

CASE NO.:
Appeal (civil) 1072 of 2008

PETITIONER:
State of Punjab & Others etc.etc

RESPONDENT:
M/s. Perfect Synthetics etc.etc

DATE OF JUDGMENT: 07/03/2008

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.1072 OF 2008

KAPADIA, J.

This civil appeal filed by the State of Punjab is directed against judgment and order dated 4.7.06 passed by Punjab and Haryana High Court in CWP No.2271 of 2006 by which it has been held that the assessee was entitled to deduction under Rule 29(xii) of the Punjab General Sales Tax Rules, 1949 (for short, "1949 Rules").

2. Respondent-assessee M/s. Perfect Synthetics is a partnership firm engaged in the business of purchase, sale and manufacturing of yarn. In this civil appeal we are concerned with assessment year 2001-02. Assessee is registered under Punjab General Sales Tax Act, 1948 (for short, "1948 Act"). Assessee claims that after purchasing raw-material from exempted units within the State it has used the same in the manufacture of yarn, majority of yarn being sold in the course of intra-state sales and tax on finished goods being paid. Some of the units from whom the assessee purchased raw-material stood exempted from payment of tax under Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short, "1991 Rules").

3. It is the grievance of the assessee that in calculating its taxable turnover, in terms of Rule 29(xii) of the 1949 Rules, deduction is not being allowed by the Department on the ground that the goods purchased by the assessee are liable to tax at the first stage of sale and since no tax on purchase of raw-material from exempted units has been paid the assessee is not entitled to deduction under Rule 29(xii) of the 1949 Rules.

4. Therefore, the short controversy which arises for determination in this appeal is :
"Whether the assessee is entitled to deduction, from gross turnover, the purchase value of the raw-material which the assessee bought from exempted units?"

5. According to appellant, the assessee is not entitled to such deduction as the said purchase value is not subjected to tax at the first stage of sale as the raw-material is purchased from the exempted units. According to appellant, only the purchase value which stood subjected to tax at first stage of sale under Section 5(1-A) of the 1948 Act is entitled to

deduction under Rule 29(xii) of the 1949 Rules.

Scheme of the Act

6. Section 4 of the 1948 Act is the charging section which provides for levy of tax. Section 5(1-A) of the 1948 Act enables the State Government to specify certain goods, tax on which is leviable at the first stage of sale thereof. Under Section 5(1-A) the State Government is empowered to issue notification specifying the goods on which the tax under sub-section (1) had to be levied at the first stage of sale thereof. Such notification was issued in the present case on 25.7.90 which is reproduced hereinbelow:

"Notification dated 25.7.1990

Punjab Government

Notification No. SO 38/P.A. 46/48 S-5/90 dated 25.07.1990

Published in Punjab Government Gazette ordinary,

Dated 25.07.1990.

In exercise of the powers conferred by sub-Section (1-A) of Section 5 of the Punjab General Sales Tax Act, 1948 (Punjab Act No.46 of 1948), the President of India is pleased to direct that with effect from the date of publication of this Notification in the Official Gazette, the tax under sub-section (1) of the said Section shall be levied at the first stage of the sale of goods other than declared goods manufactured and sold by a dealer who has been allowed the benefit of deferment of or exemption from the liability to pay tax under Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 and which stage in his case shall be the stage of sale when such dealer sells the goods from the premises of his manufacturing industrial unit for the first time in the State of Punjab."

7. Section 5(2) of the 1948 Act provides for definition of the word "taxable turnover" to mean part of the dealer's gross turnover which remains after deducting therefrom the dealer's turnover during the relevant period on such other sales or purchases as may be prescribed.

8. We quote hereinbelow Section 5(2)(a)(vii) which reads as follow:

"5. Rate of tax:-

(2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period, which remain after deducting therefrom -

(a) his turnover during that period on -

(vii) such other sales or purchases as may be prescribed;"

9. We quote hereinbelow Rule 29(xii) of the 1949 Rules which reads as under:

"RULE-29: IN CALCULATING HIS TAXABLE TURNOVER A REGISTERED DEALER MAY DEDUCT FROM HIS GROSS TURNOVER

(xii) The purchase value of goods which have already been subjected to tax under section 5(1-A) or section 5(3), as the case may be used or consumed by him in manufacture in Punjab of goods other than goods

declared tax free under section 6 for sale:

- (i) in Punjab;
- (ii) in the course of inter-State trade or commerce;
- (iii) In the course of export out of territory of India;

Provided that the dealer produces copies of cash memos or bills prescribed under rule-55A at the time of assessment or when called upon to do so, by notice, by the competent authority under the Act."

10. Section 30-A of the 1948 Act enables the State Government to exempt any class of industries from payment of tax subject to such conditions as may be prescribed. In exercise of powers conferred under Section 30-A, the State Government has framed the 1991 Rules providing for various benefits of exemption from payment of tax and the conditions thereof. In this connection, it is important to note that exemption is given to the dealers and not to the goods. The quantum of exemption to the unit is based on three factors, namely, capital invested, area in which the unit was located and the nature of industry. Rule 5 of the 1991 Rules provides for a mode of availing benefit of exemption.

