

(1999) 12 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 633 of 1999

Assistant Commissioner

APPELLANT

Vs

Krishna Industries

RESPONDENT

Date of Decision : 13-12-1999

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 16
Rajasthan Sales Tax Rules, 1955 — Rule 25C

Citation : (2000) 2 RLW 1334 : (2002) 126 STC 17

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sangeet Lodha, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This civil sales tax revision is directed against the order passed by Rajasthan Tax Board, Ajmer, in Appeal No. 3537 96/ST/Jodhpur dated February 10, 1998 rejecting appeal filed by the Assistant Commissioner, Taxes Officer, Jodhpur, and against the order of the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur, dated March 14, 1995. The Deputy Commissioner set aside the order of levy of tax by way of penalty for breach of second proviso of Rule 25C of Rules framed under the Rajasthan Sales Tax Act, 1954, It was found by the Board that though the assessee was in error in furnishing a joint declaration for more than one transaction of sale but the breach being of technical nature, essential conditions to give benefit of the exemption having been fulfilled, the penalty cannot be levied. In coming to this conclusion the Board has relied on a division Bench decision of this Court in Commercial Taxes Officer, Pali v. Kanhayalal Mohanlal [1987] 64 STC 449.

2. The facts as found by the Board and about which there is no dispute are that the assessee had obtained a purchase order from the buyer dated July 1, 1991 placing an order for supply of 65 metric tonnes of rape-seeds. In pursuance of the contract the goods were supplied between July 11, 1991 to February 21,

1992. About this transaction a declaration was furnished in form ST 17 for the purchase of a sum of Rs. 19,95,483.39 paise for resale within the State. The said declaration was furnished in terms of Rule 25C of the Rajasthan Sales Tax Rules, 1955. The said declaration was submitted with return. However, the assessing officer was of the view that the declaration being delayed, as well as a joint declaration in respect of more than Rs. 2 lacs of purchase were not permitted the condition of second proviso to Rule 25C was breached, therefore, the assessee is liable to pay penalty equal to the tax on the said amount along with interest. In this connection it need to be noticed that in the first instance the assessing officer has found that sales amounting the total Rs. 43,80,651.09 paise were claimed to be exempted under Rule 25C but are not supported by declarations and consequently disallowing the claim for exemption, and levied tax on the said turnover along with interest u/s 11-B of the Act. By first rectification order dated September 30, 1994 he had accepted declarations of assessee filed in respect of three items about which S.T. forms has been produced consisting of Rs. 5,20,243, Rs. 1,21,445 and Rs. 1,98,982.35 paise. As against the balance a declaration form S.T. 17 No. S-11, 492 for a sum of Rs. 19,95,483.39 paise was not accepted because it was for an aggregated sum exceeding Rs. 2 lacs and was covering period of more than six months. On this basis the sum of purchase covered by form S.T. 17 No. S.T. 492 amounting to Rs. 19,95,483.39 paise were subjected to tax and interest. However, when it was pointed out that after allowing exemption against three forms balance of disallowed claim was only Rs. 1,79,650 and not Rs. 19,95,483.39 paise, the amount of disallowed ST form, because of duplicate of purchase bill for Rs. 1,98,952.35 paise. Declaration of this amount was included in ST 17 form for Rs. 19,95,483 as well as separate declaration for the said purchase was also filed and accepted. Yet another rectification order was made on March 25, 1995 correcting this mistake and computation of tax and interest was confined to the turnover of Rs. 17,96,501.04 paise only. In short it can be said from the orders that ultimately the claim of the assessee under Rule 25C in respect of turnover of Rs. 17,96,501.04 paise was not accepted by the assessing officer on the ground that declaration in ST 17 form in respect of such transactions did not conform to the requirement inasmuch as more than one transaction aggregating in more than Rs. 2 lacs could not be covered under one declaration and that one declaration could not be made in respect of aggregated transactions during a period of more than six months.

3. On appeal against the aforesaid order the Deputy Commissioner (Appeals) found that though there has been breach of the provision of Rule 25C, but the same being a technical breach without there being any chance of the tax evasion or avoidance, penalty for such breach could not be levied by way of penalty. A levy for additional tax and interest in respect of the said tax was deleted.

4. On further appeal, the Rajasthan Tax Board confirmed the order of Deputy Commissioner (Appeals) by coming to the conclusion that though there is a breach of Rule 25C, but the breach being technical in nature the order of Deputy

Commissioner is not liable to be interfered with. In aforesaid circumstances this revision petition has been preferred by Revenue.

5. Mr. Lodha appearing for the Revenue urged that if the order of the Tax Board is accepted, it would result in rendering the second proviso to Rule 25C ineffective and redundant and such an interpretation ought not to be accepted. Particular attention was invited that Rule 25C has been amended from time to time and the amended provisos 2 and 3 have to be read to find true intention of the legislation, and further that in view of the amendment carried out in the rules the decision of this Court in *Commercial Taxes Officer, Pali v. Kanhayalal Mohanlal* [1987] 64 STC 449 cannot be pressed into service by the assessee, as a binding precedent.

