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C.A.No. 6885 OF 2000

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ITEM No.103

COURT No. 5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 6885 of 2000@@
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Asstt. Commnr. Commercial Taxes, Rajasthan

Appellant(s)

VERSUS

M/s. M.B. & Co.
(With office report)

Respondent(s)~

With Civil Appeal Nos.6886-6893 of 2000
(With office report)

Special Leave Petition (C) No. 20275 of 2002
(With appln.(s) for substitution, exemption from filing O.T.
and prayer for interim relief)

Special Leave Petition (C) Nos. 20276-20277 of 2000
(With appln.(s) for exemption from filing O.T. and prayer for
interim relief)

Special Leave Petition (C) No. 12007 of 2001
(With appln.(s) for exemption from filing O.T. and prayer for
interim relief)

Special Leave Petition (C) No. 21022 of 2001
(With prayer for interim relief)

Special Leave Petition (C) Nos.21024-21029 of 2001
(With prayer for interim relief)

Special Leave Petition (C) No.847 of 2002
(With appln.(s) for c/delay in re-filing SLP, exemption from
filing O.T., prayer for interim relief and office report)

Special Leave Petition (C) No.748 of 2002
(With appln.(s) for c/delay in filing SLP and prayer for interim
relief)

Special Leave Petition (C) No.1520 of 2002
(With prayer for interim relief and office report)

Special Leave Petition (C) No.6252 of 2002
(With appln.(s) for c/delay in filing SLP, prayer for interim
relief and office report)

Special Leave Petition (C) No.7627 of 2002
(With appln.(s) for c/delay in filing SLP, prayer for interim
relief and office report)

Civil Appeal No. 3332 of 2002
(With office report)

Civil Appeal No. 3733 of 2002
(With office report)

Date : 23/10/2002 These matters were called on for hearing today

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR. JUSTICE S.B. SINHA

For Appellant (s) Mr. Sushil Kumar Jain,Adv.
Ms. Anjali Doshi,Adv.
Mr. L.P. Singh,Adv.
Ms. Ruchi Kohli,Adv.

Mr. Ranji Thomas,Adv.
Ms. Bharathi Upadhyaya,Adv.
Ms. E.R. Sumathy,Adv.
Mr. Javed Mahmud Rao,Adv.

Ms. Sandhya Goswami,Adv.

For Respondent(s) Mr. H.K. Puri,Adv.

Mr. Sunil Gupta,Adv.
Ms. Anjali K. Varma,Adv.
Mr. Niraj Gupta,Adv.
Mr. Harish J. Jhaveri,Adv.

Mr. Pranab Kumar Mullick,Adv.

Mr. Rajendra Singhvi,Adv.
Mr. Ashok Kumar Singh,Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I..T.....T.....T.....T.....T.....T.....T.....J
C.A. Nos.6885/2002,6886-6893/2000, C.A. Nos.6910-6921/2002
@ SLP (C) Nos.21027/2001, 21022/2001,21025-26/2001,748/2002,
1520/2002,7627/2002,6252/2002,21029/2001,21028/2001,21024/2001,
12007/2001 & C.A.3332/2002 and 3733/2002.@@
CC

Heard Mr. Sushil Kumar Jain and Mr. Ranji Thomas,
learned counsel for the Revenue and Mr. H.K. Puri, learned
counsel for the respondents.

Delay is condoned.

Leave is granted.

The civil appeals are dismissed with costs, in cases
in which the respondents have put in their appearance.

Rest of the matters:@@
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Heard in-part.

(T.I. Rajput)
Court Master

(Jasbir Singh)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6885 of 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Asstt. Commnr. Commercial Taxes, Rajasthan ...Appellant (s)

Versus~

M/s. M.B. & Co.Respondent (s)

With C.A. Nos.6886-6893/2000, C.A. Nos.6910-6921/2002
@ SLP (C) Nos.21027/2001, 21022/2001,21025-26/2001,748/2002,
1520/2002,7627/2002,6252/2002,21029/2001,21028/2001,21024/2001,
12007/2001 & C.A.3332/2002 and 3733/2002.