11. We quote hereinbelow Rule 9(1), (2) and (3) of the 1991 Rules which read as under:

"RULE 9: RETURN, ASSESMENT ETC.

(1) The unit holding deferment or exemption certificate shall continue to file the return in the manner specified under the Act and the rules made thereunder.

(2) Notwithstanding anything contained in these rules, the unit holding deferment or exemption certificate issued under these rules, shall attach an attested copy of deferment or exemption certificate, as the case may be, in lieu of proof of payment of tax alongwith the return till the deferred or exempted amount of tax is fully availed of or the period of deferment or exemption expires under these rules, whichever is earlier.

(3) The assessment of an eligible unit in respect of which deferment or exemption certificate has been granted shall be made in accordance with the provisions of the Act and the rules made thereunder as early as possible and shall be completed by the 31st day of December in respect of the assessment year immediately preceding there to and the additional demand so determined, if any, shall be paid as per the provisions of the Act and the rules made thereunder."

ISSUE

12. The question which arises for determination in this civil appeal is:

"What is the meaning of the words "the purchase

value of the goods which have been subjected to tax under Section 5(1-A) in Rule 29(xii)?

FINDINGS

13. According to the Department, the words "subjected to tax" in Rule 29(xii), quoted above, would mean goods which had suffered the tax under that section. In that connection the Department has placed reliance on the judgment of the Constitution Bench of this Court in the case of *M/s. Gannon Dunkerley and Co. and ors. v. State of Rajasthan and ors.* \026 (1993) 1 SCC 364 in which Rule 29(2) of Rajasthan Sales Tax Rules came to be interpreted.

14. We find no merit in the said argument of the Department. In this connection, we have to construe the scheme of the 1948 Act. As stated above, Section 4 is the charging section whereas Section 5(1-A) indicates the point at which the levy takes place. The said "1948 Act" refers to single point levy of tax on the first sale. The Notification dated 25.7.1990 specifically incorporates the provisions of Rule 9 of the 1991 Rules which requires the unit holding exemption certificate to file the return under the Act and for the assessment of an eligible unit in respect of which exemption certificate has been granted. The said notification read in entirety thus indicates the exemption given to the eligible unit under the Act is only qua the payability. The said exemption to the eligible unit is not in the matter of assessment. The reason is obvious. The exemption is granted to the unit for 10 years or till the exemption entitlement gets exhausted, whichever is earlier. Therefore, under the notification, exemption is only qua payability and not in respect of assessment. That is the reason for incorporating Rule 9 into Notification dated 25.7.1990 which requires the eligible unit to file its returns in the manner specified under the Act, to attach requisite documents and for assessment in accordance with the provisions of the Act. Even with regard to payability, it may be noted that, under the scheme of the 1948 Act, the calculated tax gets appropriated towards the scheme entitlement. Taking this linkage into account, we are of the view that the words "subjected to tax" cannot be equated to the words "having suffered tax". There is one more point to be noted. Section 5(1) of the 1948 Act refers to rate of tax whereas Section 5(1-A) refers to the stage at which the tax is to be levied. As stated above, Section 5(1-A) refers not only to the stage of sale at which the tax is to be levied, it also refers to the issuance of notification by the State Government on which date alone the tax becomes leviable. Therefore, the scheme of 1948 Act is different from the scheme of Section 5(1) of Rajasthan Sales Tax Act, 1954 considered by the Constitution Bench of this Court in *Gannon Dunkerley (supra)*. Section 5(1) of Rajasthan Sales Tax Act, 1954 referred only to the rate of fixation and not to the stage of taxation. One more distinguishing feature which is required to be mentioned is that under Section 30-A read with Rule 4 and Rule 4-A of 1991 Rules, exemption is given to the dealer/unit whereas Rule 29(xii) of 1949 Rules framed under 1948 Act gives deduction to the goods. Since the said Rule 29(xii) refers to the purchase value of the goods which stood subjected to tax it becomes clear that under the scheme of 1948 Act even the eligible unit has to be assessed to tax. Under that assessment, the Department had to compute the tax liability. The Department had to compute the amount of tax payable by the eligible unit as such tax has to be appropriated towards the exemption entitlement. Therefore, the words used in Rule 29(xii) are "the purchase value of goods

which had been subjected to tax under Section 5(1-A)". Hence, we cannot equate the scheme of 1948 Act and the Rules framed thereunder with the scheme of the Rajasthan Sales Tax Act, 1954.