6. Learned counsel for the assessee Mr. Mehta urged that the alleged amendment in the provision so far as relevant for our purpose has not been effected in substance which fell for consideration before this Court in the aforesaid decision. This Court having already held the breach in the manner of filing declaration, namely the declaration of more than one transaction beyond period and amount is mere technical breach cannot lead different interpretation, inasmuch as except for changing the monthly limit and extending the period, basic substratum of the rule has not been amended. It has further been urged that reading the main provision to proviso reveals that distinction has been made between a "sale" and a "transaction". The provisions require that no declaration covers more than one transaction except where the total coverage by one declaration is not exceeding Rs. 2 lacs and not beyond the six months of the declaration. On this basis it was urged that such sale of 65 metric tonnes was made by the buyer under one contract of sale, fact that goods under one contract were supplied on different dates under different bills cannot convert the same in more than one "transaction" though each bill may be treated as one "sale". The interpretation by assessing authority is erroneous that more declaration was required in respect of one transaction which may result in more than one sale. It is only where each sale is a separate transaction then the proviso is applicable.

7. First coming to the additional supportive contention raised by the learned counsel for the respondent.

Relevant part of Rule 25-C reads as under :

"25-C. Furnishing of declaration.--(1) A dealer who is entitled to and claims--

(i) exemption from payment of tax ; or

(ii) payment of tax at a concessional rate.

(a) on sales made to a registered dealer of goods taxable at the last point for the purpose of--

(i) resale within the State ; or

- (ii) sale in the course of inter-State trade or commerce ; or
- (iii) sale in the course of export out of the territory of India ; or
- (iv) sale outside the State ; or
- (b) on the sale of any raw material eligible for concessional rate of tax, u/s 5-C ;
or
- (c) on sale of any such goods as may be exempted from tax, on the condition of
furnishing declaration,

shall in respect of each such sale, obtain a declaration from the purchasing dealer in form S.T. 17 and shall, along with the return under Rule 25, file all declarations obtained as aforesaid and also submit a separate list of such sales in form S.T. 16 ;

Provided that all declarations obtained as aforesaid shall be filed by the dealer before or at the time of assessment unless earlier required by the assessing authority :

Provided further that no declaration shall cover more than one transaction except where the total amount covered by one declaration does not exceed Rs. 2 lacs for all the transaction in six months."

8. The last proviso was deleted vide Notification No. F.4(28)FD/ Gr.IV/90-90 dated March 4, 1992, which reads as under :

"Provided further that notwithstanding anything contained in Sub-rule (1), if the Commissioner, on an application made by a dealer and after making such enquiry as he may consider necessary, is satisfied that the dealer is not in a position to furnish all or any of the declaration referred to in Sub-rule (1) above, on account of loss of such declaration(s) due to fire, flood, or riots beyond his control and it is not possible to obtain the duplicate declaration forms, he may by an order in writing exempt such dealer from furnishing such declaration(s), subject to the conditions that the application is made within 45 days of such event supported by the evidence of loss of such declaration form :

Provided that an application under the preceding proviso may be made up to March 31, 1990 in relation to riots occurred in Makarana Circle in March, 1989."

9. However, the like provisions were re-enacted with effect from same date in the form of Rule 25E, enabling the Commissioner in certain circumstances to dispense with furnishing of declaration forms.

10. A reading of proviso goes to show that the substantive provision requires a dealer to furnish a declaration in respect of each such sale in respect of which exemption is claimed which shall be obtained from a purchasing dealer in form ST 17. This requirement is further emphasised in the second proviso by providing that no declaration will cover more than one transaction except where the total amount covered in one declaration does not exceed Rs. 2 lacs for all the

transaction in aggregate. Obviously expression "transaction" in second proviso can refer to transaction of sale in the substantive provision only inasmuch as this proviso is as an exception to the general rule. Ordinarily the rule of "one sale one declaration" prevails. However, in case within a period of six months there are more than one transaction of sale, aggregate amount of which does not exceed Rs. 2 lacs, it is permissible to file one declaration in respect of all such transactions of sales as an exception to the general rule "one sale one declaration". This contention of learned counsel for assessee has, therefore, no substance.

11. Coming to the contention whether the provision lay down a technical rule of procedure or it affects the substance of the condition of the grant of exemption. In my opinion the conclusion reached by the Board is well-founded and does not call for interference. Rule 25C provides that a dealer who is entitled to claim exemption from payment of tax or claims payment of tax at a concessional rate on sales made to a registered dealer of goods taxable at the last point for the purposes of--

- (1) resale within the State ; or
- (2) sale in the course of inter-State trade or commerce ; or
- (3) sale in the course of export out of territory of India ; or
- (4) sale outside the State ; or
- (5) as raw material eligible for concessional rate of tax u/s 5C ; or
- (6) sale of all such goods as may be exempted from tax on furnishing a declaration.

