

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STC No.32 of 1994
Date of decision:30.5.2008

M/s Rama Trading Co.

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM:- HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE RAKESH KUMAR GARG**

* * *

Present: Mr. Rajesh Garg, Advocate for the petitioner.

Mr. Sanjeev Kaushik, Addl. Advocate General, Haryana.

Rakesh Kumar Garg, J.

1. The petitioner is a registered dealer and in the course of its business purchased vegetable ghee from M/s Pradeep & Co., Yamuna Nagar (RC No.19733), M/s. Suresh Kumar Sanjay Kumar, Yamuna Nagar (RC No.19645), M/s. Aggarwal Agency, Yamuna Nagar (RC No.19853) and M/s. Ganesh Trading Co. Head Office at Panipat (RC No.17629).

2. As per the averments made in the writ petition, the sales tax on vegetable ghee was payable at the first stage of sale. It is further the case of the petitioner that the selling dealers of vegetable ghee issued to him declaration in form ST-14 declaring that the tax had already been paid.

3. During the course of assessment, the petitioner had furnished copies of bills along with the declaration forms in form ST-14 to claim that the goods have already suffered tax at the hands of the first purchaser and therefore, the claim of tax paid, as well, is permissible to him under Section 18 of the Haryana General Sales Tax Act (hereinafter referred to as the 'Act'), the petitioner being a subsequent seller. However, the claim of

the petitioner was disallowed by the Assessing Authority on the ground that no tax had actually been paid by the first seller and therefore, the petitioner was not entitled to claim deduction under the terms of proviso to Section 18 of the Act and created a demand of Rs.72,983/- vide his order dated 29.8.1986. The appeal filed by the petitioner against the order of the Assessing Authority before the Joint Excise & Taxation Commissioner (A) was also rejected vide order dated 16.3.1988.

4. Aggrieved against the said order of the Appellate Authority, the petitioner further filed an appeal before the Sales Tax Tribunal, Haryana. The said appeal was also dismissed by the Tribunal vide its order dated 10.2.1992. Petition under Section 42(1) of the Haryana General Sales Tax Act, 1973, seeking reference on certain questions of law stated to be arising out of the order dated 10.2.1992 passed by the Tribunal was also rejected vide order dated 28.4.1994 by the Tribunal.

5. The petitioner, still aggrieved, has filed the present petition under Section 42(2) of the Act, 1973 for directing the Tribunal to draw a statement of the case and refer to this Court for its decision on the following questions of law arising out of the order of the Tribunal dated 10.2.1992:-

- i) Whether on the facts and in the circumstances of the case the declaration furnished by the selling registered dealer in form of ST-14 is sufficient compliance of the proviso of section 18 of the Act?
- ii) Whether on the facts and in the circumstance of the case the non-deposit of tax by the selling registered dealer during currency of their registration certificate make the purchasing registered dealer to pay the tax, in spite of the facts that the selling registered dealer has furnished declaration to the effect that tax has

been paid?

iii) Whether on the facts and in the circumstances of the case the department can only proceed against the selling registered dealer in view of the fact of the registered dealer has been furnished a false certificate and tax paid?

iv) Whether on the facts and in the circumstances of the case the Tribunal is right in law to maintain order of the assessing authority when the requirement of section 18 have been fully complied with by the petitioner-assessee?"

6. Mr. Rajesh Garg, learned counsel for the petitioner, has vehemently argued before this Court that the petitioner had produced the declaration in form ST-14 and once the proper declaration is furnished, the Assessing Authority should have allowed the claim and if the tax was not paid by the first seller, it is the duty of the Department to proceed against him and not against the purchasing dealer. Learned counsel has further argued that the genuineness of the ST-14 Declaration form submitted by the petitioner has not been disputed at any stage by the Department. Thus, the order of the Tribunal is against the law and questions of law as raised by the petitioner do arise from the order of the Tribunal

7. On the other hand, Mr. Sanjeev Kaushik, Addl. Advocate General, Haryana has argued that the enquiries revealed that the tax which was to be paid by the first seller has not been paid and, therefore, as per proviso to Section 18 of the Act no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the Assessing Authorities in the prescribed form and manner a certificate duly filled in and signed by

the registered dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage. He has further argued that the certificate which was actually produced only indicated as undertaking to pay tax which was not paid at the first stage and therefore, according to him, the impugned orders are legal and correct and the present petition is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the record.

