

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.9872-9874 OF 2011

STATE OF HARYANA & ORS.ETC. . . .APPELLANT(S)

VERSUS

M/S UNITED RICELAND PVT. LTD.
& ANR. ETC. . . .RESPONDENT(S)

ORDER

1. The matters relate to the liability of the respondents to pay purchase tax on paddy purchased within the State of Haryana and milled for subsequent export out of the State.

2. The issue was decided in favour of the respondents by this Court in Satnam Overseas (Export) through its Partner and others Vs. State of Haryana and another¹ by

1 (2003) 1 SCC 561

holding that neither Section 6 nor Section 9 of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "Act") would authorize the imposition of the levy. This Court in paragraph 28 of the said report [i.e. Satnam overseas (supra)] and relying on the definition of "turnover" in Section 2(p) of the Act and Explanation 2 thereto took the view that

"28. the proceeds of sale of any goods on the purchase of which tax is leviable under the Act or the purchase value of any goods on the sale of which tax is leviable under the Act shall not be included in the turnover. Inasmuch as the sale of paddy is taxable under the Act, the purchase value of such paddy cannot be included in the turnover; it is evident that no purchase tax can be imposed under Section 6 of the Haryana Act."

Section 9 of the Act which continued to remain in operation till 1st April, 1991 was held by this Court in Satnam Overseas (supra) to be a charging as well as an exemption section and as the rice from the

paddy procured by the respondent from within the State was to be exported, the benefit of exemption under Section 9(1)(b) of the Act was held in favour of the respondents.

3. The Haryana General Sales Tax Act was amended in the year 2003 by Amendment Act No.4 of 2003 (hereinafter referred to as "2003 Amendment"), *inter alia*, amending Section 6 of the Act making the provisions of Section 6 of the Act subject to Sections 15 and 27 thereof in place of the "other provisions of the Act", as contained earlier. Section 9 of the Act which was already omitted/deleted with effect from 1st April, 1991 remained untouched by the 2003 Amendment. As the amended provisions of the Act were relied upon to deny the benefit of refund to the respondents for purchase tax paid for

periods when Section 9 was in force, the matter was re-agitated before the High Court of Punjab and Haryana. By the impugned order, the High Court answered the issue in favour of the respondents. Aggrieved, these appeals have been filed.

4. The opinion rendered by the High Court in the impugned order succinctly sum up the issue in the following terms :

"In the light of the above, we shall now consider whether the sole purpose of the impugned amendments is to nullify the judgment of the Supreme Court in *Satnam Overseas (Export) V. State of Haryana (supra)* and, therefore, the same are ultra vires to the legislative power of the state. A bare reading of the two Amending Acts shows that by amending Section 6 of the Haryana Sales Tax Act, the State Legislature has made the provisions of that section subject to Sections 15 and 27, whereas un-amended Section 6 was subject to other provisions of the Act. Section 9(1)(b) of the Haryana Sales Tax Act, which was deleted w.e.f. 1.4.1991, has not been erased from the statute book with retrospective effect. Notwithstanding this, by virtue of clause (3) of Haryana Act No.4 of 2003 and clause (f) of Haryana Act No.4 of 2004, attempt has been made to validate

and legalise the levy of tax on purchase of paddy on or after 1.4.1981. The use of the expression "notwithstanding" anything to the contrary contained in judgment, decree or order of any court..." in the validation clause contained in Haryana Act No.4 of 2003 leaves no manner of doubt that the sole purpose of that clause is to nullify the effect of the judgment of the Supreme Court in *Satnam Overseas (Export) V. State of Haryana (supra)* vide which the levy of purchase tax on the paddy upto 31.3.1991 was declared illegal. What the Legislature has done is to simply override the judgment of the Supreme Court without amending the scheme of the Haryana Sales Tax Act and deleting Section 9(1) (b) under which the petitioner's and other dealers engaged in the manufacture of rice were entitled to exemption from levy of tax on the purchase of paddy. Therefore, by applying the ratio of the judgments of the Supreme Court in *Prithvi Cotton Mills Ltd. Vs. Broach Borough Municipality (supra)*; *D. Cawasju and Co. V. State of Mysore (supra)* and *Municipal Corporation of the city of Ahmedabad V. New Shrock Spinning and Co. Ltd. (supra)*, we hold that the validation clause contained in Haryana Act No.4 of 2003 and clause (f) of Harana Act No.4 of 2004 are ultra vires to the powers of the State legislature."

5. We do not see how in the light of what was effected by the amendment made in the year 2003, the view taken by the High

court that the lacuna in the Act which had led to the decision in Satnam Overseas (supra) can be understood to have been rectified by the amendment so as to confer legitimacy to the same, can be faulted with. On the aforesaid basis, the High Court construed the amendment and the actions thereunder to be an attempt to overcome the decision of this Court in Satnam Overseas (supra). Having considered the ratio of the decision laid down in Satnam Overseas (supra), as discussed above, and the purport and effect of the 2003 Amendment we do not see the said view can be faulted.

6. An attempt has been made by Ms. Pinky Anand, learned Additional Solicitor General to open up the issue once again by contending that the view taken in Satnam Overseas (supra) with regard to Section 6 of

the Act and the interpretation of Section 2(p) was in the context of the provisions of Section 2(p) as it then existed which was subsequently amended by Amendment Act of 1991 (No.4 of 1991) with effect from 27th May, 1971. It is further submitted by the learned ASG that Explanation (2) to Section 2(p) of the Act, on the basis of which the view of this Court in Satnam Overseas (supra) with regard to Section 6 were expressed in paragraph 28 of the report in Satnam Overseas (supra), was deleted by the amendment. It is therefore contended that Satnam Overseas (supra), would require a reconsideration.

7. We do not find any substance in the said contention advance inasmuch as by the Amendment it is only the first Part of Section 2(p) which has been amended with effect from 27th May, 1971 leaving the

Explanations untouched. That apart, the contention now advanced by the learned ASG in our considered view, ought to have been brought to the notice of the Court after the pronouncement of the decision in Satnam Overseas (supra). Instead, a conscious decision was made by the State in bringing the amendment of the Act in 2003 ostensibly to cure the defects pointed out in Satnam Overseas (supra) which result, however, did not materialize. Rather the amendments brought in had the effect of assuming the colour of an attempt to overcome the verdict rendered in Satnam Overseas (supra) which is not a permissible course of action for the legislature.

8. Accordingly, we find no merit in the present appeals filed by the State which are dismissed, however, without any

costs. The order of the High Court is sustained.

....., J.
(RANJAN GOGOI)

....., J.
(R. BANUMATHI)

NEW DELHI
APRIL 11, 2018

ITEM NO.101 [PH]

COURT NO.3

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(S). 9872-9874/2011

THE STATE OF HARYANA & ORS.ETC.

APPELLANT(S)

VERSUS

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& ANR. ETC.

RESPONDENT(S)

Date : 11-04-2018 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s)

Ms. Pinky Anand, ASG
Mr. Piyush Hans, Adv.
Mr. Deepak Thukral, Adv.
Mr. Sumit Teterwal, Adv.
Ms. Saudamini Sharma, Adv.
For Mr. Kamal Mohan Gupta, AOR

For Respondent(s)

Mr. A.K. Ganguli, Sr. Adv.
Dr. Abhishek Atrey, AOR.
Mr. Rajiv Agnihotri, Adv.

Mr. Surya Kant, AOR

M/S. Mitter & Mitter Co., AOR

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

The appeals are dismissed with no costs in terms
of the signed order.

[VINOD LAKHINA]
AR-cum-PS

[ASHA SONI]
BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]