REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3463 OF 2003

M/S UNITED RICELAND LTD. — APPELLANT

VERSUS

STATE OF HARYANA & ANR. — RESPONDENTS

J U D G M E N T

D.K. JAIN, J.:

1. This appeal, by special leave, is directed against the judgment dated 3rd August, 2000 delivered by the High Court of Punjab and Haryana, whereby the writ petition filed by the appellant herein, questioning the Constitutional validity of Haryana General Sales Tax (Amendment) Act 9 of 1993 (for short "Act 9 of 1993"), substituting Section 15-A in the Haryana General Sales Tax Act, 1973 (for short "the Act") retrospectively w.e.f. 27th May, 1971, has been dismissed.

2. The appellant (hereinafter referred to as "the dealer"), a registered dealer under the Act, was engaged in the business of purchase and dehusking of paddy to produce rice, in the State of Haryana. Rice so produced was exported outside the country within the meaning of Section 5 of the Central Sales Tax Act, 1956 (for short "the CST Act"). The present appeal relates to the assessment year 1990-91. The turnover of the paddy purchased by the dealer during the relevant year was subjected to purchase tax under Sections 6 and 15-A of the Act vide assessment orders dated 14th January, 1997 and 9th July, 1999.

3. Aggrieved by the said levy, the dealer preferred a writ petition before the High Court, challenging, *inter alia,* the substitution of Section 15-A in the Act vide Act 9 of 1993, with retrospective effect.

4. Before the High Court, it was conceded by the counsel for the dealer that the question of the constitutional validity of substituted Section 15-A was concluded against the dealer by virtue of the decision of a Full Bench of the High Court in ***United Riceland Limited & Anr.*** *Vs.* ***State of Haryana & Ors.***[1], and therefore, the said issue did not survive for consideration. In so far as the merits of the assessments were concerned,

[1] 104 STC 362 (Full Bench)

the High Court was of the opinion that since an efficacious statutory remedy by way of appeal was available to the dealer and that the writ petition also suffered from delay and laches, it could not be entertained. Accordingly, as noted above, by the impugned judgment, the writ petition has been dismissed primarily on the ground of laches.

5. Hence, the present appeal.

6. Mr. Ramesh Singh, learned counsel appearing on behalf of the dealer contended that in ***Satnam Overseas (Export) & Ors.*** *Vs.* ***State of Haryana & Anr.***[2]***,*** this Court did not consider the effect of the Haryana General Sales Tax (Second Amendment) Ordinance No. 2 of 1990 (for short "Ordinance No. 2 of 1990") which had deleted Section 9 of the Act with effect from 15th October, 1990. Learned counsel argued that in light of the decisions of this Court in ***Bishambhar Nath Kohli & Ors.*** *Vs.* ***State of Uttar Pradesh & Ors.***[3]; ***R.K. Garg*** *Vs.* ***Union of India & Ors.***[4]; ***A.K. Roy*** *Vs.* ***Union of India & Ors.***[5] and ***Fuerst Day Lawson Ltd.*** *Vs.* ***Jindal Exports Ltd.***[6], it is settled that the date of commencement of an Act which is preceded by an ordinance, is the date of promulgation of

[2] (2003) 1 SCC 561
[3] AIR 1966 SC 573
[4] (1981) 4 SCC 675
[5] (1982) 1 SCC 271
[6] (2001) 6 SCC 356

the ordinance. Learned counsel argued that in any case the benefit of exemption contained in Section 9(1)(b) of the Act would be available to the dealer till 15th October, 1990 i.e. the date when Ordinance No. 2 of 1990, deleting Section 9 of the Act, was promulgated.

7. *Per contra,* learned counsel for the respondents submitted that since the provisions of Ordinance No. 2 of 1990 were incorporated in the Haryana General Sales Tax (Amendment) Act No.4 of 1991 (for short "Act No. 4 of 1991"), in light of the judgment of this Court in ***Fuerst Day Lawson Ltd.*** (supra), the amendment was effective from the date of the ordinance i.e 15th October, 1990. It was urged that if at all the dealer was eligible for the benefit of the exemptions under Section 9(1)(b) of the Act, it would only be for a part of the year and not for the whole of the assessment year, as initially claimed. While supporting the impugned judgment, learned counsel contended that the High Court had rightly dismissed the dealer's writ petition as barred by laches, and had correctly relegated them to the statutory remedy under the Act in light of the decision of this Court in ***M/s. Titagarh Paper Mills Ltd.*** *Vs.* ***Orissa State Electricity Board & Anr.***[7]. It was asserted that dealer's challenge to the levy of

[7] (1975) 2 SCC 436

purchase tax cannot survive after this Court had upheld the validity of Section 15-A of the Act in ***Satnam Overseas (Export)*** (supra).

