

CASE NO.:
Appeal (civil) 3751-3760 of 1999

PETITIONER:
GOODYEAR INDIA LTD. APPELLANT

Vs.

RESPONDENT:
STATE OF HARYANA & ORS. RESPONDENTS

DATE OF JUDGMENT: 20/07/2001

BENCH:
S.P. Bharucha, N. Santosh Hegde & Y.K. Sabharwal

JUDGMENT:

Y.K. Sabharwal, J.

The question for decision in these appeals is whether the sales tax authorities can raise demands on the assessee on the basis of reassessment orders when the original assessment orders for the same assessment years and for the same turnover have been held to be valid. The facts relevant for the appeals are:

The assessing authority under the Haryana General Sales Tax Act, 1973 (for short 'the Act') passed assessment orders levying on the appellant purchase tax under Section 9 of the Act for the assessment years 1973-74 to 1977-78 on the dispatches made by the appellant of its manufactured goods to various depots outside the State. The assessment orders were made between the year 1979 and 1981.

The assessment orders were made under Section 9 of the Act read with a notification dated 19th July, 1974. Section 9 of the Act provided that where a dealer purchased goods within the State and used them in the manufacture of other goods which were then exported from the State otherwise than by way of interstate sale, in circumstances in which no tax was payable under the provisions of the Act, there would be levied a tax on purchase of such goods at such rate as may be notified under Section 15. In exercise of the powers conferred by Section 9 and sub-section (1) of Section 15 of the Act, a notification dated 19th July, 1974 was issued prescribing the rate of purchase tax. The assessment orders and also the constitutional validity of the notification dated 19th July, 1974 were challenged by the appellant in several writ petitions filed in the High Court. The writ petitions in respect of assessment years 1976-77 and 1977-78 were allowed by the High Court of Punjab and Haryana by judgment dated 4th December, 1982 reported in Goodyear India Ltd. v. The State of Haryana & Anr. [53 STC 163]. The High Court held the impugned notification to be ultra vires. As a consequence of the quashing of the notification, the assessment orders were also set aside. The High Court, however, observed that the judgment will not preclude the assessing authority to pass orders of reassessment ignoring altogether the provisions of the impugned notification. The operative portion of the judgment reads thus :
"As a necessary consequence of the quashing of the notification, the assessment orders are also set aside. This, however, would in no way preclude the Assessing Authority to reassess

the matter ignoring altogether the provisions of the impugned notification."

This judgment was challenged by the State of Haryana by filing a special leave petition in this Court. At the same time, on 13th January, 1983, the Haryana Legislature also enacted the Haryana General Sales Tax (Amendment and Validation) Act, 1983 amending Section 9 of the Act and retrospectively validating the notification dated 19th July, 1974. These amendments were challenged in the writ petitions filed in the High Court by M/s.Bata India Ltd. The High Court upheld its earlier view in the case of Goodyear India Ltd. and held that the retrospective validation of the notification and the consequential validation of all actions taken thereunder were liable to be quashed. The decision of the High Court is reported in Bata India Ltd. & Anr. v. The State of Haryana & Anr. [54 STC 226]. The writ petitions of the appellant challenging the assessment orders for the assessment years 1973-74 to 1975-76 and 1980-81 were also allowed and these assessment orders were quashed. This Court while granting special leave petitions, by an interim order, directed the State Government to refund the tax collected by it in four equal instalments. Further, during the pendency of the appeals in this Court, a Full Bench comprising of three Judges of the Punjab and Haryana High Court in the case of Des Raj Pushp Kumar Gulati v. State of Punjab [58 STC 393] considered the correctness of the view taken in the case of Bata India Ltd. and by judgment dated 24th June, 1985 setting aside the said view held that the levy of the purchase tax was constitutional and valid.

On 20th October, 1986, the assessing authority passed reassessment orders for the assessment years 1973-74 to 1977-78 charging purchase tax without giving effect to the notification dated 19th July, 1974 on the basis that the said notification has been quashed by the High Court in the aforementioned case reported in Goodyear India Ltd. v. State of Haryana & Anr. [53 STC 163]. These orders of reassessment were challenged by the appellant by filing writ petition Nos.6646, 6664 to 6667 of 1986 in the High Court of Punjab and Haryana. These writ petitions were admitted and recovery of tax pursuant to reassessment orders was stayed.