9. Section 18 of the Haryana General Sales Tax Act is reproduced hereinafter below:-

“The State Government may, by notification direct that in respect of such goods, other than the goods specified in Schedules C and D, and with effect from such date as may be specified in the notification, the tax under section 15 shall be levied at the first sale thereof, [subject to the conditions and restrictions as the Govt. may specify in this behalf] and on the issue of such notification the tax on such goods shall be levied accordingly.

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the Assessing Authorities in the prescribed form and manner a certificate duly filled in and signed by the registered dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage.

Explanation: For the purpose of this sub-section, the first stage of sale in respect of any goods and in relation to any class of dealers shall be such as may be

specified by the State Government in the notification.”

10. A perusal of the above said provisions of law would show that for claiming deduction from payment of tax on a subsequent sale of goods on which tax has been paid by the first seller, the dealer (second seller) has to furnish the certificate in the prescribed form and manner and signed by the registered dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage. As per requirement of Section 18 of the Act, there was no further step required to be taken by the petitioner to verify the payment of tax.

11. Undisputedly, sales tax was payable at the first stage of the sale on vegetable ghee in the State of Haryana and further that the petitioner has submitted such certificate i.e the declaration in form ST-14 as provided to him by the first seller, who is a registered dealer of the Department. It is also not disputed by the Department that till date no action has been taken against the said registered dealer for recovery of tax. The Madras High Court in **The State of Tamil Nadu v. Raichael Chacko** 59 STC 144 has held that once a proper declaration i.e. form ST-14 has been furnished by the dealer to the Assessing Authority the dealer is entitled to claim deduction from the payment of sales tax on a subsequent sale for the goods on which tax has been paid at the stage of first sale and it is not the duty of the subsequent seller to pay tax if the first seller has not paid the tax and it is the duty of the Department to proceed against him and not the purchasing dealer. In the case of **Govindan and Co. v. State of Tamil Nadu** 35 STC 50, the Hon'ble Madras High Court held that to claim benefit of tax on the ground that the sales effected by the assesseees were second sales, they need not show that their sellers had in fact paid the tax at the first point and it was enough for them to show that the earlier sales were taxable sales and that the tax was really payable by

their sellers. This decision was affirmed by the Hon'ble Supreme Court in State of **Tamil Nadu v. Raman & Co. and others** 93 STC 185.

12. Undisputedly, the sales tax in the State of Haryana on vegetable ghee was payable at the stage of first sale. It is also not in disputed that the petitioners had purchased the impugned goods within the State of Haryana and were the second sellers. The only argument raised by the revenue to deny the claim of the petitioner is that the first seller has not paid the tax and, therefore, the claim of the petitioner for exemption from the payment of sales tax cannot be accepted. The liability of the non-payment of tax is on the selling dealer who may have given a false declaration but in any case such false declaration will not make the buying dealer of the first stage of sale liable to pay the tax as the buying dealer has fulfilled the conditions mentioned in Section 18. It would be preposterous to say that buying dealer has to go in for making enquiries with respect to every sale, as to whether the tax has actually been paid or not. If that were to be the situation, then the very purpose of form ST-14 is defeated.

13. In view of the law laid down by the Madras High Court in **Raichael Chacko's case** (supra) and **Raman & Co. and others** case (supra), the dealer is entitled to claim deduction from the payment of sales tax on a subsequent sale for the goods on which tax has been paid at the stage of first sale and it is not the duty of the subsequent seller to pay tax if the first seller has not paid the tax. No contrary judgement has been cited by the respondents.

14. Thus, we are of the view that the aforementioned questions of law do arise in the present case and, therefore, we direct the Sales Tax Tribunal, Haryana to draw a statement of the case and refer to this Court for its decision the questions of law as aforementioned in para 5 of the

judgement which arise out of the order of the Tribunal dated 10.2.1992.

**(RAKESH KUMAR GARG)
JUDGE**

**30.5.2008
ps**

**(SATISH KUMAR MITTAL)
JUDGE**