

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

VAT Appeal No. 3 of 2011 (O&M)
Date of decision: August, 03, 2016

M/s G. N. General Mills

.. Appellant

v.

The State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SIINGH SIDHU

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

...

Rajesh Bindal J.

This order will dispose of four appeals bearing VAT Appeal Nos. 3, 4,5 and 6 of 2011 raising the following substantial question of law:

“Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in directing the appellant to produce complete H-Forms and also to prove that the purchase of paddy was made after and for the purpose of complying with the export order whereas those documents were already produced while framing the assessment under the CST Act, 1956 ?”

All the appeals have been filed by same dealer. The assessment years involved are 1997-98, 1998-99, 1999-2000 and 2000-01.

The facts have been taken from VAT Appeal No. 4 of 2011 pertaining to the

assessment year 1998-99.

Learned counsel for the appellant submitted that assessment of the appellant was framed by the Assessing Officer vide order dated 28.2.2002 and the benefit of rebate of tax on purchase of paddy, rice manufactured out of which was exported outside India was not granted. The appellant preferred appeal. The matter was remitted back for re-consideration. After remand, the case was taken up and decided afresh vide order dated 3.11.2005 and the claim of the appellant for rebate of tax on purchase of paddy, rice manufactured out of which was exported outside India was declined, whereas the transaction of export sale as such was admitted and the benefit thereof was granted while framing the assessment under Central Sales Tax Act, 1956 against statutory “H” form. Aggrieved against the order of assessment, the appellant preferred appeal, which was accepted by the first appellate authority. It was directed that rebate of tax paid on purchase of paddy, rice manufactured out of which was exported, for which form 'H' was furnished, be granted. The tax be re-computed following the earlier judgment of the Sales Tax Tribunal (for short, the Tribunal') in Appeal No. 154 of 2002-03—M/s Rama Krishna Trading Co. Jalandhar v. State of Punjab. The State, being aggrieved against the order passed by the first appellate authority, preferred appeal before the Tribunal. The Tribunal, vide order dated 1.1.2009, accepted the same and set aside the direction given by the first appellate authority, whereby the matter was remanded back to the Assessing Authority for re-calculation of the tax. The appellant filed rectification application referring to the judgment of this court in GSTR No. 14 of 2005—State of Punjab v. M/s Rattna Rice and General Mills, Fazilka, decided on 17.3.2009 opining that rebate of tax on

the type of transaction in question was available under Section 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). The Tribunal, while accepting the rectification application, directed that the Assessing Authority shall decide the issue as directed by the first appellate authority in terms of the judgment of this Court in M/s Rattna Rice and General Mills's case (supra). However, the condition was put in that the dealer shall be liable to produce complete 'H' form and prove that the paddy was purchased for the purpose of complying with any export order.

Learned counsel for the appellant submitted that the Tribunal had exceeded its jurisdiction by adding word in the judgment of this court in M/s Rattna Rice & General Mills' case (supra), where the issue involved was identical to the issue in the present set of appeals. Once there was no such direction issued in that case, the words added by the Tribunal in the order passed in rectification application were totally un-called for. The State accepted the verdict in M/s Rattna Rice & General Mills' case (supra). He further submitted that in Section 5(2)(a)(vi) of the Act, simple words used are that the goods had been sold in the course of export outside the territory of India. There is no condition attached. The paddy and rice have been held to be a single commodity for the purpose of export in terms of Section 15 (ca) of the Central Sales Tax Act, 1956. Reference was also made to the judgment of Constitution Bench of Hon'ble the Supreme Court in State of Karnataka v. Azad Coach Builders Pvt. Ltd. and another, (2010) 36 VST 1 (SC). It was further submitted that transaction of sale of rice was in the course of export outside the territory of India was accepted by the Assessing Authority while framing assessment under the Central Sales Tax Act, 1956 and it was so recorded in the order of assessment that 'H' forms have been

perused and placed on record, meaning thereby that those were verified and only thereafter the requisite rebate was granted to the appellant.

On the other hand, learned counsel for the State submitted that Section 29 of the Act is an over-riding provision. It provides that tax on sale and purchase of goods shall not be imposed in case such sale or purchase takes place in the course of export outside the territory of India, provided that it was for compliance of an order for such export. Hence, there was no error in the order passed by the Tribunal directing the appellant to prove that purchase of paddy was for complying with the order of export. She further submitted that paddy is contained in Schedule 'C', whereas stage of tax has been prescribed in Schedule 'D' of the Act. She referred to the judgment of Hon'ble the Supreme Court in Monga Rice Mill and others v. State of Haryana and another, (2004) 6 SCC 101 to submit that identical issue was considered by Hon'ble the Supreme Court, though with reference to Haryana General Sales Tax Act, 1973, and there was not much difference. The opinion expressed by Hon'ble the Supreme Court was that export orders have to be prior in time. As the appellant had not produced any export order, no question of rebate on purchase of paddy can be granted.