This Court by judgment dated 19th October, 1989 reported in Goodyear India Ltd. v. State of Haryana & Anr. etc. [76 STC 71=(1990) 2 SCC 71] affirmed the view taken in Goodyear's case and Bata India Ltd.'s case by the Punjab and Haryana High Court and held that the levy of purchase tax was unconstitutional, further holding that the view expressed in Des Raj Pushp Kumar's case was not correct.

The correctness of the view expressed in the aforesaid decision in Goodyear's case came to be examined by a three Judges Bench of this Court in the case of Hotel Balaji & Ors. v. State of Andhra Pradesh & Ors. [(1983) 88 STC 98] and the view taken therein was departed. It was held that Goodyear's case was not correctly decided.

As a result of the decision in Hotel Balaji's case, the State of Haryana filed Review Petition (C) No.185-91 of 1993 seeking review of the aforementioned judgment dated 19th October, 1989 in Goodyear's case. The review petition was allowed by this Court on 17th November, 1994 and the judgment under review was set aside. The result was that the judgment of the High Court quashing the notification dated 19th July, 1974 as also the assessment orders was reversed.

The High Court by judgment dated 11th December, 1996 dismissed writ petition Nos.6646, 6664-67 of 1986 and upheld the reassessment orders for the assessment years 1973-74 to 1977-78. The review petition filed by the appellant was also dismissed by the High Court on 29th January, 1999.

In these appeals the appellant has challenged the correctness of the judgments of the High Court dated 11th December, 1996 and 29th January, 1999.

The effect of what has been noticed above is that now there are two sets of assessment orders for same assessment years. One - the original orders of assessment validity whereof has been upheld on

review petition of State of Haryana being allowed by this Court on 17th November, 1994. Second - the reassessment orders as a result of the impugned judgment of the High Court whereby the challenge of the appellant to the reassessment orders has failed despite original orders of assessments for same years having been held to be valid.

For the same assessment year with same turnover there cannot be two sets of assessment orders - the original assessment order as also the reassessment order. It is neither disputed for the respondents nor can it be disputed that under these circumstances, two orders of assessment cannot stand - either the original orders of assessment would stand or the reassessment orders.

It is no doubt true that the orders for reassessment were passed by the assessing authority in view of the declaration of invalidity of original orders of assessment and the liberty given to the revenue to reassess the matter ignoring the provisions of the notification in terms of the decision dated 4th December, 1982 setting aside the assessment orders and quashing the notification. The contention on behalf of the appellant, however, is that as a result of the review petition filed by the State being allowed by this Court the original assessment orders stand restored and revived. We find force in the argument. As a consequence of the revival and restoration of the original orders of assessment, the authorities cannot base their demand on the orders of reassessment. The reassessment orders may have been valid when made but on restoration and revival of the original orders of assessment, in the circumstances as aforesaid, the State can recover tax calculated on the basis only of the original orders of assessment and is precluded from raising any demand of tax based upon the reassessment orders. The respondents cannot now rely upon the orders of reassessment.

In the aforesaid situation, learned counsel for the respondents contends that the State is entitled to recover from the appellant the amounts that were refunded pursuant to the order of this Court on the special leave petitions. There necessarily will have to be a process of accounting and the appellant will have to pay what is found to be due thereafter. Learned counsel for the respondents also seeks interest for the period the amounts remained with the appellant. We need not go into this question. The question of interest is a matter of accounting between the parties which aspect will be gone into and decided by the assessing authority in the light of this decision and according to law.

For the foregoing reasons, the appeals are allowed and the impugned judgments of the High Court dated 11th December, 1996 and 29th January, 1999 are set aside and the orders of reassessment are quashed. In the facts and circumstances of the case, parties are left to bear their own costs.

.....J.
[S.P. Bharucha]

.....J.
[N. Santosh Hegde]

.....J.
[Y.K. Sabharwal]
New Delhi;
July 20, 2001.

JUDIS