15. Before concluding we may refer to the judgment of the Constitution Bench of this Court in the case of M/s. Gannon Dunkerley and Co. and ors. V. State of Rajasthan and ors. (supra). In that case it was held that the goods, on which no tax was leviable under Section 5(1) of Rajasthan Sales Tax Act, 1954, were not subjected to any tax and, therefore, there was no question of such goods having suffered tax at the rates prescribed under Section 5 of the said Act. We quote hereinbelow paras 68 and 69 of the said judgment which read as under:

"68. The constitutional validity of a statute has to be determined on the basis of its provisions and on the ambit of the operation as reasonably construed and if, so judged, it does not pass the test of constitutionality it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. [See: Collector of Customs v. Nathella Sampathu Chetty \026 (1962) 3 SCR 786] The rules framed under the Rajasthan Sales Tax Act would not, therefore, be of any assistance in resolving the question regarding the validity of Section 5(3). We have, however, examined the rules that have been framed and we find that they do not improve the position. The relevant provisions in this regard are contained in sub-rule (2) of Rule 29 of the Rajasthan Sales Tax Rules which makes provision for deductions from the turnover in the case of a works contract. The said sub-rule (2) contains two clauses. Clause (i), which is referable to the proviso to sub-section (3) of Section 5, provides for deduction of the value of the goods transferred in execution of works contract, whether as goods or in some other form, which have already suffered tax at the rates prescribed by Section 5 or which are exempted from tax under Section 4. Clause (ii) is referable to Explanation (i) of Section 2(t) and it provides for deduction of all sums towards labour charges, which are directly co-related with the goods, property in which has passed in the execution of works contract, whether as goods or in some other form.

69. Shri Krishnamurthy Iyer, the learned counsel appearing for the State of Rajasthan, has submitted that the words "which have already suffered tax at the rates prescribed under Section 5" are wide enough to permit deduction in respect of goods on which no tax is leviable under sub-section (1) of Section 5 of the Act, namely, sales in the course of inter-State trade or commerce or sales outside the State or in the course of import and export as well as sales of goods which have been declared to be of special importance in the course of inter-State trade or commerce under Section 14 of the Central Sales Tax Act and are governed by Section 15 of the said Act. We find it difficult to accept this contention. The words "which have already suffered at the rates prescribed under Section 5" only refer to the goods which have already been subjected to tax under the Act at the rates specified under Section 5, and their value is to be excluded from the turnover. The goods on which no tax is leviable under sub-section (1) of Section 5 are not subject to any tax under the Act and there is

no question of such goods having suffered tax at the rates prescribed under Section 5. In this context we may again refer to the definition of taxable turnover contained in Section 2(s) of the Rajasthan Sales Tax Act wherein provision is made under clauses (i) to (iv) for deduction from the turnover for arriving at the taxable turnover. Clause (i) refers to sale of goods "on which no tax is leviable under this Act" and clause (ii) refers to sale of goods "which have already been subjected to tax under this Act." These clauses show that the legislature has made a distinction between a sale of goods on which no tax is leviable and a sale of goods which has already been subjected to tax under the Act. Clause (i) of sub-rule (2) of Rule 29 is a provision similar to that contained in clause (ii) of Section 2(s). It is, therefore, not possible to construe clause (i) of sub-rule (2) of Rule 29 to mean that sales on which no tax is leviable under sub-section (1) of Section 5 are to be excluded from the turnover for the purpose of computing tax on such turnover in relation to a works contract."

16. It is important to note that under Rule 29(2) of the Rajasthan Sales Tax Rules, 1955, provision was made for deduction from the turnover in the case of a works contract. Sub-rule (2) contained two clauses. Clause (i) referred to the proviso to Section 5(3) which inter alia provided for deduction of the value of the goods transferred in execution of works contract which had suffered tax at the rates prescribed by section or which stood exempted from tax under Section 4. Clause (ii) referred to Section 2 and it provided for deduction of labour charges. In this case, we are concerned only with clause (i) which provided for deduction of value of goods transferred in execution of works contract which had suffered tax at the rates prescribed by Section 5. The underlined sentence is relied upon by the learned counsel appearing on behalf of the Department to contend that the present case is similar to the case of *M/s. Gannon Dunkerley (supra)*. We do not agree with this contention. It is important to note that Rule 29(2) of the Rajasthan Sales Tax Rules, 1955 used the words "goods which had suffered tax at the rates prescribed under Section 5". Therefore, Section 5 of the Rajasthan Sales Tax Act, 1954 dealt with only the rate of tax. Therefore, Section 5 of the Rajasthan Sales Tax Act, 1954 contemplated only rate fixation and not to the stage of taxation whereas in the present case, we are concerned with Section 5(1-A) of 1948 Act which, as stated above, refers to the stage at which the tax has to be levied, namely, first stage of sale. Moreover, the expression "which had already suffered tax" is not there in Rule 29(xii) of 1949 Rules. In fact, Rule 29(xii) does not say the goods should have suffered tax or the tax should have been paid or that the goods had been subjected to tax under Section 4 or under the said Act and, therefore, the scheme of the Act in question is quite different from the scheme of Rajasthan Sales Tax Act, 1954. Therefore, in our view the judgment of the Constitution Bench in *M/s. Gannon Dunkerley (supra)* has no application to the facts of the present case. For the same reasons, the judgment of the Division Bench of this Court in the case of *State of M.P. and ors. v. Indore Iron & Steel Mills Pvt. Ltd.-(1998) 6 SCC 416* has also no application to the present case.

17. For the aforesaid reasons, we find no infirmity in the impugned judgment. Hence, this civil appeal is accordingly dismissed with no order as to costs.