O R D E R@@
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.....L.....I..T.....T.....T.....T.....T.....T.....T.....J

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Leave is granted in special leave petitions.

The Assistant Commercial Tax Officers of different circles of the State of Rajasthan (hereinafter referred to as 'the Revenue') are in appeal aggrieved by judgements of the High Court of Judicature at Rajasthan dismissing various Sales Tax Revision cases following the judgment under challenge in the lead case in this batch of cases - Civil Appeal No. 6889 of 2000.

This appeal is directed against the order of the learned Single Judge of the High Court of Judicature at Rajasthan (Jodhpur Bench) in Sales Tax Revision No. 1191 of 1999 made on January 4, 2000. The High Court dismissed the ...2/-

- 2 -

revision petition filed by the Revenue against the order of the Rajasthan Tax Board, Ajmer in Appeal No. 781 of 1996 dated 8th December, 1998.

The respondent-assessee is a manufacturer-dealer. It manufactures tiles and sells the same to various persons. The goods manufactured by it, are covered by the "Sales Tax Incentive Scheme for Industries, 1987" announced by the State Government vide Notification No. F.4(35) FD Cr.IV/87 dated@@

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23rd May, 1987. The said Scheme is framed under sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (for short, 'the Act'). The said Incentive Scheme exempts the industrial units from payment of tax on the sale of goods manufactured by them within the State in the manner and to the extent and for the period covered by the notification. Clause (4) of the said Incentive Scheme provides, inter alia,

that an industrial unit, which is granted eligibility certificate under the notification, shall be exempted from payment of tax on sales made within the State of the goods manufactured by it. The quantum of sales tax exemption and the period of eligibility of exemption are specified in Annexure 'C' thereto.

We have also perused the notification, bearing No.F.4(66) FD Gr.IV/82-72 dated 26th September, 1987, which ...3/-

- 3 -

was issued under Section 7(2-B) of the Act whereby the State Government announced the "Sales Tax Deferment Scheme for Industries, 1987". It allows the industrial units prescribed in the notification to defer the payment of tax on the sales of the goods manufactured by them within the State, in the manner, to the extent, for the period and subject to the conditions specified in the notification. Paragraph (4) of the said Deferment Scheme says, inter alia, that an industrial unit, which is granted eligibility certificate under this notification, shall be entitled to defer the payment of tax on the sales made within the State of the goods manufactured by it. The quantum of tax to be deferred and the maximum period of deferment would be as prescribed in Annexure 'C' thereto.

A perusal of paragraphs (4) of both the Schemes shows that the exemption or deferment of tax is in respect of taxable turnover of the manufacturer-dealer.

In the instant case, it appears that on the total turnover of the assessee, the assessing authority worked out the exemption limit on the basis of taxable turnover of tiles and packing material. However, on 27th September, 1994 the assessing authority passed the assessment order for the Assessment Year 1992-93, inter alia, holding that only ...4/-

- 4 -

granite tiles sold by the assessee are exempted under the said Incentive Scheme and not the packing material used for selling the granite tiles, which is exigible to tax as the sale of packing material is an implied sale under the proviso to Section 5(1) of the Act. The assessing authority, therefore, imposed tax of Rs.2407/- along with interest of Rs. 817/- on the packing material used. The order of assessment was challenged before the Deputy Commissioner (Appeals) who allowed the appeal of the assessee on February 22, 1996. Aggrieved by the said order, the Revenue filed an appeal before the Rajasthan Tax Board, which took the view that there was no separate sale of packing material and, thus, affirmed the order of the Deputy Commissioner (Appeals). Having unsuccessfully pursued the matter in Sales Tax Revision Petition before the High Court, the Revenue is in appeal before this Court.

