A K.B. HANDICRAFTS EMPORIUM AND ORS. ETC.

v.

STATE OF HARYANA AND ORS.

APRIL 28, 1993

B [B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

Haryana General Sales Tax Act, 1973:

Sections 9. 24 read with Rule 21, ST Form-15, the Haryana General Sales Tax Rules and read with Section 5 (1) of the Central Sales Tax Act and Form A of
C *the General Sales Tax Rules—Raw material purchased within Haryana—Sale of manufactured goods out of such raw material to dealers at Delhi, who exports them—Purchase tax whether leviable.*

Constitution of India. 1950 :

D

Article 32—Writ Petition—Whether a particular sale is intra-State sale, inter-State sale or export sale—Supreme Court cannot determine in writ jurisdiction.

W.P.(C) No. 9835/1983

E

Petitioners-firms were registered sales tax dealers. They manufactured and sold handicraft items. As they purchased raw material within the State against declaration forms ST-15 prescribed under Rule 21 of the Haryana General Sales Tax Rules read with Section 24 of the Haryana General Sales Tax Act, purchase tax was not paid.

F

The petitioners sold the items of handicrafts to dealers in Delhi who exported the same out of India. As the Delhi dealers issued Form H, prescribed under the Cectral Sales Tax Rules, they did not pay tax on the said sale/purchase.

G **Following the High court decision in *M/s. Murli Manohar and Company, Panipat & ors.* v. *State of Haryana & Ors.* C.W. P. No. 1227 of 1980. The Sales Tax Authorities levied purchase tax u/s 9 of the Haryana General Sales Tax Act for the assessmment years in question on the purchase of raw material made by the petitioners, computing the tax with reference to the purchase value of the goods exported against Form H.**

H **Hence the present writ petition before this Court was filed challenging**

the impugned order of levying purchase tax. A

Meanwhile this court allowed the appeals preferred against the decision of the High Court in *Murli Manohar and Company's* case, setting aside the judgment of the High Court.

B

As a common question arose in this batch of writ petitions, all petitions heard together.

The petitioners contended that in view of the decision of this Court in *Murli Manohar* 1991 [1] SCC 377, the writ petitions were to be allowed.

C

Disposing of the writ petitions, this Court,

HELD: 1.1. The decision in *Murli Manohar* says that there can be only three types of sales, namely, intra-State sales, inter-state sales and export sales and no other. A sale to an exporter would be either an intra-state sale or D an inter-state sale; in either case, the decision says, it does not attract the purchase tax (on raw material) under Section 9 of the Haryana General Sales Tax Act. However, in the light of the decision in *Hotel Balaji*, it must be held that there is one more category in addition to the three categories mentioned above. The fourth category is where a dealer in Haryana takes his goods out of Haryana (without effecting a sale, within the State), and effects the sale in E the other State. According to Section 9 of the Haryana Act, as explained in Hotel Balaji, purchase tax can be levied and collected on the raw material purchased by the manufacture within Haryana, which was utilised for manufacturing the goods so sold in the other State. (458-D-F)

Murli Manohar case. [1991] 1 S.C.C. 377, followed. F

Good year India Ltd. and Ors. v. *State of Haryana and Anr.* [1990] 2 S.C.C. 71, referred to.

Hotel Balaji and Ors. etc. etc. v. *State of Andhra Pradesh & ors. etc. etc.* J.T. G (1992) 6 S.C. 182 explained

2.1. In a petition under article 32 of the Constitution it is not the province of the Supreme Court to go into facts. As repeatedly emphasised by this Court, the question whether a particular sale is an intra-State sale, an inter state sale, an export sale within the meaning of Section 5(1) or a H

penultimate sale within the meaning of section 5(3), or otherwise, is always a question of fact to be decided by the appropriate authority in the light of the principles enunciated by Courts. (459-C)

2.2. In these circumstances, it is directed that the matters be disposed of by the authorities under the Act in the light of the law declared by this Court in *Murli Manohar, Hotel Balaji* and in this judgment. (459-D)

ORIGINAL JURISDICTION: Writ Petition (c) Nos. 9835-38 of 1983.

