

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

VATAP No. 176 of 2013 (O&M)
Date of Decision: 15th July, 2015

M/s AB Sugars Ltd.

..Appellants

versus

State of Punjab and another

..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Sandeep Goyal, Advocate, for the appellants.
Mr. Piyush Kant Jain, Additional Advocate General, Punjab,
for the respondents.

S.J.VAZIFDAR A.C.J.

This is an appeal under section 68 of the Punjab Value Added Tax Act, 2005 against the order of the Value Added Tax Tribunal, Punjab dated 20.03.2008 upholding the order passed by the Deputy Excise & Taxation Commissioner (Appeals)-First Appellate Authority dismissing the appellant's appeal against the order of the Assessing Officer.

2. The appellants have pressed the following questions, which according to them, raise substantial questions of law:-

- i) "Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in ignoring the judgment of M/s Gobind Sugar Mills and following the judgment of M/s Jagatjit Sugar Mills case despite the fact that the issue and facts in

Govind Sugar Mills case are almost identical to the issues and facts of the present case?

- ii) Whether in the facts and circumstances of the case, the appellant is liable to pay tax on the purchase of sugarcane under the provisions of Punjab General Sales Tax Act, 1948, when the Punjab Sugarcane (Regulation of Purchase & Supply) Act, 1953 is in force which is a special Act?”

3. The Assessing Officer-Deputy Excise & Taxation Commissioner and Value Added Tax Tribunal rightly held that the appellant is liable to pay tax on the purchase of sugarcane under the provisions of the Punjab General Sales Tax Act, 1948 (for short ‘PGST Act’) in view of the judgment of a bench of three learned Judges of the Supreme Court in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab and another* 1995(1) SCC 67, which was a judgment on the very provisions which fall for consideration before us.

4. Mr. Sandeep Goel, the learned counsel appearing on behalf of the appellant, however, contends that the authorities ought not to have followed and that we ought not to follow this judgment, although it would normally be binding on us as the Supreme Court failed to consider an argument now raised before us and which, it is contended, is supported by another judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others* (1999) 7 Supreme Court Cases 76.

5. We are unable to agree. In our view we are bound by the judgment of the Supreme Court in *M/s Jagatjit Sugar Mill’s case* (supra) as the Supreme Court in this case dealt with the very provisions with which we are concerned. The question that arose in that case was whether the petitioner-sugar mill was liable to pay the purchase tax on the sugarcane

purchased by it from the growers. The respondents therein contended that sugarcane was exempted from purchase tax inter-alia in view of section 4-B of the PGST Act. The Supreme Court noted the definitions in Section 2 of the PGST Act of the terms “dealer”, ‘goods’ ‘purchase’ ‘sale’ and ‘turnover’. The Supreme Court also noted Section 4 of the PGST Act which was the main charging section and section 5 which defines the expression ‘taxable turnover’. Sections 4 and 4-B of the PGST Act, which were also noted, in so far as they are relevant, read as under:-

“4. Incidence of taxation. - (1) Subject to the provisions of sections 5 and 6 every dealer except one dealing exclusively in goods declared tax - free under section 6 whose gross turnover during the year immediately proceeding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming, into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958:

Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this Act.

"4-B. Levy of purchase tax on certain goods. –

Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source and -

- i. uses them within the Union Territory of Chandigarh in the manufacture of goods specified in Schedule B, or
- ii. uses them within the Union Territory in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the Union Territory in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- iii. uses such goods for a purpose other than that of resale within the Union Territory, or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or
- iv. sends them out side the Union Territory other than by the way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, and no tax is payable on the purchase of such

goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the Central Government may direct".

The question before the Supreme Court was whether the petitioner therein was liable to pay purchase tax on the sugarcane purchased by it from the growers of the sugarcane. This is the very question before us as well. Paragraphs 14, 22 and 23 of the judgment read as under:-

“14. The contention of the learned counsel for the petitioner is this: Section 4-B, which levies purchase tax, expressly excludes the goods mentioned in Schedule B from its purview. In other words, Schedule B goods are exempt from tax on their sale by virtue of Section 6 and exempt from tax on their purchase by virtue of Section 4-B. The emphasis is upon the opening words of Section 4-B which reads: “Where a dealer who is liable to pay tax under this Act purchases any goods *other than those specified in Schedule B* from any source....” We find it difficult to agree. The said argument, in our opinion, is based upon an incorrect premise that purchase tax is levied by Section 4-B in the Act and not by any other provision. The said argument also ignores the fact that Section 4 levies tax not only upon “all sales effected” but also on “purchases made”. If the assumption underlying the argument of the learned counsel for the petitioner were to be accepted then no purchase tax was leviable on Schedule C goods prior to introduction of Section 4-B. Similarly, no purchase tax should be leviable even now on Schedule C goods (Schedule C, even according to the counsel for petitioners, mentions goods subject to purchase tax) inasmuch as Section 4-B does not refer to Schedule C nor does Section 4-B levy purchase tax on the purchase of goods in Schedule C. In our opinion, the purpose of Section 4-B is altogether different. It is designed really to *identify and affirm* — in a broad sense, create — the levy of purchase tax in some cases and to *provide for exemption* from purchase tax in certain other specified situations. This is done in the interest of manufacturers-dealers, consuming public and other

dealers — a common feature in almost all the sales tax enactments, as we shall presently demonstrate. To explain what we say, let us analyse the section. For attracting the levy of purchase tax under Section 4-B, the following requirements must be satisfied:

- (a) A dealer (liable to pay tax under the Act) purchases goods other than those specified in Schedule B from any source;
- (b) No tax is payable on the purchase of such goods under any other provisions of the Act;
- (c) The goods so purchased are used/disposed of etc. in one of the modes mentioned in clauses (i), (ii), (iii) or (iv).

22. It is, therefore, idle to contend that Section 4-B imposes purchase tax or is the only provision imposing purchase tax. As analysed hereinbefore, it is mainly designed to affirm or exempt, as the case may be, the purchase of certain goods from purchase tax in certain specified situations. It, of course, does not deal with the goods specified in Schedule B. Its object is to ensure inter alia that purchase of raw material is not taxed where the sale of manufactured goods brings in tax to the State or serves the national interest, as explained hereinbefore. If, however, manufactured goods are so disposed of as not to bring in tax to the State nor so as to serve national interest aforementioned, then the purchase of goods (broadly referred to as raw material in this judgment), the State retains and collects the purchase tax on raw material. Similarly, where the very goods are sold in such a manner as to bring in revenue to State by way of tax on their sale, (i.e., sale within the State, inter-State sale or export sale, as the case may be) then again the purchase of such goods is exempt from tax as explained and elaborated hereinabove.

23. If so, the question arises which is the provision which levies the purchase tax? The answer is — Section 4(1) itself. Section 4(1) not only levies tax on all sales but also levies tax on all purchases as well. Of

course, in no case will both the sale point and purchase point of the same transaction be taxed, which feature is indicated in sub-section (2-A) of Section 4 also. It is, therefore, obvious that where the sale of certain goods is exempt from tax by virtue of Section 6, their purchase will be taxed and conversely where the Act expressly taxes the purchase of certain goods their sale simultaneously will not be taxed — subject, of course, to any express provisions providing exemptions. In the case of sugarcane, it being an agricultural produce — and in cases where it is sold by the grower himself — such sale is exempt from tax by virtue of Section 6 read with Schedule B. If so, the purchaser thereof is liable to pay tax on its purchase by virtue of Section 4(1). That is the position in the cases before us. Since Section 4-B does not apply to Schedule B goods, the said provision is not relevant to the petitioners. The purchase tax on sugarcane is levied by Section 4(1), since it being an agricultural produce, and said to be sold by growers themselves, is exempt from tax on its sale under Section 6.”

6. Mr. Goel rightly did not even contend that the judgment is not applicable to the case before us. He, however, contended that the Supreme Court did not consider the argument which he developed before us. He contended that the petitioner is not liable to pay the purchase tax under the Punjab General Sales Tax Act, 1948 as purchase tax is levied under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. He submitted that the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 being a special enactment for levying purchase tax exclusively on purchase of sugar overrides the Punjab General Sales Tax Act, 1948. He further contended that on a harmonious construction of the two Acts, the State can levy purchase tax on purchase of sugarcane only under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. In support of this

contention, he relied upon the judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (supra)*.

7. The Supreme Court in that case dealt with the Bihar Finance Act, 1981 and Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 which are referred to in that judgment as ‘the Finance Act’ and ‘the Sugarcane Act’, respectively. It was contended that the State legislature having once provided for levy of purchase tax under the Sugarcane Act, cannot impose the same levy under the Finance Act. Analyzing the provisions of the Finance Act, the Supreme Court observed that it provides for levy of different types of commercial taxes which are generally leviable in the State of Bihar and that the object of the Sugarcane Act was to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and for taxation of sugarcane and matters incidental thereto.

Mr. Goel, relied upon paragraph 11 of the judgment which reads as under:-

“11. The next contention on behalf of the State, as noted above, is that the two enactments operate in different fields inasmuch as while the Finance Act is an enactment for the purpose of generating revenue for the State, the Sugarcane Act is enacted generally for the purpose of production, supply and distribution of sugar. The power of taxation contemplated under this Act is only incidental to further the object of Section 49(8) of the Sugarcane Act. In other words, an attempt was made to contend that the tax which was levied and collected under Section 49 of the Sugarcane Act was to be appropriated towards the requirements of the Board and the Council constituted under the Sugarcane Act. In this connection, it was contended that Section 3 of the Sugarcane Act contemplated establishment of the Sugarcane Board with specific power to fulfill the objects of the said Act. Therefore, the levy that was being collected as purchase tax under Section 49(1)(b) of the Act, being an exclusive levy for the purpose of the requirement of the Board, the same cannot be equated with

