

Before Hon'ble S. P. Kurdukar, C.J., M. S. Liberhan, G. C. Garg,
K. K. Srivastava & Swatanter Kumar, JJ.

M/S MORINDA CO-OPERATIVE SUGAR MILLS LTD.,
MORINDA,—Petitioner

versus

THE ASSESSING AUTHORITY, ROPAR & OTHERS,—Respondents.

Civil Writ Petition No. 661 of 1984.
July 10, 1995

Constitution of India, 1950—Arts. 226/227—Punjab General Sales Tax Act (46 of 1948)—S. 4-B & 4(1), Schedule B entry 39—Whether purchase tax is to be levied on sugar-cane purchased from growers—Purchaser of sugar-cane is liable to pay purchase tax on its purchase by virtue of S. 4(1) and that provision of S. 4 (B) is not relevant.

Held, that whether the petitioners are liable to pay purchase tax on sugar-cane purchased by them from the growers thereof, has squarely been answered by the Supreme Court against the petitioners in the case of *M/s Jagatjit Sugar Mill's*. It has been held therein that the purchaser of sugar-cane is liable to pay purchase tax on its purchase by virtue of section 4(1) of the Punjab Act and that the provision in Section 4(B) of the Punjab Act is not relevant to the petitioners.

(Para 12)

Shri H. L. Sibal, Sr. Advocate (Ms. Rita Kohli, Advocate, Mr. G. R. Sethi, Advocate and Mr. M. R. Sharma, Advocate with him) and Mr. Pritam Saini & Mr. Vinod Sharma, Advocates, for the Petitioners.

G. K. Chatrath, Advocate General, Punjab assisted by Mr. H. S. Sidhu, Assistant Advocate General, Punjab, for the Respondents

JUDGMENT

G. C. Garg, J.

(1) This order will dispose of Civil Writ Petitions 4993 of 1985: 126, 127, 128, 202, 232, 427 and 2975 of 1980; 5248, 5249, 5363, 5364, 5365, 5366, 5367, 5368 and 5369 of 1982; 189 of 1983; 661 and 4943 of 1984; and 5771 of 1987. Petitioners in this bunch of twenty-one writ petitions are registered dealers within the meaning of Punjab

General Sales Tax Act, 1948 (hereinafter called as 'Punjab Act'). The main controversy raised in these writ petitions is common, namely, whether sugarcane purchased by the petitioners directly from the growers thereof is subject to levy of purchase tax under the Punjab Act.

(2) The petitioners are the Sugar Mills and are engaged in the manufacture of sugar. They purchase sugar-cane, an agricultural produce from the growers thereof directly, Gunny bags purchased by the petitioners are used as packing material for sugar and are sold with sugar. Some other stores are also purchased which are required to carry on the business. Unserviceable stores are sold in due course of time.

(3) In C.W.P. Nos. 126, 128, 202, 232, 427 and 2975 of 1980 and 5249 of 1982, notices under the relevant provisions of the Punjab Act were issued with a view to bring to tax the purchase of sugarcane directly made by the petitioners from the growers thereof. From the notices it seems apparent that tax was sought to be levied in view of the provisions of Section 4-B of the Punjab Act. Civil Writ Petition 127 of 1980 has been filed even in the absence of notice and only on an apprehension of tax liability likely to be created under Section 4-B of the Punjab Act.

(4) In C.W.P. 5771 of 1987 notice under Section 10(6) of the Punjab Act, Annexure P-6 relating to assessment year 1980-81 and assessment order, Annexure P-10 relating to assessment year 1981-82 have been challenged. *Vide* order Annexure P-10, petitioner has been assessed to tax after holding that purchase tax is leviable on the purchases of sugar-cane made directly from the growers. We were informed by the learned counsel for the petitioners that appeal against the order of assessment is pending for final disposal.

(5) Civil Writ Petition Nos. 4993 of 1985, 661 and 4943 of 1984 have been directed against the orders of assessment levying purchase tax under Section 4-B of the Punjab Act on the purchase of Sugarcane made from the growers or their family members directly. In these three cases, either appeal has not been preferred against the order of assessment or the same has been dismissed on merits or in limine, the petitioner having failed to deposit the amounts as directed by the Joint Excise and Taxation Commissioner as a condition precedent for hearing the appeal on merits.

