

(2011) 06 KL CK 0033
In the High Court Of Kerala
Case No : ST. Rev. No. 26 of 2011

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(4)(a)

Citation : (2011) 45 VST 544

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : Arshad Hidayathullah, V.V. Asokan, K.I. Mayankutty Mather and R. Jaikrishna, for the Appellant; Vinod Chandran, Special Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The connected revision cases are filed by Bharath Petroleum Corporation Ltd., a public sector oil company, challenging the orders of the Sales Tax Appellate Tribunal confirming disallowance of concessional rate of tax claimed by the company on inter-State sales of diesel and other petroleum products. The Central sales tax assessments involved are for the years 1999-2000 and 2000-01. The C forms filed by the company for claiming concessional rate of tax on the turnover of crores of rupees were found to be defective and unacceptable. Against disallowance of concessional rate of tax made by the assessing officer, company filed appeal to the first appellate authority. After scrutinising all the defective C forms, the appellate authority found that for the year 1999-2000 defects in as many as 83 C forms were minor and, therefore, directed the assessing officer to return the C forms for correction and representation. Turnover covered by these C forms is around Rs. 36.5 crores. However, for the very same year the Deputy Commissioner found that the defects in 155 C forms covering a turnover of above Rs. 100 crores are erasures, substitution and manipulations of the invoice numbers, value and other particulars and, therefore, those defects are such as to invalidate the C forms. Accordingly he confirmed disallowance of concessional rate of tax on this

turnover. So far as the next year 2000-01 is concerned, the position is exactly the same and the variation is only in regard to the number of C forms and the turnover involved. The case of the company is that the erasures, substitutions or manipulations alleged in the C forms neither exist nor are sufficient to invalidate the C forms. However, the Tribunal also did not accept the contention of the company and after verifying the C forms produced they also confirmed the orders of the first appellate authority. Consequently company has filed these revisions before us. We have heard Senior Counsel Sri Arshad Hidayathullah appearing for the petitioner-company and Special Government Pleader for the respondent. Before we started hearing of the matter, the Government Pleader submitted before us that the company, though has filed revision petitions, settled the tax liability for two years under amnesty scheme provided u/s 23(3A) of the KGST Act, by which it got full waiver of interest and tax liability is settled at 50 percent of the dues. For the year 1999-2000, tax arrears was over Rs. 27 crores and the interest was over Rs. 47 crores. The total liability of Rs. 74.23 crores was settled by the company by paying half the amount of tax, i.e., Rs. 13.547 crores and the same was accepted by the Department in full settlement. So far as the year 2000-01 is concerned, the tax arrears were nearly Rs. 35 crores and the interest was nearly Rs. 43 crores and the total liability of Rs. 79.70 crores was settled by the company by remitting 50 percent of the tax, i.e., Rs. 15.94 crores and the same was accepted by the Department. Since the company has settled the liability by remitting 50 percent of the tax and got full waiver of interest, we told the senior counsel that unless the company expects relief of more than 50 percent of the tax that was due before settlement, there will be no use in pursuing revisions. However, senior counsel submitted before us that section 23(3A) provides for continuation of proceedings and if company gets relief, it is entitled to refund. The Government Pleader submitted that refund claim, if any, made based on appellate or revisional orders passed after settlement under amnesty scheme will be considered with the original demand and not with reference to the balance amount paid based on amnesty scheme. We do not think there is any need for us to consider the effect of revisional orders or appellate orders issued after settlement of liability by the assessee under amnesty scheme because the same does not arise in these cases. However, since senior counsel requested us to consider the revisions on the merits, we proceed to consider the contentions raised by counsel for the petitioner and the objections raised by the Government Pleader for the respondent.

2. Senior counsel for the petitioner contended that the Tribunal did not exercise their jurisdiction properly inasmuch as they have not considered whether the defects pointed out are such as to justify rejection of C forms as invalid. The Government Pleader, however, referred to the observations of the Tribunal that they have verified the original C forms at least random and they found that the defects exist. According to the Government Pleader, the defects are not real defects, but manipulations in C forms because the petitioner erased the original invoice value written by the purchasers and substituted with their own figures.

