(2011) 06 KL CK 0032

In the High Court Of Kerala

Case No : O.T. Rev. (VAT) No. 37 of 2011

Alex Paul — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 10(b), 10A, 2(g), 2(g)(ii), 8

Citation : (2012) 52 VST 160

Hon'ble Judges : C.N. Ramachandran Nair, J;Bhabani Prasad Ray, J

Bench : Division Bench

Advocate : Jose Joseph and Santhosh P. Abraham, for the Appellant; V.K. Shamsudeen, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The revision is filed against the order of the Appellate Tribunal sustaining penalty levied on the petitioner u/s 10A of the Central Sales Tax Act for the year 2008-09. We have heard advocate Sri Jose Joseph, counsel appearing for the petitioner and Government Pleader appearing for the State. The petitioner is a contractor engaged in the construction business in Kerala. During the year 2008-09, the petitioner purchased a Hitachi model JCB from Mangalore for Rs. 34,06,600 by availing of concessional rate of tax at two percent against C form issued as provided u/s 8(3) of the Central Sales Tax Act, hereinafter referred to as, "the Act". The Intelligence Officer of Sales Tax noticed that item purchased is not covered by the certificate of registration issued under the Act and so much so, the issue of C form is an offence punishable u/s 10(b) of the Act, which calls for levy of penalty u/s 10A of the Act. The petitioner raised the contention that the certificate of registration issued to him under the Act covers "construction tools" which takes in the JCB and so-much so there is no violation and proposal for penalty was not justified. However, the intelligence officer rejected the contention that the equipment purchased is a "construction tool" and he levied penalty at one and a half times the tax evaded. Even though the first appellate authority remanded the matter for re-consideration of the issue afresh, on second appeal, the Tribunal decided the case on merits by holding that the JCB is not a "construction tool" as claimed by the petitioner and on that basis they upheld levy of penalty. It is against this order of the Tribunal, the petitioner has come up with this revision.

2. A dealer registered under the Act is entitled to make inter-State purchase of goods covered by clause (b) of section 8(3) at concessional rate which are the following:

...goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or (in the telecommunications network or) in mining or in the generation or distribution of electricity or any other form of power.

3. Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957 gives detailed enumeration of the goods which a registered dealer can purchase from outside at concessional rate. The rule reads as follows:

13. Prescription of goods for certain purposes.--The goods referred to in clause (b) of sub-section (3) of section 8, which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale, or in mining, or in the generation or distribution of electricity or any other form of power.

4. The CST Act originally provided concessional rate for purchase by traders for resale and by manufacturing and processing industries for production and sale of goods. However, pursuant to the constitutional amendment expanding the scope of "sale" covering various transactions, the CST Act was amended by Act 20 of 2002 wherein the definition of "sale" is recasted as following:

''Sale'', with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,--

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

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

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

(iv) a 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;

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

(vi) a supply, by way of or 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,

but does not include a mortgage or hypothecation of or a charge or pledge on goods.

5. By virtue of the above amendment, contractors are entitled to avail of concessional rate for inter-State purchase of goods which are for sale in the course of execution of works contract, whether as goods or in some other form. It is by virtue of this provision, the petitioner applied for registration under the Act which was in fact granted to him with an endorsement in the certificate of registration that the petitioner is entitled to make inter-State purchase of the following goods at concessional rate.

Cement, steel, sand, metal, construction tools, shuttering materials.

6. The petitioner''s case is that the JCB purchased is a construction tool and so much so the item is covered by certificate of registration issued to him. However, admittedly, later the petitioner applied for inclusion of more items in the certificate of registration and the following items are included by the assessing officer:

Excavator, JCB, compressor and rock breaker.