(6) In Civil Writ Petition Nos. 5363 to 5369 of 1982, 189 of 1983 and 5248 of 1982, the only challenge to the orders of the assessing

authority, appellate authority and the Tribunal is to the levy of purchase tax under Section 4-B of the Punjab Act on the purchase of sugar-cane made from the growers or their family members direction except in C.W.P. 5248 of 1982 where an additional challenge is also to the levy of tax on Bardana (gunny bags).

(7) The writ petitions have been opposed by the State of Punjab. Written statements have been filed.

(8) C.W.P. 661 of 1984 (*M/s Morinda Co-operative Sugar Mill, Morinda v. The Assessing Authority, Ropar and another*) was straightway admitted to Full Bench. Some other writ petitions were also ordered to be heard along with C.W.P. 661 of 1984. A Full Bench of three Judges, before whom the matters came up for hearing, after noticing "in these writ petitions, the question raised was as to whether Single Bench Judgment of this Court reported in *Malwa Sugar Mills Co. Ltd. v. Assessing Authority* (1), which had held that Section 4-B of the Punjab General Sales Tax Act (hereinafter referred as the Act), which became effective from 15th November, 1972 did not envisage levy of purchase tax on the purchase of sugar-cane which was sold by the growers themselves or by their family members, in view of Entry 39 of Schedule 'B' to the Act and which had been affirmed by the Letters Patent Appellate Bench in LPA 42 of 1976 as also by the Supreme Court when the same came to be challenged through S.L.P. 2000 of 1977,—vide order dated 2nd September, 1977 could be over-ruled by the Full Bench of this Court reported in *Desh Raj Parshotam Lal v. State of Punjab* (2). Additionally it is canvassed on behalf of the petitioners that Full Bench order in assuming that the Single Bench judgment in *Malwa Sugar Mills' case* (supra) ran counter to the ratio of Division Bench judgment in *Babu Ram Jagdish Kumar & Co. v. State of Punjab* (3), as the ratio of *Babu Ram Jagdish Kumar's case* (supra) was not even remotely concerned with the question that arose for consideration in *Malwa Sugar Mills's case* (supra)", observed that Full Bench cannot examine the correctness of enunciation of law by another co-equal Bench and, therefore, directed that the matter be put up before Hon'ble The Acting Chief Justice for constituting a larger Bench.

(1) 1976 (38) S.T.C. 39.

(2) (1978) 42 S.T.C. 429.

(3) (1976) 38 S.T.C. 259.

(9) The matter thereafter came up for hearing before the Full Bench of Five Judges on September 17, 1990. The matter could not be taken up for disposal as the learned counsel for the parties agreed that an identical question was pending consideration before the Supreme Court since 1979 in Writ Petition (C) No. 382 of 1979 (*M/s Jagatjit Sugar Mills etc. v. State of Punjab and another*). In the situation, it was ordered that this writ petition along with other connected petitions be listed for hearing after the decision of the Supreme Court. Writ Petition (Civil) No. 382 of 1979 (*M/s Jagatjit Sugar Mills etc. v. State of Punjab and another* (4)), along with other connected matters was dismissed by the Supreme Court on October 4, 1994. It is in the above backdrop that these matters have come up for hearing before us.

(10) The main contention raised in these writ petitions and addressed by the learned counsel for the petitioners is, whether 'sugar-cane' which is purchased from the growers or the producers or their family members falling under Entry 39 of Schedule 'B' to the Punjab Act can be subjected to levy of purchase tax under Section 4-B of the Punjab Act and whether the decision rendered by the Full Bench in *Desh Raj Parshotam Lal's case* (supra) is erroneous ?

(11) The other points raised in some of the writ petitions and addressed during the course of hearing are as under :—

- (i) Whether tax could be imposed on packing material, gunny bags when sold along with the tax free goods i.e. sugar ?
- (ii) Whether in the facts and circumstances of these cases, penalty could be imposed ?