The respondent in this appeal has been served but no one has put in an appearance. We heard Mr. Sushil Kumar Jain, learned counsel for the Revenue, and Mr. H.K. Puri, learned counsel appearing for the respondents in three connected appeals.

Mr. Sushil Kumar Jain submits that in view of the first proviso to clause (s) of Section 2 of the Act, there is ...5/-

- 5 -

a deemed sale of the packing material and, therefore, the subsequent order of assessment ought to have been upheld by the authorities under the Act. We are afraid, we cannot accede to the contention of the learned counsel. We have pointed out above that it is the taxable turnover of the manufacturer-assessee that is relevant for the purpose of determining the exemption or deferment of tax. The expression "taxable turnover", is defined in Section 2(s) of the Act, which insofar as is relevant, reads thus:

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"Taxable turnover' means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods--

- (i) on which no tax is leviable under this Act,
- (ii) which have already been subjected to tax under this Act,
- (iii) which have been sold to persons outside the State for consumption outside the State, and
- (iv) which are taxable at a point of sale within the State subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provision of this Act or the rules made thereunder.

Provided that where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him, the taxable turnover in respect of such sales shall, at the option of such dealer to be exercised in the prescribed

...6/-

manner, be one per cent of the aggregate amount of the sale prices received or receivable by him in respect of the sale or supply of such goods and of such bardana, container or material;"

.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J
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A close reading of the first proviso, on which reliance is placed by the learned counsel, shows that it applies to a case where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him. Apart from the fact that the goods in question are not as such exempted under the Act, it has no application to the case of the first sale of goods by any seller.

In the instant case, as it would appear from the facts narrated above that the respondent-assessee is the manufacturer of goods which were sold along with packing material and it is, therefore, the first seller. It follows that the proviso is not attracted.

Learned counsel next has invited our attention to the fifth proviso to Section 5(1) of the Act and submitted that in view of that proviso, the packing material is exigible to tax.

The said provision, insofar as it is relevant for our purpose, reads as under:

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"5. Rate of Tax.-- The tax payable by a dealer under this Act shall be at such single point in ...7/-

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the series of sales by successive dealers as may be prescribed and shall be levied at such rate not exceeding fifty per cent on the taxable turnover, as may be notified by the State Government in the Official Gazette.

Proviso (1) to (4) xxx xxx xxx

Provided also that when any goods are sold, packed in any material, the tax shall be leviable on the sale of such packing material, whether charged separately or not, at the same rate as is applicable to the sale of the goods themselves; and if the goods are exempted from tax under section 4 or have already been subjected to tax under the Act, then at the rate notified for such packing material from time to time."

.....L.....I..T.....T.....T.....T.....T.....T.....T.....J
.SP2

Section 5 deals with rate of tax payable by a dealer. A plain reading of the fifth proviso shows that it is in two parts. The first part applies when goods are sold, packed in any material; in such a case, the tax would be leviable on the sale of such packing material, whether charged separately or not, at the same rate as is applicable to the sale of the@@

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goods themselves. For purposes of the proviso, there must be@@
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sale of packing material. Whether there is such a sale or not is a question of fact. The second part is in effect an explanation to the first part and says that if the goods are exempted from such tax under Section 4 or have already been subject to tax under this Act, tax would be levied at the rate notified for such packing material from time to time. Admittedly, no notification is placed on record. The contention that the first part and not the second part will ...8/-

- 8 -

apply as the Scheme postulates exemption of dealers and not the goods, even if accepted, will not advance the case of the Revenue because as a fact it was found that there was no sale of packing material. As observed above, this proviso is relevant for the purposes of determining the rate of tax payable by a dealer. It is neither a charging section nor can it be read into clause (s) of Section (2) - the definition of "taxable turnover" - so as to enlarge the meaning of "taxable turnover". If this be so, the first part of the fifth proviso is of no assistance to the Revenue. In

filing O.T., prayer for interim relief and office report)

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(With appln.(s) for c/delay in filing SLP and prayer for interim relief)

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Mr. Harish J. Jhaveri,Adv.