(Under Article 32 of the Constitution of India)

WITH

W.P. (C) Nos. 7468-7469/81, 3838-39/83, 5398/85, 5435/85, 386/84, 1489/86, 12691/85, 489-90/83, 81/83, 68/86 & 1065/87

Lakshmi Chandra Goyal, B.B. Sahni and Serve Mitter for the Petitioners

D.P. Gupta, Solicitor General, Ms. Indu Malhotra, Ms. Aysha Khatri, Ms. V. Mohana and Ms. Nisha Bagchi for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY.J. A common question arises in this batch of writ petitions. We may take the facts in writ petition (C) No. 9835 of 1983 filed by M/s K.B. Handicrafts Emporium & Ors., as representative of the facts in all the cases. The petitioners are firms engaged in the manufacture and sale of handicrafts items. They are registered Sales Tax Dealers in the State of Haryana. They purchased raw material within the State against declaration forms ST-15 prescribed under Rule 21 of the Haryana General Sales Tax Rules read with Section 24 of the Act. By issuing Form S.T.15, the petitioners undertook that the goods manufactured by them out of the said raw material would be sold by them either within the State or in the course of inter-state trade and commerce or in the course of export within the meaning of Section 5(1) of the Central Sales Tax Act. A dealer issuing the said Form need not pay the purchase tax on such raw material. After manufacturing the items of handicrafts, the petitioners say, they sold them to dealers in Delhi who, in turn, exported them out of India. At the time of sale of handicrafts to Delhi dealers, the Delhi dealers issued Form-H, prescribed under the Central Sales Tax Rules which means that the goods purchased were meant for export. Neither party paid tax on the said sale/purchase.

For the assessment years in question, the Sales Tax Authorities of Haryana levied purchase tax on the purchase of raw material made by the petitioner, following the decision of the Punjab and Haryana High Court in *M/s. Murli Manohar and Company, Panipat & Ors.* v. *State of Haryana & Ors.* (Civil Writ Petition No. 1227 of 1980), under section 9 of the Haryana General Sales Tax Act, 1973. However, the assessing authority computed the tax with reference to the purchase value of the goods exported against Form-H. The petitioners did not choose to file an appeal but directly approached this Court by way of this writ petition on the ground that in view of the decision of the Punjab and Haryana High Court in *Murli Manohar* there was no point in their pursuing the remedies under the Act in that State.

Appeals were preferred in this court against the decision of the Punjab and Haryana High Court in *Murli manohar* which have been disposed of by this Court on October 25, 1990 (reported in [1991] 1 S.C.C. 377). This Court allowed the appeal and set aside the judgment of the High Court.

When these writ petitions came up for hearing, it was urged by the learned counsel for the petitioners that in view of the decision of this Court in *Murli Manohar* the writ petitions must be allowed striaghtway. This was demurred to by the learned Solicitor General appearing for the respondent-State.

We are of the opinion that the decision of this Court in *Murli Manohar* does cover the point raised in these appeals but it is necesary to add a clarification. Before we do that, it is necessary to state a little background. Earlier to the rendering of the decision in *Murli Manohar*, a Bench of this Court comparising Sabyasachi Mukharji and Ranganathan, JJ. held in *Goodyear India Ltd. and Ors.* v. *State of Haryana and Anr.* [1990] 2 S.C.C. 71 that where the goods manufactured are taken out of Haryana (without effecting a sale) to the branch office or depot of the Manufacturer or to the office or depot of his agent, no purchase tax can be levied under section 9 of the Act on the raw material purchased within the State and used in the manufacture of such goods. It was held that imposing such tax would amount to levying tax on consignment, which the State Legislature was not competent to do. Section 9, as it then stood, stated expressly that no such purchase tax on raw material was leviable, if the goods manufactured out of such raw material were sold either within the State or were sold in the course of inter-state Trade and Commerce or were sold in the course of export within the meaning of Section 5(1) of the Central Sales Tax Act. *Murli Manohar* was decided in the light of the law declared in *Goodyear*. Later, However, a Bench of three Judges comprising S. Ranganathan, V. Ramaswami, JJ. and one of us (B.P. Jeevan Reddy, J.) held that *Goodyear* does not lay down the correct law–vide *Hotel Balaji and*