the levy of purchase tax contemplated under Section 4 of the Finance Act. We do not find sufficient force in this argument to repel the contention of the appellant that the tax collected under Section 49(1)(b) of the Sugarcane Act is the same as is contemplated under Section 4 of the Finance Act but confined to sugarcane. A perusal of Section 49(8) of the Sugarcane Act shows that a part of the amount of purchase tax collected under its sub-section (3) is utilised for the purpose of the Board and the Council as grant but sub-section (8) of Section 49 does not, in any manner, indicate that the entirety of this collection under sub-section (1)(b) of Section 49 is solely earmarked for the purpose of the expenditure of the Board or the Council. A perusal of Sections 6 and 9 of the Sugarcane Act clearly shows that the legislature has made separate provisions for the funds of the Board as well as the Council under the said Act, and only a portion of the collection under sub-section (1)(a) of Section 49 is earmarked for these purposes; hence, it is clear that the balance of collection goes to the State Exchequer/General Fund. So, there is no merit in the arguments advanced on behalf of the State that the collection of purchase tax under sub-section (1)(b) of Section 49 is for the purpose of creating a fund for the exclusive use of the Board and the Council created under the said Act.”

8. We will assume that the observations of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (supra)* are of assistance to the appellant. It may have been possible for the appellant to rely upon this judgment to draw an analogy with the provisions of the enactments that fall for our consideration. However, the judgment in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra)* is directly on point. It dealt with the provisions of the very enactments that fall for our consideration. It cannot be disputed that absent anything else we are bound by the judgment.

9. Keeping the doctrine of precedent in mind we are not entitled to take a different view based on Mr. Goel’s additional submission founded on

the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. In *Suganthi Suresh Kumar v. Jagdeeshan* (2002) 2 *Supreme Court Cases* 420, the Supreme Court held that the High Court cannot question the correctness of the decision of the Supreme Court even though the point raised before the High Court was not considered by the Supreme Court. In *Director of Settlements A.P. and others v. M.R.Apparao and another* (2002)4 *Supreme Court Cases* 638, the Supreme Court held that the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered by, or that relevant provisions were not brought to the notice of the Supreme Court. It was further observed that once the Supreme Court decides the principle it would be the duty of the High Court to follow the decision.

10. We, therefore, cannot take a view different from the one taken by the Supreme Court in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) on the ground that the Supreme Court did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar* (supra) as in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) the Supreme Court considered the very provisions that fall for our consideration. In *Gobind Sugar Mills Ltd. v. State of Bihar* (supra) different enactments fell for the consideration of the Supreme Court.

11. This is not even a case where the enactments considered in *Gobind Sugar Mills Ltd. v. State of Bihar* (supra) were identical to the Punjab General Sales Tax Act and the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or that there were no difference between the two enactments. Section 49(8) of the Sugarcane Act which fell for

consideration in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* expressly provides that a part of the amount of purchase tax collected under subsection (3) is to be utilized for the purpose of the Board and the Council as grant but did not indicate that the entirety of this collection was solely earmarked for the purpose of expenditure of the Board or the Council. Such a provision is absent in the enactments before us. Infact, the statement of object and reasons of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 expressly state as under:-

“Statement of Objects and Reasons- “With the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from the 8th May, 1952, this regulation of sugarcane industry has become exclusively a Central subject. The State Government are now only concerned with the supply of sugarcane to sugar factories: moreover in view of lean financial position of the State, the State Government are not in a position to provide adequate funds for extensive Cane Development work in the areas supplying cane to sugar factories with the result that the factories are not getting cane of good quality. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories for its development on organized scientific lines making adequate funds available after imposing a tax on sugarcane purchases by factories, to protect the interests of cane growers and of the Industry and to put the new Act permanently on the Statute Books” (vide Punjab Government Gazette Extraordinary, dated the 9th October, 1953, p. 1630).”

12. Faced with this, Mr. Goel submitted that in any event in view of Article 266 of the Constitution of India the amounts collected under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 would be transferred to the consolidated fund of India and the enactments thereafter cannot direct the manner in which the same is to be utilized. He further submitted that once the amounts are credited to the consolidated fund of

India, the Act cannot say how it is to be utilized. Only the legislature can do so.

Even assuming this to be so we do not see how it can make a difference. The legislature has imposed the tax. The amounts collected may well be available to the legislature to be spent for the purposes mentioned therein and in the statement of objects and reasons. These are aspects which can be gone into only by the Supreme Court and not by this Court for accepting these submissions would in effect result in this Court holding that the judgment of the Supreme Court in Jagatjit Sugar Mill's case (supra) is not good law.

13. Considering the view taken by us on Mr. Goyal's submission, it is not necessary to consider Mr. Jain's further submission that the appellant has infact challenged the validity of the Punjab General Sales Tax Act, 1948 and that such a challenge could not have been taken before the authorities.

14. In the circumstances, the questions of law, are answered against the appellant. The appeal is accordingly dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

15.07.2015
'ravinder'

Whether judgment to be referred to the reporter-	✓ Yes	No
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