(12) The primary and most important question raised in those writ petitions, namely, whether the petitioners are liable to pay purchase tax on sugar-cane purchased by them from the growers thereof, has squarely been answered by the Supreme Court against the writ petitioners in the case of *M/s Jagatjit Sugar Mills's* (supra). It has been held therein that the purchaser of sugar-cane is liable to pay purchase tax on its purchase by virtue of Section 4(1) of the Punjab Act and that the provision in Section 4-B of the Punjab Act is not relevant to the petitioners. This was not disputed by the

(4) J.T. 1994 (6) S.C. 534,

learned counsel appearing for the parties. The apex Court after noticing the case of the petitioners in *Jagatjit Sugar Mills's case* (supra) and the judgments of this Court as referred to by the learned counsel for the parties, observed in para 25 of the judgment as under :—

“The view taken by us accords with the view taken by the Punjab and Haryana High Court over the last two decades as indicated in the Full Bench decision in *Desh Raj Parshotam Lal*. A discordant note was no doubt struck in Malwa Sugar Mills (decided in December, 1975) but the decision of the Division Bench soon thereafter in *Babu Ram Jagdish Prasad* and other decisions referred to in the aforesaid Full Bench decision had always taken the view consistent with the one indicated by us hereinabove. As a matter of fact, this was how Section 4-B was understood by this Court in *Devi Das Gopal Krishan*.”

(13) The Supreme Court while dismissing the writ petitions vacated the interim orders made in favour of the writ petitioners. The tax, collection whereof was stayed, was allowed to be collected according to law. Bank guarantees and securities were also permitted to be encashed by the State. Thus, the main contention raised on behalf of the petitioners herein stands answered by the Supreme Court against them. The other contentions raised do not detain us any further for the fair stand taken by the learned counsel for the parties that the same may be permitted to be raised before the authorities concerned.

(14) Keeping in view the facts and circumstances of these cases and the agreed stand of the learned counsel for the parties, Civil Writ Petition Nos. 126, 128, 202, 232, 427 and 2975 of 1980 and 5249 of 1982 which are directed against the notices issued under the various provisions of the Punjab Act are dismissed, leaving it open to the authorities to proceed according to law from that stage after affording a reasonable opportunity to the petitioners to show cause in view of the changed position. However, in cases where assessments have been framed after service of show cause notices, it would be open to the petitioners to challenge the same by filing appeal within a period of sixty days from the date of this order and the State shall not raise the question of limitation. C.W.P. No. 127 of 1980 is also dismissed as in this case even a show cause notice had not been issued. C.W.P. No. 5771 of 1987 is also dismissed. However,

the appeal pending against the order of assessment shall be disposed of according to law.

(15) Civil Writ Petition Nos. 4993 of 1985; 661 and 4943 of 1984 which are directed against the orders of assessment or the appellate orders are dismissed, leaving it open to the petitioners to file appeals before the Sales Tax Tribunal or the appellate authority according to law within sixty days from the date of this order and the State shall not raise the question of limitation. Appeal/appeals, if filed, shall be disposed of according to law. Appeal filed by the petitioners in C.W.P. 4943 of 1994 which was dismissed by the appellate authority in **limine** for non-compliance of the order of the Joint Excise and Taxation Commissioner shall be revived and disposed of on merits according to law. If the petitioners deposit the amount of Rs. 75,000 as ordered by the Joint Excise and Taxation Commissioner, within sixty days from today, failing which the order already passed shall remain **intact**.

(16) The orders passed by the Sales Tax Tribunal in C.W.P. Nos. 5363 of 5369, 5248 of 1982 and 189 of 1983 are set aside and the matters are remitted to the Tribunal for decision afresh in accordance with law, after hearing learned counsel for the parties. It shall be open to the Tribunal to decide the matters itself or if found necessary, remit the same to the authorities for decision afresh.

(17) We have no doubt that the authorities under the Punjab Act shall decide the matter expeditiously and determine tax liability under the law then applicable and in the light of the judgment of the Supreme Court in *M/s Jagatjit Sugar Mills' case* (supra). The parties will be at liberty to seek any further direction or clarification, if required.

(19) The interim orders passed in all these matters are hereby vacated and the State authorities may now collect the tax according to law.

(20) All these writ petitions stand disposed of with the above observations and directions. There shall however, be no order as to costs.

J.S.T.