A *Ors. etc. etc.* v. *State of Andhra Pradesh & Ors. etc. etc.* JT (1992) 6 S.C. 182. It was held in Hotel Balaji that having regard to the scheme of and the objective underlying section 9 it was competent for the State Legislature to levy purchase tax on raw material purchased within the State where the goods manufactured out of such raw material are taken out of the State (without effecting a sale within the State or otherwise than by way of an inter-state sale or by way of an export-sale B within the meaning of Section 5(1) of the Central Sales Tax Act). It was held that such a tax does not amount to consignment tax. It is this decision in *Balaji* that calls for a certain clarification of the principles enunciated in *Murli Manohar.*

The facts in *Murli Manohar* were substantially similar to the facts herein. C The dealers within the State of Haryana purchased raw material without paying tax, manufactured goods out of the same and sold the manufactured goods to dealers who in turn exported those goods out of India. On these facts it was held by the Punjab and Haryana High Court that inasmuch as the sale to exporters was a penultimate sale falling under section 5(3) of the Central Sales Tax Act and further inasmuch as Section 9 of the State Act exempted only export sales within D the meaning of section 5(1) of the Central Sales Tax Act but not the penultimate sale falling under Section 5(3), tax under Section 9 was leviable. On appeal, this Court affirmed that Section 9 of the Haryana Act (before it was amended by Haryana Act 1 of 1988) did not exempt as sale falling under Section 5(3) but exempted only a sale falling under section 5(1). Even so, the appeal was allowed E on the following reasoning: "the sales made by the assesses can only fall within one of the three categories. They are either local sales or inter-state sales or export sales..... We are unable to conceive of a fourth category of sale which could be neither a local sale nor an inter-State sale nor an export sale." In other words, the decision says that there can be only three types of sales, namely, intra-state sales, inter-state sales and export sales and no other. A sale to an exporter would F be either an intra-state sale or an inter-state sale; in either case,it does not attract the purchase tax (on raw material) under Section 9 of the Haryana Act, says the decision. It is on this reasoning that the appeals were allowed inspite of the clear enunciation that the sales falling under Section 5(3) of the Central Sales Tax Act were not exempt under Section 9 of the Haryana Act, as it then stood.

G The above holding is evidently influenced by the decision in *Goodyear,* which was good law at the time *Murli Manohar* was decided. However, in the light of the decision of *Hotel Balaji,* it must be held that there is one more category in addition to the three categories mentioned above. The fourth category is where a dealer in Haryana takes his goods out of the Haryana without effecting a sale. An H illustration would serve to highlight what we say: a Haryana manufacturer takes his goods to Delhi without effecting a sale. In Delhi, if he finds it more profitable,

he will sell it to a dealer in Delhi. Or if he finds it more profitable to sell it to an exporter in Delhi he will sell the same to such exporter. These two sales are neither intra-state sales nor inter-state sales, nor export sales within the meaning of Section 5(1) of the Central Sales Tax Act. In one case, it is a sale in Delhi and in the other, it is a punultimate sale within the meaning of Section 5(3) of the Central Sales Tax Act. According to Section 9 of the Haryana Act, as explained in *Hotel Balaji* and *Murli Manohar*, purchase tax can be levied and collected on the raw material purchased by the manufacturer within Haryana, which was utilised for manufacturing the goods so sold in these two situations.

We must make it clear that in a petition under Article 32 of the Constitution, it is not our province to go into facts. As repeatedlly emphasised by this Court, the question whether a particular sale is an intra-state sale, an inter-state sale, an export sale within the meaning of section 5(1) or a penultimate sale within the meaning of section 5(3), or otherwise, is always a question of fact to be decided by the apporiate authority in the light of the principles enunciated by Courts. In these circumstances, we content ourselves by declaring the law and leave it to be applied by the appropriate authorities. Counsel for the petitioners says that all the sales effected by all the petitioners are inter-State sales. May be, or may not be. We leave the matters to be disposed of by the authorities under the Act in the light of the law declared by this Court in *Murli Manohar, Hotel Balaji* and in this judgment.

The writ petitions are disposed of with the aforementioned clarification and observations. No costs.

V.P.R. Petitions disposed of.