

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).3753/2007

(From the judgement and order dated 05/09/2006 in STC No. 3/1999 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

FOOD CORPORATION OF INDIA

Petitioner(s)

VERSUS

STATE OF PUNJAB

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer for interim relief) (For final disposal)

Date: 11/12/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Mr. Y. Prabhakara Rao,Adv.

For Respondent(s)

Mr. Ajay Pal,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.
The appeal is dismissed with no order as to costs.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5825 OF 2007
(Arising out of SLP(C)Nos. 3753 of 2007)

FOOD CORPORATION OF INDIA

.. APPELLANT

vs.

STAE OF PUNJAB

.. RESPONDENT

ORDER

Leave granted.

The appellant is a statutory Corporation dealing in imports, procurements and

distribution of foodgrains through out the country. The appellant-Corporation has been assessed for the Assessment year 1975-76. An additional demand of Rs.12,47,069/- was made on the Corporation. This was challenged.

The main contention of the appellant is that commission charges paid to the commission agent are not includible in the taxable turnover under the provisions of Punjab General Sales Tax Act 1948 as the Corporation had purchased foodgrains at the prices notified by the Central Government as the Minimum Support Price. It is conceded on

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behalf of the Corporation that in cases where there is no price fixation by the Central Government such charges are includible in the taxable turnover under the said Act, however, in this case such charges are not includible as commission agent has no role to play in price fixation in view of the Notification fixing the price issued by the Central Government.

We do not find any merit in the above arguments advanced on behalf of the appellant.

We quote hereinbelow the following relevant sections of the 1948 Act:-

Sec.2. (d) "Dealer" means any person including a Department of Government who in the normal course of trade sells or purchases any goods []in the State of Punjab, irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, "Dealer" includes the local manager or agent of such person in Punjab in respect of such business and also includes a person engaged in the business of:-

[(i)transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration];

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(ii)transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract;

(iii)delivery of goods on hire-purchase or any system of payment by instalments;

(iv)transfer of the right to use any goods for any purpose (whether or not for a specified period) for the cash, deferred payment or other valuable consideration; and

(v)supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

[Words "that are actually delivered for the purposes of consumption" omitted by Pb. Act 3 of 1973 dated 1.4.1960. sub-clause (i) of clause (d) inserted by Punjab Act 8 of 1987 dated 13.4.1987.]

2.(2) a factor, a broker, a commission agent, a dealer's agent, an auctioneer or any other mercantile agent by whatever name called and whether of the same description as here-in-before mentioned or not, who carries on the business of selling, supplying or purchasing goods and who has in the customary course of business, authority to sell goods belonging to principals or to purchase goods on their behalf is a dealer.

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2.(3)(ff) "purchase" with all its grammatical or cognate expressions means that acquisition of goods specified in Schedule C 5 [or of goods on the purchase whereof tax is payable under any provisions of this Act] for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge' 6 [and includes: [Inserted by Punjab Act 3 of 1973 w.e.f. 15.11.1972. Inserted by Punjab Act 8 of 1987 w.e.f. 2.2.1983.]

2.2 [(h) "sale' means any transfer of property in goods other than goods specified in Schedule "C" for cash, deferred payment or other valuable consideration and includes:-

(i) transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(ii) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(iii) delivery of goods on hire-purchase or any system of payment by instalments;

(iv) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

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(v) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(vi) supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of these goods by the person making the transfer, delivery or supply to a person to whom such transfer, delivery or supply is made but does not include a mortgage, hypothecation, charge or pledge;]

[substituted by for the words "Sale-means any transfer of property in goods other than goods specified in Schedule 'C' for the cash or deferred payment or other valuable

consideration, but does not include a mortgage, hypothecation, charge or pledge; by Punjab Act 8 of 1987 dated 13.4.1987.]

2.(3)[i] "turnover" includes the aggregate of the amounts of sales and purchases and parts of sales and purchases actually made by any dealer during the given period, less any sum allowed as cash discount and trade discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or on before, delivery thereof.]

(Inserted by Punjab Act 8 of 1987 dated 13.4.1987.)

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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 preceding 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 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.

(2)Every dealer to whom sub-section (1) does not apply or who does not deal exclusively in goods declared to be tax free under section 6 shall be liable to pay tax under this Act on the expiry of 30 days after the date on which his gross turnover during any year first exceeds the taxable quantum:

Provided that in the case of a dealer who imports any goods for sale or use in manufacturing or processing, or who manufactures or processes any goods for sale, the liability to pay tax shall commence with effect from the date on which gross turnover during any year first exceeds the taxable quantum.

(2-A) Notwithstanding anything contained in sub-sections (1) and (2) no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

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(3)Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years during each of which his gross turnover has failed to exceed the taxable quantum and such further period after the date of such expiry as may be prescribed, and on the expiry of this later period his liability to pay tax shall cease.

(4)Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the date on which his gross turnover first exceeds the taxable quantum."

The scheme of the Act indicates that Sec.4 is the charging section. It indicates that the "taxable turnover" which is not defined expressly in the Act applies to the difference between gross turnover assessed during the year in question and the taxable quantum which in turn has been defined under Sec.4(5). If

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this scheme is kept in mind then in the present case commission paid to the agent is includible in the gross turnover. The scheme of Sec.4 clearly indicates that every dealer, which includes even a commission agent, is liable to pay tax to the extent the gross turnover of the concerned year exceeds the taxable quantum.

Keeping in mind the above scheme of the Act we see no infirmity in the impugned judgment. Accordingly civil appeal stands dismissed with no order as to costs.

(S.H. KAPADIA)

.....J.

.....J.
(B. SUDERSHAN REDDY)

NEW DELHI;
DECEMBER 11, 2007.