the case, could the Market fee be included in the purchase turnover in view of 46-STC-477?

Sd/-
V. Ramaswami.
Chief Justice

Sd/-
G.R. Majithia
Judge.

September 27, 1988”

It is clear from the above order that the Division Bench of the High Court, after satisfying itself, with reference to the questions of law to be determined directed the Tribunal to state the relevant case and refer the questions for the opinion of the High Court. In view of the specific order/direction of the High Court, the Sales Tax Tribunal, Punjab has no other option but to refer the same to the High Court and by order dated 15.09.1989 rightly referred it. In those circumstances, as rightly pointed out by counsel for the appellant, we are of the view that unless there were very clear reasons, the High

Court could not have held that there was no material available in the order of the Tribunal for considering the same.

7) Now let us see whether any factual basis/materials were available in the order of the Tribunal for determining the question posed before the High Court. The counsel for the appellant took us through the order of the Assessing Authority as well as Sales Tax Tribunal. A perusal of the orders of the Assessing Authority, Amritsar, (Annexure-P1) and of Sales Tax Tribunal clearly show that all the factual details pertaining to the first question of law were highlighted and placed for appropriate orders.

8) The Assessing Authority on 20.01.1983 assessed the Appellant-Corporation and made an additional demand of Rs. 1,84,58,291/- including the penalty. In its judgment, the Authority made it clear that it considered the question whether the incidental expenses would be included in the assessment of the tax. The order states as under:

“The representative of the dealer argued that the expenses so incurred are purely service charges and these do not formed [sic.] a part of consideration and hence the same should not be taxed. I am of the view that these expenses includes market fees, dami and labour charges, which form the part and parcel of the bill and hence are the part of

consideration, so the plea of the representatives of the Corporation is not taxable.”

9) Subsequently, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) Jalandhar, wherein it specifically contended that market fee and dami were not part of the turnover. Insofar as market fee was concerned, reliance was placed on the decision of this Court in **Anand Swarup Mahesh Kumar (supra)**. In regard to dami (commission paid), it was contended that such expenses should not be included in the taxable turnover. The Appellate authority noticed the said contention, but rejected the same vide order dated 16.11.1983.

10) We are satisfied that the question of law that arose for decision of the High Court was whether in the facts and circumstances of the case, the incidental charges could be treated as a part of taxable turnover and if that is so, as to what should be the correct rate at which the said incidental charges should be calculated. Further, it was brought to our notice that the appellant-Corporation had paid the required tax for the Assessment Year 1975-76 as demanded within the time specified in the demand notice. In the same manner,

when on 28.03.2001, the Excise and Taxation Officer had asked the appellant-Corporation to deposit an amount of Rs. 29,52,874.15 before 30.03.2001, the Corporation had deposited the said amount on 28.03.2001. As by this order, we propose to request the High Court to decide the first question afresh, there is no need to elaborate upon the same except holding that adequate materials as well as factual details are available for determination of the first question of law referred to the High Court.

11) In the light of the above discussion, we set aside the order of the High Court insofar as it relates to the first question of law and remit the same to it with a request to answer the same referred to by the Sales Tax Tribunal, after affording opportunity to both parties, and pass fresh order in accordance with law as expeditiously as possible. To this extent, the impugned order of the High Court is modified. The Civil Appeal is partly allowed. No costs.

.....J.
(R.V. RAVEENDRAN)

.....J.
(P. SATHASIVAM)

NEW DELHI;
AUGUST 21, 2009.