8. In order to appreciate the rival submissions, it would be expedient to examine relevant provisions of the Act. Section 9, as it stood prior to its deletion by Ordinance No.2 of 1990, provided that:

> "9. (1) Where a dealer liable to pay tax under this Act,
> (*a*) * * *
> (*b*) purchases goods, other than those specified in Schedule B, from any source in the State and uses them in the State in the manufacture of any other goods and either disposes of the manufactured goods in any manner otherwise than by way of sale in the State or dispatches the manufactured goods to the place outside the State in any manner otherwise than by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India within the meaning of Section 5 of the Central Sales Tax Act, 1956; or
> (*c*) * * *
> in the circumstances in which no tax is payable under any other provision of this Act, there shall be levied, subject to the provisions of Section 17, a tax on the purchase of such goods at such rate as may be notified under Section 15."

9. The scope and ambit of Section 9(1)(b) of the Act, was succinctly explained by this Court in ***Satnam Overseas (Export)*** (supra). It was observed that the Section postulates the existence of circumstances in which no tax is payable, under any provisions of the Act by a dealer who: (i) is liable to pay tax under the Act; (ii) purchases goods (referred to as

"raw material") (other than those specified in Schedule B) from any source in the State; (iii) uses them in the State in the manufacture of any other goods (referred to as "manufactured goods"); (iv) disposes of the manufactured goods in any manner otherwise, than by way of sale or (v) dispatches the manufactured goods to a place outside the State in any manner and provides that in such a case there shall be levied, a tax, subject to the provisions of Section 17, on the purchase of raw material at such rate as may be notified under Section 15 of the Act. It was explained that the levy of purchase tax on the raw material would have no application when the manufactured goods are: (a) disposed of by way of sale in the State; (b) dispatched to a place outside the State: (i) in the course of inter-State trade or commerce, or (ii) in the course of export outside the territory of India, within the meaning of Section 5 of the CST Act. It was emphasised that the exemptions contained in Section 9(1)(b) of the Act were confined to cases of impost levied thereunder and not otherwise. Endorsing the view expressed by this Court in the cases of ***Murli Manohar and Co. & Anr.*** *Vs.* ***State of Haryana & Anr.***[8], ***Hotel***

[8] (1991) 1 SCC 377

Balaji & Ors. *Vs.* ***State of A.P. & Ors.***[9] and ***K.B. Handicrafts Emporium & Ors.*** *Vs.* ***State of Haryana & Ors.***[10], it was held as under:

> "…we conclude that specific charging provision of Section 9(1)(b) will be attracted as the assessee purchased paddy (which is not one of the goods specified in Schedule B), procured rice (manufactured goods) from the said paddy and exported rice outside the territory of India, on which no purchase tax was payable under the general charging provision of Section 6 which is, inter alia, subject to the provisions of Section 9. We have already held above that the assessees will not be liable to pay tax on the purchase of such paddy in view of the provisions of clause (b) of sub-section (1) of Section 9 in the assessment years in question, or, for that matter, any assessment year ending before 1-4-1991."

10. Ordinance No.2 of 1990 was succeeded by Act No.4 of 1991 which came into effect from 15th April, 1991. Section 15 of Act No.4 of 1991 provided that:

> "The Haryana General Sales Tax (Second Amendment) Ordinance, 1990 (Haryana Ordinance No.2 of 1990), is hereby repealed."

11. Section 15-A was initially inserted in the Act on 25th January, 1990 and was given retrospective effect from 27th May, 1971. Presently, we are concerned with Section 15-A as substituted by Act No. 9 of 1993 retrospectively from 27th May, 1971. It provides:

[9] 1993 Supp (4) SCC 536
[10] 1993 Supp (4) SCC 589

"15-A. *Adjustment or refund of tax in certain cases*.—Subject to the provisions of clause (*iii*) of proviso to sub-section (1) of Section 15 and subject to the conditions and restrictions, as may be prescribed—

(*i*) the tax leviable under this Act or the Central Sales Tax Act, 1956, on the sale of goods by a dealer, manufactured by him, shall be reduced by the amount of tax paid in the State on the sale or purchase of goods, other than the tax paid on the last purchase of paddy, cotton and oilseeds, used in their manufacture; and

(*ii*) when no tax is leviable on the sale of manufactured goods except those specified in Schedule B, subject to the conditions and exceptions specified therein, or when the tax leviable on the sale of manufactured goods is less than the tax paid in the State on the sale or purchase of goods, other than the tax paid on the 1st purchase of paddy, cotton and oilseeds, used in their manufacture, the full amount of tax paid or the excess amount of tax paid over the tax leviable on sale, as the case may be, shall be refundable if the manufactured goods are sold in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India.

Provided that in case the manufactured goods have been sold before the 1st day of January, 1988 the tax paid on goods, leviable to tax at the first stage of sale under Section 18, used in their manufacture, shall not be refunded."