7. Counsel for the petitioner contended that only by way of precaution the petitioner got the above items specifically included in the certificate of registration later and in fact it is a construction tool which was covered by the certificate originally issued to him. The Government Pleader, on the other hand, contended that the "tool" does hot ''take in a massive equipment like the JCB and so much so the lower authorities including the Tribunal rightly rejected the petitioner''s contention and confirmed penalty. There is no dispute on the legal position that u/s 8(3)(b) of the Act, a registered dealer is entitled to make inter-State purchase of goods at concessional rate only if the goods purchased are of the class or classes specified in the certificate of registration and the same should be either for resale or for processing or for manufacture of goods for sale. As already stated, rule 13 enumerates the goods or classes of goods which dealers are entitled to purchase by availing of concessional rate against declaration issued in form C.

8. It is seen that even though amendment is introduced expanding the scope of sale in section 2(g) of the Act, there is no corresponding amendment to section 8(3)(b) of the Act or rule 13 of the CST Rules. As already explained above, the two categories of dealers originally covered under the Act are traders engaged in purchase and resale and industries engaged in the manufacturing and processing

of goods for sale. After the constitutional amendment, a new class of dealers emerged who are deemed sellers of goods in the course of business like execution of works contract, leasing, hire-purchase, etc. A works contractor is engaged in purchase and resale of goods which happens in the execution of works contract. As is evident from section 2(g)(ii) itself, in the case of works contract, transfer of goods can happen in the same form or in some other form. This obviously means that contractors may engage in processing of goods for conversion of goods from one form to another form before sale or in the course of sale of such goods. Therefore, the contractors are engaged not only in resale of goods but processing of goods and sale of such goods in the course of execution of works contract. So much so, contractors answer the description of processors of goods within the meaning of section 8(3)(b) of the Act and we therefore feel they are entitled to avail of concessional rate for purchase of the class of goods referred to in rule 13 above stated.

9. The next question to be considered is whether the JCB purchased by the petitioner which is essentially used by the contractors for digging, levelling land, transporting earth, rubble within short distance, etc., is an item that falls within rule 13 of the Rules above extracted. The assessing officer himself concedes that the item falls within rule 13 and that is the reason why on specific application he allowed it''s inclusion in it. So much so, the State probably cannot contend that the JCB is not an item falling under rule 13. No one can have a doubt that JCB is either a machinery or an equipment used for all kinds of work on earth such as digging, filling, levelling and all kind of manipulations on earth including short distance transport of soil and rubble. In fact, JCB is extensively used in road works, in construction sites and in all kind of civil construction works and its manifold use helps contractors to complete the work fast and by avoiding enormous labour cost. So much so, we declare that the inclusion of the item as a machinery or equipment through an amendment to the certificate of registration issued later is perfectly in order. However, we are unable to accept the contention of the petitioner that JCB is a tool which is already covered by the certificate issued earlier to him. "Tool" only means an instrument or implement used for work, whether manual or with machine. A large multi-utility equipment like JCB cannot be termed as a tool as referred to in rule 13 of the CST Rules. We are, therefore, unable to accept the contention of the petitioner that prior to the amendment to the certificate of registration incorporating JCB also in it, the petitioner is entitled to purchase JCB at concessional rate as a "tool" which only was covered by the certificate of registration issued to the petitioner at the time of purchase of the equipment. So much so, inter-State purchase of JCB against issuance of C form prior to inclusion of the same in the certificate of registration is a violation punishable u/s 10(b) of the Act for which penalty could be levied in lieu of prosecution. We, therefore, uphold in principle the penalty levied on the petitioner u/s 10A of the Act. Even though we have in principle upheld the violation and exigibility to penalty for misuse of C form, we are in agreement with the contention of the petitioner that the offence is only technical. We,

therefore, reduce the amount of penalty to Rs. 1 lakh (rupees one lakh only). We, therefore, allow the O.T. revision case in part by modifying the orders of the Tribunal and that of the lower authority refixing penalty at Rs. 1 lakh (rupees one lakh only). The intelligence officer is directed to revise the penalty and issue demand notice for the petitioner to make payment.