Further, invoice numbers are seen written in a separate paper and the paper is pasted in the back side of the C form substituting whatever entries that were made there. Senior counsel for the petitioner relied on the decision of the Allahabad High Court reported in *Apex Traders Vs. Commissioner of Sales Tax*, and contended that overwriting and corrections in the C form will not justify rejection. He has also relied on the decision of the Supreme Court reported in *Bush (India) Ltd. Vs. Union of India and others*, and in *Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore*, . Another decision relied on by the senior counsel for the petitioner is that of Gujarat High Court reported in *Commissioner of Sales Tax Vs. Pure Beverages Ltd.*, .

3. After hearing both sides and after going through the orders, what we find is that the questions raised are not really substantial questions of law. Section 8(4) (a) of the CST Act read with rule 12(1) of CST (Registration and Turnover) Rules makes it clear that unless the inter-State sales are covered by valid C forms which means that the C forms should contain details of inter-State sales made by the petitioner, namely, invoice numbers, date, value and other relevant particulars, the dealer is not entitled to get the benefit of concessional rate based on the C forms. However, it is also settled position that minor defects or curable defects should not be treated as ground for rejection of C forms and should be allowed to be corrected. The main grievance of the petitioner is that all the mistakes and corrections pointed out by the officer that was confirmed in two level appeals have been rectified through confirmation letters issued by the purchasers. Counsel has produced copies of communication issued by all the purchasers where-under all the purchasers have confirmed that C forms issued contain the very same particulars with which the company produced the same with erasures, corrections and substitutions. The Government Pleader submitted that confirmatory letters from purchasers are not sufficient to cure defect or manipulations in C forms. According to him, any correction in the C form has to be made by the buyer issuing it and he has to attest the same. We are in complete agreement with the contention of the Government Pleader because C forms are declarations issued by the outside State purchaser which is in triplicate and all the copies of the C form should contain the same entries and particulars and it is subject to verification by the assessing officers of the seller as well as the buyer. In other words, corrections or substitutions of figures cannot be made by the selling dealer on the two copies received by him because one copy is retained by the issuing dealer which is for production before his assessing authority. Concessional rate can be claimed by the purchasing dealer for inter-State purchases only if the goods are for resale or for use in manufacture or processing of other goods. In the course of sales tax assessment under the local law of the State from which C form is issued, the assessing officer is entitled to verify whether the goods purchased at concessional rate by issuing C forms were utilised for purposes declared by the dealer in the forms issued and for this purpose the quantity purchased and the purchase turnover are collected from the

triplicate copy of C form retained by the dealer. In fact, correctness of sales turnover or production of goods accounted can also be checked with reference to the entries in the triplicate copy of C forms issued. So much so, in our view, the petitioner's contention that they are entitled to supplement and substitute entries in the C forms produced by them by producing confirmation letters from the buyers is rightly rejected by all the authorities and we cannot also permit it. Even though we find force in the contention of the Government Pleader that there is no substantial question of law involved warranting our interference with orders of the Tribunal which concurred with lower authorities to reject the C forms for defects apparently fatal in nature, we feel since the petitioner is a public sector undertaking and since the buyers are also various manufacturing companies located outside Kerala, we feel we should show some indulgence in the matter and accordingly we called for the C forms running into hundreds. Even though it is neither possible nor expected of us to verify all the C forms, we checked the allegations pertaining to a few C forms for the year 1999-2000. What we notice is that C form No. TN/G 139759 for Rs. 35,11,984 was issued by AAA Ltd., Tamil Nadu on January 7, 2000 whereas the sales covered by the said C form are from December 4, 1999 to March 2, 2000. Obviously the buyer issued the C form in advance and the particulars of the sales made from January 7, 2000 to March 2, 2000 would have been and could have been filled up only by the petitioner. Similar is the position with regard to C Form No. TN/C 332118 issued by Adayar Gate Hotel, Tamil Nadu on April 26, 1999 which covers sales from April 6, 1999 to March 31, 2000. In fact, as per the particulars shown in the C form, the same covers as many as 49 consignments, the details of which are filled up in the C form without being authenticated or signed by the purchaser. Therefore, what is seen is that advance blank C form is issued by the buyer which is filled up by the seller which is a procedure impermissible under the provisions of the Act and Rules because buyer should certify correctness of the entries in the C form. So far as C Form No. TN/D 94219 dated January 14, 2000 issued by Adisankara Spinning Mills Ltd., Tamil Nadu, what we notice is that it is also a C form issued in advance covering the sales up to February 16, 2000. A paper is pasted on the reverse side of the C form showing the total value of all the invoices at Rs. 4,90,241.76. On exposure of this C form against light, what we notice is the buyer had in fact filled up the back side of the C form giving numbers and dates of five invoices covering total value of Rs. 7,94,015 which is in fact signed by them. However, the paper pasted over it without the signature of the buyer contains only four invoices and the value was also reduced by Rs. 3 lakhs. The manipulation is obvious from this because even the buyers' seal and signature are covered by the paper pasted over it and entries in the pasted paper are not signed by the buyer. Similar is the position with C form No. TN/D 942199 which covers 87,18,619.92 which is also issued by the same company Adisankara Spinning Mills Ltd. Here what we notice from the entries in the paper pasted on the back side of the C form is that the C form issued on March 9, 2000, is intended to cover as many as 72 consignments and the invoices are issued from April 5, 1999 to July 12, 1999. On showing C form against light,

