(2006) 07 KL CK 0076

In the High Court Of Kerala

Case No : S.T. Rev. No. 96 of 2006

Carborundum Universal Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 06-07-2006

Acts Referred:

Central Excise Rules, 1944 — Rule 57A
Central Excises and Salt Act, 1944 — Section 12, 37, 6
Central Sales Tax Act, 1956 — Section 6A

Citation : (2006) 3 KLJ 223 : (2006) 148 STC 339

Hon'ble Judges : V. Ramkumar, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Antony Dominic, A.M. Shaffique, E.K. Nandakumar, A.K. Jayasankar Nambiar and Anil D. Nair, for the Appellant; Raju Joseph, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The assessee is a company engaged in the manufacture of aluminium oxide granules at Edappally in Ernakulam District. Assessee had a branch at Visakhapatnam which was subsequently closed. The assessment year in question relates to 1999-2000 under the Central Sales Tax Act, 1956. The assessee filed its return claiming exemption on stock transfer for Rs. 77,75,219 out of which it was pointed out that, the turnover of Rs. 75,77,525 was stock transfer to the factory at Visakhapatnam. Various other reliefs were also sought for in the return. We are in this case concerned with the question whether the assessee is entitled to get claim of exemption on stock transfer for the amount of Rs. 75,77,525. The assessing authority disallowed the claim on the ground that the assessee had not produced proof for the transfer and movement of goods to the factory and evidence for crossing the check-posts.

2. The assessee took up the matter in appeal and the claim was also rejected by the Deputy Commissioner (Appeals) stating that the assessee had not produced

F form declaration to prove that the transactions were otherwise than by way of sale. The appellate authority placed reliance on the decision in Ashok Leyland Ltd. v. State of Tamil Nadu [2004] 134 STC 473, wherein the apex court held that the initial burden of proof is on the dealer to prove that the movement of goods was occasioned by reason of transfer of such goods otherwise than by way of sale. The appellate authority also found that filing of form F declaration is mandatory and only on filing of such declaration, the assessing authority would be able to make an inquiry for the purpose of passing an order after arriving at the requisite satisfaction that the movement of goods was occasioned otherwise than as a result of sale. The assessee, aggrieved by the order of the appellate authority, filed an appeal before the Tribunal. The Tribunal also concurred with the view of the appellate authority and dismissed the appeal against which this revision has been preferred.

3. Sri Anil D. Nair, counsel appearing for the assessee, submitted that the Tribunal ought not to have held that form F is mandatory to prove transfer in the light of the decision of this Court in Vijayamohini Mills v. State of Kerala [1989] 75 STC 63 and also the decision of the apex court in Ashok Leyland Ltd. v. State of Tamil Nadu [2004] 134 STC 473. Counsel submitted that the Tribunal ought to have allowed the appeal on the basis of the decision of the apex court in Ashok Leyland Ltd. v. State of Tamil Nadu [2004] 134 STC 473. Counsel submitted that even in the absence of form F declaration the assessee produced other evidence to show that there was a stock transfer. Counsel referred to RG 24 register maintained under the Central Excise Rules and submitted that the register is the best evidence to prove the claim of stock transfer. Counsel also submitted that the assessee has also produced delivery notes which would support the case of the assessee that there was stock transfer. Counsel submitted, in any view of the matter as per Section 6-A of the Central Sales Tax Act, 1956 production of F form was not mandatory.

4. Counsel appearing for the Revenue, on the other hand, submitted that burden is on the assessee to show that what was transferred is only stock transfer. Even if production of form F declaration was not mandatory prior to the amendment, burden is entirely on the assessee to show that there was a stock transfer. RG 24 register produced is not conclusive proof of movement of goods from State of Kerala to Visakhapatnam ; so also the delivery note produced. The apex court in Ashok Leyland Ltd. v. State of Tamil Nadu [2004] 134 STC 473 has elaborately considered the history of the legislation as also the Constitutional amendments in relation to inter-State movement of goods and Section 6-A of the Central Sales Tax Act, 1956. The court held as follows:

... Indisputably, the burden would be on the dealer to show that the movement of goods had occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be. For the purpose of discharge of such burden of proof, the dealer is required to furnish to the assessing authority within the prescribed time a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal. Such declaration would contain the prescribed particulars in the prescribed form obtained from the prescribed authority. Along with such declaration, the dealer is required to furnish the evidence of such dispatch of goods by reason of Act 20 of 2002. In the event, if it fails to furnish such declaration, by reason of legal fiction, such movement of goods would be deemed for all purposes of the said Act to have occasioned as a result of sale. Such declaration indisputably is to be filed in form F. The said form is to be filed in triplicate.

5. After the coming into force of Act 20 of 2002 production of form F declaration is a mandatory requirement. The assessment in the instant case relates to 1999-2000. Before the coming into force of the amendment as per Act 20 of 2002, production of form F declaration was not mandatory. Statute however specifically casts the burden on the assessee u/s 6-A of the Central Sales Tax Act, 1956. The said section is extracted below for easy reference:

6-A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale.-(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

6. When we read Section 6-A of the Central Sales Tax Act, 1956 along with the Central Sales Tax (Registration and Turnover) Rules, 1957, burden of proof is on the assessee to show that there is a transfer of goods other than by way of sale. The question posed is whether form RG 23A produced by the assessee would clearly show that there was stock transfer of goods from State of Kerala to Visakhapatnam. Form RG 23A deals with stock account of inputs for use in or in relation to the manufacture of final products. This document as such would not show that there was movement of goods from Kerala to Visakhapatnam. This is a form prescribed under Rule 57A of the Central Excise Rules framed in exercise of the powers conferred by Sections 6, 12 and 37 of the Central Excise Act, 1944 and maintained by the assessee itself. We are in this case concerned with the provisions of the Central Sales Tax Act, 1956 and the Central Sales Tax (Registration and Turnover) Rules, 1957. The petitioner has to comply with the

provisions of the Central Sales Tax Act and Rules framed thereunder and not the provisions of the Central Excise Act and Rules framed thereunder. Declaration form under the Central Excise Rules is not a reliable piece of evidence to show transfer of stock from one State to another. That document is not binding on the officers functioning under the Central Sales Tax Rules. Further counsel submitted that there is an entry in RG 24 regarding delivery notes. The assessee has not produced any reliable evidence to show that there was stock transfer from State of Kerala to Visakhapatnam after passing through the check-posts in the State. All the fact finding authorities have concurrently found that the assessee has not discharged the burden u/s 6-A of the Central Sales Tax Act, 1956. We find no infirmity in the orders passed by the authorities below. Revision petition lacks merits and it is accordingly dismissed.