Heard learned counsel for the parties and perused the relevant referred record. `

In our opinion, the issue sought to be raised by the parties is squarely covered by the judgment of this court in M/s Rattna Rice and General Mills' case (supra). In that case, the following questions of law were considered:

“1. Whether in view of ratio laid down by the Hon'ble Pb. &

Haryana High Court in the case of M/s Veeru Mal Monga & Sons v. State of Haryana and others, the orders of the Hon'ble Sales Tax Tribunal accepting the revisionists application are sustainable in law ?

2. Whether the revisionists are entitled to rebate of Tax U/s 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948 ?
3. Whether the judgment given by the Hon'ble Pb. & Haryana High Court in the case of M/s Veeru Mal Monga & Sons has a binding force on the Punjab Sales Tax Tribunal, when there is no direct judgment contrary to the judgment given by the Hon'ble Pb. & Haryana High Court ?”

A perusal of the aforesaid questions shows that there was specific issue regarding entitlement of rebate under Section 5(2)(a)(vi) of the Act and the effect of the judgment of Hon'ble the Supreme Court in Monga Rice Mill and others' case (supra), which was a case decided under the Haryana General Sales Tax Act, 1973. The facts of the case in M/s Rattna Rice and General Mills' case (supra) and the case in hand are identical. Both are the cases of rice shellers, who were purchasing paddy, the rice manufactured out of which was exported outside India. The relevant paras of the judgment are extracted below:

“A perusal of the contents of Form 'H' would show that the sale made by the dealer has to be after the agreement or order and it has to be for the purposes of complying with the terms thereof. The columns 5 and 6 of the Part 'B' of the schedule further shows that the goods have been actually exported. The form

would further reveal that in case the goods are re-imported the information with regard to the same has to be furnished to the sales tax authorities within a month from the date of the import. This form was furnished by the dealer which has been accepted. Therefore, on facts it is established that the twin test laid down by the various judgments stand satisfied and, therefore, the dealer would be entitled to seek exemption in respect of these goods for the purposes of working out his turnover.

The judgment of the Division Bench of this Court rendered in the case of *M/s Veerumal Monga and Sons* (supra) would not be applicable to the instant references made to this Court because in that case it was found as a fact that the transaction involving the purchase of paddy by the dealer did not fall within the ambit of Section 5(3) read with Section 15(a) of the CST Act. It was further found that it was not a transaction preceding the sale or purchase of paddy occasioning export thereof outside India. However, in the present case, the facts are entirely different. The sale has been made to a export house and form 'H' issued under Rule 12(1) read with Section 5 of the CST Act has been placed on record. Therefore, the view taken by the Tribunal in its conclusion deserves to be accepted in principle. We make it clear that we are not expressing any opinion on the question regarding relevance of Section 27 of the HGST Act.

As a sequel to the above discussion, question no. 1` is answered against the revenue by holding that the Division

Bench judgment of this court in *M/s Veerumal Monga and son's case (supra)* would not apply to the facts of the instant references and, therefore, the question is answered against the revenue and in favour of the dealer. As a necessary corollary the answer to question no. 2 is required to be answered in favour of the dealer especially when question no.1 has been answered against the revenue. Accordingly, the dealer is held entitled to exemption under Section 5(2)(a)(vi) of the PGST Act.

It follows that answer to question no. 3 has to be answered in the negative because the judgment of this court in *Veerumal Monga's case (supra)* would not apply to the facts and circumstances available in the instant references. Accordingly question no. 3 is also answered against the revenue.

For the reasons aforementioned, question no. 1 is answered against the revenue and in favour of the dealer whereas question no. 2 is answered in favour of the dealer. Question no. 3 is answered in the negative against the revenue.”

In the case in hand, it is not in dispute that the appellant had furnished 'H' forms, which were accepted. The aforesaid judgment with identical facts is considering the provisions of the Act in question. All the issues raised by the State, which was the petitioner before this court, were considered and it was opined that the Tribunal had rightly decided the issue in favour of the dealer holding him entitled to rebate of tax on paddy in terms of Section 5(2)(a)(vi) of the Act. With a view to maintain consistency,

we deem it appropriate to follow the earlier judgment of Division Bench of this court and answer the question in negative, i.e., against the revenue and in favour of the assessee.

As no such direction was given by the Division Bench of this court dealing with the issue earlier, the appeals are accordingly accepted. The directions given by the Tribunal to the extent “..... and prove that the purchases of paddy, deduction of which is claimed from total turnover had been made after and for the purpose of complying with the agreement/order or in relation to such export” are set aside.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

August 03, 2016
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No