12. Substantive provision requires that in respect of each such sale in respect of which exemption, full or at concessional rate, is claimed the dealer has to obtain a declaration from the buyer in form ST-17 in respect of each sale and all such declaration are to be filed along with return. In relaxation of this requirement first proviso permitted that all declaration obtained aforesaid shall be filed by the dealer before or at the time of assessment or within such further time as the assessing authority may for sufficient cause permit. The second proviso provides further that no declaration shall cover more than one transaction except where the total amount covered by one declaration does not exceed Rs. 2 lacs for all the transactions in six months. Here it may be noticed that so far as the parent provision are concerned it is ordinarily required of a dealer claiming exemption under Rule 25C to obtain declaration from the purchasing dealer in form S.T. 17 in any one or more of six contingencies in respect of each sale, and the same are required to be furnished along with the return before assessing officer. Thus the substantive provision, without going to proviso, ordains in six contingencies in which sale by a registered dealer to another registered dealer can claim exemptions and also provides procedures for obtaining such exemption. Conditions are to obtain declaration in form No. 17 from the purchaser about

purpose for which he purchases the goods from the selling dealers and also that such declaration be filed along with the return. The two provisos make relaxation in the procedure, viz., about the time at which such declaration can be filed and about the manner in which declaration is to be obtained. However, the essential condition remains that a declaration from the purchasing dealer, about his purpose of sale, must be obtained and produced before the assessing officer. Though production of such form is ordinarily required to be filed along with return, but first proviso given sufficient latitude now, that it can be filed any time before assessment, or at the time of assessment or even thereafter as may be permitted by the assessing officer. Likewise the second proviso had made relaxation in the insistence on separate declaration in respect of each separate sale. Declaration referred to in second proviso can only relate to declaration required under substantive provision. I am therefore of the opinion that the substantive provision remains that the purpose for which commodity is sold to a purchasing dealer makes the sale transaction eligible for exemption from tax or to be taxed at concessional rate and the other part pertains to production for proof of sale for such purpose, mode and time for production of such proof also having been prescribed. No consequence has been provided for deviation in the mode of proof about purpose for which sale has taken place. The other provision also envisages that in certain circumstances the proof about purpose for which sale by one registered dealer to another dealer has been made entitling the selling dealer to claim exemption, as is apparent from insertion of further proviso. When there is no time-limit fixed with rigidity within which proof has to be produced and there is provision that in certain circumstances production of declaration cannot be insisted altogether, but proof of conditions of exemption can be made by other methodology as per third proviso it cannot be said that breach of second proviso can be treated to be more than a technical breach. This Court in *Commercial Taxes Officer v. Kanhayalal Mohanlal* [1987] 64 STC 449 required to interpret Rule 25C as it existed at the relevant time in the following term :

"25C. Furnishing of declaration.--(1) A dealer who is entitled to and claims--

(i) exemption from payment of tax ; or

(ii) payment of tax at a concessional rate ;

(a) on sales made to a registered dealer of goods taxable at the last point for the purpose of--

(i) resale within the State ; or

(ii) sale in the course of inter-State trade or commerce ; or

(iii) sale in the course of export out of the territory of India ; or

(iv) sale outside the State ; or

(b) on the sale of any raw material eligible for concessional rate of tax, u/s 5-C ;

or

(c) on sale of any such goods as may be exempted from tax, on the condition of furnishing declaration,

shall in respect of each such sale, obtain a declaration from the purchasing dealer in form S.T. 17 and shall along with the return under Rule 25, file all declarations obtained as aforesaid and also submit a separate list of such sales in form S.T. 16 ;

Provided that no declaration shall cover more than one transaction."

13. It will be seen from the aforesaid provision that while substantive provision, requiring separate declaration for each sale has remained same, the proviso made a clear declaration that "no declaration shall cover more than one transaction." It did not make any exception to general rule one sale--one declaration and was re-asserting need of procuring a separate declaration in a more rigid manner in respect of each transaction. Nor any provision was envisaged for extending the period for filing the declaration which was required to be filed along with the return. Merely because the relaxation in the compliance has been made in the procedural aspect of the matter in which a declaration has to be procured for claiming exemption by the seller, cannot alter the nature of provision relating to period at which declaration is to be filed as well as of procuring separate declaration for separate transaction from directory, to mandatory or obligatory so as to nullify the statutory grant of exemption to certain transaction. In my opinion the amendment to which learned counsel has made reference does not make the ratio of decision redundant. The division Bench of this Court has held that the provision is of directory in nature in the sense no penalty be imposed in the absence of mens rea and has been followed by the Board of Revenue in dealing with levy of tax by way of penalty and interest in such cases.

14. No interference is called for in the order made by the Tax Board in this case and revision is hereby dismissed. No orders as to costs.