
(1985) 07 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Sales Tax Case No. 56 of 1979

Assistant Commercial Taxes Officer

APPELLANT

Vs

Makrana Marbles

RESPONDENT

Date of Decision : 18-07-1985

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8, 9

Citation : (1985) RLW 484 : (1986) 62 STC 339 : (1985) 2 WLN 41

Hon'ble Judges : S.M. Jain, J;S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This is a petition u/s 15(2)(b) of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act"), read with Section 9 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Sales Tax Act"), for directing the Board of Revenue for Rajasthan (in short "the Board") to state the case and refer the question of law arising out of its order dated 25th October, 1978, passed in special appeal, which it refused to do by its order dated 20th April, 1979. The question proposed by the A. C. T. O. is as under :

Whether on the facts and in the circumstances of the case, the Board of Revenue was justified in setting aside the penalty imposed u/s 10A of the Central Sales Tax Act, 1956 although the goods imported on the strength of C forms for the purpose of use in manufacture was utilised in job-work ?

2. Learned counsel for the parties are in agreement that in view of the provisions contained in Section 13(10) of the Rajasthan Sales Tax (Amendment) Act, 1984, which has come into force from 1st May, 1985, the petition by the A. C. T. O. is to be treated as a revision against the impugned orders of the Board and has to be disposed of as revision in accordance with Section 15 of the Act as substituted by the aforesaid Amendment Act, 1984.

3. Non-petitioner No. 1 (M/s. Makrana Marble and Stone Co., Makrana, District Nagaur) is the dealer-assessee (partnership firm) and carries on business of processing marble stones belonging to their customers. It purchased and imported into Rajasthan diesel and mobile oil costing Rs. 27,750 in the course of inter-State trade by paying Central sales tax at the concessional rate by furnishing declaration in C forms. The diesel and mobile oil were utilised in processing marble stones, which belonged to other persons, on job-work basis. The concessional rate of Central sales tax was allowed u/s 8(1)(b) read with Section 8(3)(b) of the Central Sales Tax Act, because the assessee had furnished declaration for oil used by him in the manufacture or processing of the goods for sale. The A. C. T. O. imposed a penalty of Rs. 1,600 u/s 10A(1) read with Section 10(d) of the Central Sales Tax Act, by his order dated 6th October, 1967 on the ground that oil purchased by it was utilised in processing the goods belonging to others and were not in fact to be sold by it, but in fact were redelivered to its customers, who were the real owners of the marble stones processed by it on the basis of the job-work. The dealer-assessee went in appeal and the Deputy Commissioner (Appeals), Jodhpur, vide his order dated 30th October, 1969, dismissed the appeal. He held that as the oil imported by the dealer-assessee was utilised in processing the marble stones, which were not sold by it, the imposition of penalty was justified. The dealer-assessee filed a revision before the Board of Revenue. A single Bench of the Board accepted the revision by its order dated 27th December, 1977. It resulted in the deletion of the penalty imposed on the dealer-assessee. The A. C. T.O. filed a special appeal before the Division Bench of the Board, which was dismissed by its order dated 25th October, 1978. On behalf of the petitioner (A. C. T. O.) reliance was placed on East India Cotton Mfg. Co. P. Ltd. v. Assessing Authority-cum-Excise and Taxation Officer [1972] 30 STC 489 . The dealer-assessee relied on Navsari Cotton Silk Mills Ltd. v. State of Gujarat [1976] 37 STC 140 and Empire Dyeing and Mfg. Co. Ltd. v. State of Maharashtra [1977] 40 STC 1 (Bom) as according to it, the oil imported by the assessee was utilised by it in processing the marble stones.

4. A petition u/s 15(1) of the Act was filed before it, which was dismissed. Hence, this petition u/s 15(2)(b) of the Act, which has now been heard as a revision.

5. The only question of law that arises out of the order passed by the Division Bench of the Board in special appeal, is whether the penalty imposed u/s 10A of the Central Sales Tax Act, although the goods were imported on the strength of C forms for the purpose of use in manufacture having been utilised in job-work, was justified and the Board erred in law in setting it aside.

6. In Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co. Ltd. [1981] 48 STC 239 , a similar question, with which we are concerned, arose before the Supreme Court. While affirming East India Cotton Mfg. Co. P. Ltd.'s case [1972] 30 STC 489 and overruling Navsari Cotton Silk Mills Ltd.'s case [1976] 37 STC 140 their Lordships held that even if the assessee carried out the work of sizing, bleaching and dyeing of textiles for a

third party on job-contract basis, its case would be covered by the terms of the second sub-clause of Section 8(3)(b) of the Central Sales Tax Act provided that the textiles so sized, bleached and dyed by the assessee were intended for sale by the third party. It was observed :

If it is proved in any proceedings initiated u/s 10(d) or Section 10A that the textiles sized, bleached or dyed by the assessee for a third party on job-contract basis were not intended for sale by such third party, as would be evident if such textiles were in fact not sold by the third party but were used for its own purposes, the assessee would incur the penalty prescribed in those sections.

7. While respectfully following Assessing Authority's case [1981] 48 STC 239 we are of opinion that no penalty could be imposed u/s 10A of the Central Sales Tax Act on the dealer-assessee although diesel and mobile oil were imported on the strength of C forms and were utilised in processing marble stones which belonged to other persons on job-work basis.

8. In view of the aforesaid authoritative pronouncement of the Supreme Court, it is not necessary to notice other authorities or to make a further probe in the matter.

9. The Board of Revenue, in its order dated 25th October, 1978, passed in special appeal, in our opinion, was right and justified in coming to the conclusion that the penalty was not imposable u/s 10A of the Central Sales Tax Act on the ground that the goods were imported on the strength of C forms.

10. The petition u/s 15(2)(b) of the Act heard as revision is dismissed without any order as to costs.