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Delay is condoned.

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Court Master

(Jasbir Singh)
Court Master

(Signed order is placed on the file)

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This appeal is directed against the order of the learned Single Judge of the High Court of Judicature at Rajasthan (Jodhpur Bench) in Sales Tax Revision No. 1191 of

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- 2 -

revision petition filed by the Revenue against the order of the Rajasthan Tax Board, Ajmer in Appeal No. 781 of 1996 dated 8th December, 1998.

The respondent-assessee is a manufacturer-dealer. It manufactures tiles and sells the same to various persons. The goods manufactured by it, are covered by the "Sales Tax Incentive Scheme for Industries, 1987" announced by the State Government vide Notification No. F.4(35) FD Cr.IV/87 dated@
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23rd May, 1987. The said Scheme is framed under sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (for short, 'the Act'). The said Incentive Scheme exempts the industrial units from payment of tax on the sale of goods manufactured by them within the State in the manner and to the extent and for the period covered by the notification. Clause (4) of the said Incentive Scheme provides, inter alia, that an industrial unit, which is granted eligibility certificate under the notification, shall be exempted from payment of tax on sales made within the State of the goods manufactured by it. The quantum of sales tax exemption and the period of eligibility of exemption are specified in Annexure 'C' thereto.

We have also perused the notification, bearing No.F.4(66) FD Gr.IV/82-72 dated 26th September, 1987, which
...3/-

- 3 -

was issued under Section 7(2-B) of the Act whereby the State Government announced the "Sales Tax Deferment Scheme for Industries, 1987". It allows the industrial units prescribed in the notification to defer the payment of tax on the sales of the goods manufactured by them within the State, in the manner, to the extent, for the period and subject to the conditions specified in the notification. Paragraph (4) of the said Deferment Scheme says, inter alia, that an industrial unit, which is granted eligibility certificate under this notification, shall be entitled to defer the payment of tax on the sales made within the State of the goods manufactured by it. The quantum of tax to be deferred and the maximum period of deferment would be as prescribed in Annexure 'C' thereto.

A perusal of paragraphs (4) of both the Schemes shows that the exemption or deferment of tax is in respect of taxable turnover of the manufacturer-dealer.

In the instant case, it appears that on the total turnover of the assessee, the assessing authority worked out the exemption limit on the basis of taxable turnover of tiles and packing material. However, on 27th September, 1994 the assessing authority passed the assessment order for the Assessment Year 1992-93, inter alia, holding that only
...4/-

- 4 -

granite tiles sold by the assessee are exempted under the said Incentive Scheme and not the packing material used for selling the granite tiles, which is exigible to tax as the sale of packing material is an implied sale under the proviso to Section 5(1) of the Act. The assessing authority, therefore, imposed tax of Rs.2407/- along with interest of

Rs. 817/- on the packing material used. The order of assessment was challenged before the Deputy Commissioner (Appeals) who allowed the appeal of the assessee on February 22, 1996. Aggrieved by the said order, the Revenue filed an appeal before the Rajasthan Tax Board, which took the view that there was no separate sale of packing material and, thus, affirmed the order of the Deputy Commissioner (Appeals). Having unsuccessfully pursued the matter in Sales Tax Revision Petition before the High Court, the Revenue is in appeal before this Court.

The respondent in this appeal has been served but no one has put in an appearance. We heard Mr. Sushil Kumar Jain, learned counsel for the Revenue, and Mr. H.K. Puri, learned counsel appearing for the respondents in three connected appeals.