what we notice is the buyers had in fact filled up reverse side of the C form with particulars of only six transactions (invoices) and, therefore, the paper pasted and the entries thereon are not made by the buyer. Discrepancy, in our view, does exist and it is of such serious nature that without buyer signing it with the attestation of the assessing officer of the State which issued the C form, the same cannot be ordered to be accepted. In other words, what is to be ensured is that corrections or substitutions made in the C form should be in line with the corrections made by the buyer in the triplicate copy retained by him and produced before the assessing officer for assessment under the local Sales Tax Act in that State. On going through the confirmation letters issued by the purchasers, we notice that the same do not contain all the details though they have confirmed the turnover particulars. We specifically asked the Senior counsel appearing for the petitioner as to why details of payment made by the purchasers are not furnished in the statement. In the absence of attestation of corrections of C forms by the buyers which should also be made in the triplicates retained by them for verification by the issuing officer in those States, the lower authorities including the Tribunal rightly rejected the petitioner's claim. However, we still feel that since the petitioner is a public sector company engaged in steady inter-State sales and since the buyers are also limited companies located in Tamil Nadu, one more opportunity can be granted to the petitioner, but on strict conditions because the assessments of the buyers for these years and verification of triplicate copies of issued C forms would be over long back in those States. We should also keep in mind that our orders should not lead to violation of statutory provisions by buying dealers in other States and evasion of tax should not happen in such States. Keeping all these in mind, we give one more opportunity to the petitioner to avail of benefit of concessional rate of tax as follows: (i) The assessing officer will return all the C forms rejected as invalid to the petitioner for return to the buyers for them to attest the entries and corrections in the C forms with signature and seal which should also be countersigned by the assessing officer of the State, who will do it after verifying entries in the triplicate copy.

(ii) Along with production of copies of the C forms attested by the issuing dealer with counter-signature of the assessing officer of the issuing State, the petitioner should furnish full details of payments received from the purchasers covering all the disputed inter-State sales.

(iii) If the petitioner proves the inter-State sales with evidence of payments received from the purchasers and also produces C forms attested and counter-signed as above, the assessing officer will verify the correctness and if found correct, accept such C forms and grant concessional rate.

The S.T. revision cases are disposed of as above. The assessing officer is directed to return the rejected C forms within one month from date of production of copy of this judgment, if the petitioner confirms that they do not want to file SLP against this judgment. However, if SLP is filed, original C forms should be

returned only after SLP is over or subject to orders of the honourable Supreme Court. The petitioner is granted three months" time from date of return of C forms from the officer to produce corrected copies and furnish details of payments received as above for the officer to verify and revise the assessments. However, if the petitioner cannot produce the documents and particulars as above within three months from date of return of C forms, then the assessment at full rate will stand sustained subject to amnesty benefit availed of by them.