12. The question relating to the constitutional validity of the retrospective substitution of Section 15-A in the Act w.e.f. 27th May, 1971 is no more *res integra*, in light of the decision of this Court in ***Satnam Overseas (Export)*** (supra), wherein this Court, while upholding the constitutionality of Act 9 of 1993, observed thus:

"It is true that Section 15-A does not permit refund of purchase tax paid on paddy, cotton and oilseeds by an assessee though such a relief is available in regard to other goods. In the light of

the above discussion, the challenge to Section 15-A on the ground of violation of Section 15(*c*) of the CST Act or Article 286(1)(*b*) of the Constitution cannot be sustained because the only relief that is granted by Section 15(*c*) is reduction of tax leviable on the sale of rice procured from out of paddy, where tax has been levied on sale or purchase of such paddy inside the State. This relief is incorporated by the Haryana Act in clause (*iii*) of the proviso to sub-section (1) of Section 15. Even clause (*b*) of sub-article (1) of Article 286 does not provide for exemption of tax on the purchase of paddy. There is no other provision either in Article 286 or in the CST Act which bars a State from levying tax on the sale or purchase of paddy which is not exported out of the territory of India. Section 15-A proceeds on the premise that purchase tax is payable, inter alia, on paddy. From the above discussion, it is clear that before the omission of Section 9 from the Haryana Act, no purchase tax was payable on paddy under Section 6 of the Act, therefore, during the aforesaid period, the assessee cannot complain of the denial of the benefit of adjustment and refund of purchase tax on the basis of Section 15-A of the Haryana Act. The position would, however, be different after 1-4-1991, when Section 9 was omitted from the Act."

The Court finally summed up its conclusions as follows:

"(*1*) In the specified circumstances in which charge of purchase tax on the raw material is imposed, clause (*b*) of sub-section (1) of Section 9 of the Haryana Act and the exemptions provided therein would apply; the law declared by this Court in *Murli Manohar & Co.*, *Hotel Balaji* and *K.B. Handicrafts* holds the field;

(*2*) while Section 9 remained on the statute-book till 1-4-1991, retrospective amendments of Sections 2(*p*), 6, 15 and 15-A of the Haryana Act would make no difference in regard to levy of purchase tax on paddy;

(*3*) adjustment of purchase tax paid on paddy (raw material) is permissible under Section 15-A of the Haryana Act during the relevant period;
(*4*) by virtue of Section 15-A of the Haryana Act, denial of refund of purchase tax, if any, paid by a dealer is not illegal much less unconstitutional."

13. The Court held that the exemptions mentioned in Section 9(1)(b) of the Act would be available to the dealer for assessment years ending before 1st April, 1991, and the substituted Section 15-A, which provides that purchase tax payable on paddy used as raw material can neither be refunded nor adjusted, will not have any effect between 27th May, 1971 and 1st April, 1991 as Section 9(1)(b) still existed in the statute book during that period. It is evident that in ***Satnam Overseas (Export)*** (supra), this Court did not examine the effect of Ordinance No.2 of 1990, as Section 9 was first deleted vide the said Ordinance w.e.f. 15th October, 1990.

14. It is trite that an ordinance promulgated by the President or the Governor has the same force and effect as an Act of Parliament or Act of State Legislature, as the case may be. Articles 367(2) and 213(2) of the Constitution make it abundantly clear that an ordinance operates in the field it occupies with the same rigour as an Act. In ***A.K. Roy*** (supra); a

Constitution Bench of this Court had observed that "an ordinance issued by the President or the Governor is as much a law as an Act passed by the Parliament and is, fortunately and unquestionably, subject to the same inhibitions. In those inhibitions lie the safety of the people." This view has been approved and reiterated in other Constitution Bench decisions. (See: ***R.K. Garg*** (supra); ***T. Venkata Reddy & Ors.*** *Vs.* ***State of Andhra Pradesh***[11] and ***Fuerst Day Lawson Ltd.*** (supra).)

15. Examined on the touch-stone of the afore-noted legal principles, it is manifest that Section 9 ceased to exist in the statute book from the date of promulgation of the ordinance i.e. 15th October, 1990; particularly, when there was nothing in the Act No. 4 of 1991 rendering the provisions of the ordinance otiose during the period from 15th October, 1990 to 15th April, 1991. Therefore, it follows that the benefit of the exemption contained in Section 9(1)(b) of the Act was available to the dealer only upto 15th October, 1990; and not till 1st April, 1991, as elucidated in ***Satnam Overseas (Exports)*** (supra).

16. In light of the foregoing discussion, the appeal is partly allowed to the extent that the dealer will not be liable to pay purchase tax on the

[11] (1985) 3 SCC 198

purchase of paddy made by them upto 15th October, 1990, i.e. till the date of promulgation of Ordinance No.2 of 1990.

17. In the facts and circumstances of the case, we make no order as to costs.

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(D.K. JAIN, J.)

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(ANIL R. DAVE, J.)

NEW DELHI;
JANUARY 7, 2011.

(RS)