Mr. Sushil Kumar Jain submits that in view of the first proviso to clause (s) of Section 2 of the Act, there is ...5/-

- 5 -

a deemed sale of the packing material and, therefore, the subsequent order of assessment ought to have been upheld by the authorities under the Act. We are afraid, we cannot accede to the contention of the learned counsel. We have pointed out above that it is the taxable turnover of the manufacturer-assessee that is relevant for the purpose of determining the exemption or deferment of tax. The expression "taxable turnover", is defined in Section 2(s) of the Act, which insofar as is relevant, reads thus:

.....L.T.....T.....T.....T.....T.....T.....J
.SP1

"Taxable turnover' means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods--

- (i) on which no tax is leviable under this Act,
- (ii) which have already been subjected to tax under this Act,
- (iii) which have been sold to persons outside the State for consumption outside the State, and
- (iv) which are taxable at a point of sale within the State subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provision of this Act or the rules made thereunder.

Provided that where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him, the taxable turnover in respect of such sales shall, at the option of such dealer to be exercised in the prescribed

...6/-

- 6 -

manner, be one per cent of the aggregate amount of the sale prices received or receivable by him in respect of the sale or supply of such goods

and of such bardana, container or material;"

.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

A close reading of the first proviso, on which reliance is placed by the learned counsel, shows that it applies to a case where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him. Apart from the fact that the goods in question are not as such exempted under the Act, it has no application to the case of the first sale of goods by any seller.

In the instant case, as it would appear from the facts narrated above that the respondent-assessee is the manufacturer of goods which were sold along with packing material and it is, therefore, the first seller. It follows that the proviso is not attracted.

Learned counsel next has invited our attention to the fifth proviso to Section 5(1) of the Act and submitted that in view of that proviso, the packing material is exigible to tax.

The said provision, insofar as it is relevant for our purpose, reads as under:

.....L..T.....T.....T.....T.....T.....T.....T.....J
.SP1

"5. Rate of Tax.-- The tax payable by a dealer under this Act shall be at such single point in ...7/-

the series of sales by successive dealers as may be prescribed and shall be levied at such rate not exceeding fifty per cent on the taxable turnover, as may be notified by the State Government in the Official Gazette.

Proviso (1) to (4) xxx xxx xxx

Provided also that when any goods are sold, packed in any material, the tax shall be leviable on the sale of such packing material, whether charged separately or not, at the same rate as is applicable to the sale of the goods themselves; and if the goods are exempted from tax under section 4 or have already been subjected to tax under the Act, then at the rate notified for such packing material from time to time."

.....L.....I..T.....T.....T.....T.....T.....T.....T.....J
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Section 5 deals with rate of tax payable by a dealer. A plain reading of the fifth proviso shows that it is in two parts. The first part applies when goods are sold, packed in any material; in such a case, the tax would be leviable on the sale of such packing material, whether charged separately or not, at the same rate as is applicable to the sale of the goods themselves. For purposes of the proviso, there must be sale of packing material. Whether there is such a sale or

not is a question of fact. The second part is in effect an explanation to the first part and says that if the goods are exempted from such tax under Section 4 or have already been subject to tax under this Act, tax would be levied at the rate notified for such packing material from time to time. Admittedly, no notification is placed on record. The contention that the first part and not the second part will ...8/-

- 8 -

apply as the Scheme postulates exemption of dealers and not the goods, even if accepted, will not advance the case of the Revenue because as a fact it was found that there was no sale of packing material. As observed above, this proviso is relevant for the purposes of determining the rate of tax payable by a dealer. It is neither a charging section nor can it be read into clause (s) of Section (2) - the definition of "taxable turnover" - so as to enlarge the meaning of "taxable turnover". If this be so, the first part of the fifth proviso is of no assistance to the Revenue. In this view of the matter, we consider it unnecessary to delve further on the question as to whether the first part of the proviso or the second part of the proviso would govern the case here.

In the result, we find no illegality in the order under challenge in these appeals. The appeals are without any merit and they are, accordingly, dismissed with costs, in cases in which the respondents have put in their appearance.

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(Syed Shah Mohammed Quadri)@@
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(S.B. Sinha)@@
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New Delhi,
October 23, 2002.