(2004) 05 AHC CK 0187

In the Allahabad High Court

Case No : Sales Tax Revision No. 1635 of 1990

Chandpur Sugar Co. Ltd. APPELLANT

Vs

Commissioner, Sales Tax RESPONDENT

Date of Decision : 07-05-2004

Acts Referred:

Central Sales Tax Act, 1956 — Section 10A

Citation : (2005) 139 STC 528

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Prakash Krishna, J.—The present revision arises out of penalty proceedings u/s 10A of the Central Sales Tax Act, 1956. The dispute relates to the assessment year 1984-85. The penalty proceedings were initiated for making false representation by issuing the form C to the selling dealer by the applicant that it is authorised to make purchases at the concessional rate of tax. The applicant has been granted registration certificate both under Sections 7(1) and 7(2) of the Central Sales Tax Act. A copy of the registration certificate has been filed by the parties before this Court. In the said registration certificate which is effective from May 29, 1976, the dealer has been authorised to issue form C in respect of various items mentioned in the registration certificate. One of the items mentioned in the said registration certificate is at the Serial No. 20. Against the Serial No. 20 "machine tools" is mentioned. The assessing officer issued a show cause notice to the dealer to show cause as to why penalty should not be imposed for issuing form C in respect of various items which are not covered by the registration certificate. Although in the show cause notice the department objected the issuance of form C in respect of number of items but since the penalty has been levied only in respect of three items enumerated below, therefore, it is not necessary to refer the other items mentioned in the show cause notice. These three items are "wielding material", "parts of bag sewing machines" and "paints and varnish". The assessing officer was of the view that the dealer has unauthorisedly issued form C in respect of the aforesaid three items as they are not covered by the registration certificate. A copy of the reply of the show cause notice has been annexed as annexure No. 2 to the supplementary counter-affidavit filed on behalf of the department in this Court. The dealer submitted that he was authorised to issue form C in respect of all the three items mentioned above as they are covered by the registration certificate issued in his favour. It was submitted that the "wielding material" is covered by machinery store. Similarly "parts of bag sewing machine" is stores as it is used in sewing bags. The "paints and varnish" are covered under the entry "chemical".

2. The assessing authority by its order dated February 13, 1990 after consideration and rejection of the reply to the show cause notice levied a penalty of a sum of Rs. 69,875 in all. The said order has been confirmed by the Assistant Commissioner (Judicial) by the order dated March 31, 1990, in appeal. The Tribunal has dismissed the second appeal by the order under revision.

3. Heard the counsel for the parties and perused the record. The learned counsel for the applicant submitted that the "wielding material" imported in State of U.P. against form C is covered under entry No. 20 of the registration certificate. In other words it is nothing but "machine tools". In support of his submission he has placed reliance upon two judgments of this Court in the case of (1) Wasti Ram & Sons v. Commissioner, Sales Tax 1987 UPTC 1366 and (2) Commissioner, Sales Tax Vs. TEK Invest (India) Pvt. Ltd., . In my view none of the aforesaid judgments have any application to the facts of the present case. Neither the learned counsel for the dealer nor the learned Standing Counsel could point out as to what is meaning of "machine tools". The dealer has justified issuance of form C with reference to the "machine tools" for the purchases of "wielding material". On a plain reading "wielding material" cannot be treated as "machine tools". In the case of Wasti Ram and Sons 1987 UPTC 1366, the assessee was granted registration certificate enabling him to import "mill stores" for use in the manufacturing process of rice. The assessee had imported automatic parboil paddy driers, paddy dehusker and wielding machine. In para 9 of the aforesaid judgment it was held therein that these items imported by the assessee cannot be said to be "mill stores", which expression refers to small tools and spare parts of the machinery. However, this Court set aside the order of penalty not on the question as to what does the expression "mill stores" actually means. But on the question that the assessee all through stated that it bona fide believed that the machinery imported thereby was fully covered by the term "mill stores". Therefore, the said case was decided on a different issue. In the case in hand "mill store" is not mentioned in the registration certificate of the dealer.

4. The next case relied upon by the dealer is also not applicable inasmuch as it was held by this Court that generating set is clearly a machinery and since the machinery is endorsed in the registration certificate therefore non-levy of penalty was held justified. In the present case, the dealer has imported "wielding

material" and not the wielding machine. Therefore, it cannot be said that it is covered by "machine tools". "Wielding material" cannot be treated "machine tools".

5. At this stage it is necessary to notice the observation of the Tribunal in the order under revision which has not been controverted. It reads as follows :

"The only material on which the assessee falls back to substantiate their bona fides is the registration certificate. They would, however, admit that the goods enumerated in the registration certificate do not enable them to purchase the goods which they did by issue of form C. The items imported, for which the C forms in question were issued do not fall in the categories mentioned in the list of the registration certificate."

6. Therefore, I do not find any substance in the argument of the learned counsel that the "wielding material" is covered under "machine tools".

7. For the same reasons parts of bag sewing machine are not covered by the "machine tools".

8. A reading of the registration certificate granted to the dealer shows that it was authorised to issue form C in respect of various machineries and other items mentioned therein from serial Nos. 1 to 45 which reads as follows :

Sl. No. Name of machinery 1. Ball and roller bearings.

2. Blowers, force feeders, compressors and their spare parts.

3. Boilers, boiler mountings.

4. Boiler tubes, boiler free check valves.

5. Refractors.

6. Brake lining.

7. Sulphur and other chemicals (light and heavy).

8. Diesel engine generating set, spare and accessories.

9. The dolit, ferror printing machine.

10. Pumps and its spare parts.

11. Steam turbine and turbo pumps.

12. Cast steel and cast iron casting-gears, pinions, sprockets head stools, trash plates.

13. Non-ferrous metals (gun-material and white metal inputs).

14. Hardware material, tools and tacklers.

15. MS pipes, GI pipes, glow valves, GM valves, non return valves MS ''T'', GI

''T'', sockets.

16. Brass cutter GI stainless steel perforated sheets, wire screws, soaves.

17. Sight glass tubes.

18. Jointings, packing gaskets and rubber sheets.

19. Lubricants.

20. Machine tools.

21. Medical and surgical instruments.

22. Precision instruments tools.

23. Process controlling instruments (steam flow metre, pressure gauges, temper gauges, draght gauges, ammeter, temperature recorders, pressure recorders.

24. Reduction gear and its spare parts.

25. Springs.

26. Lathe machine, shaper, planner, drilling machine, grinders bands of machine, anvil, bench-vicsa.

27. Steam valves, pressure tubes.

28. Centrifugal machine.

29. D.S.M. screen.

30. Filter presses for sugar factory.

31. Sulphur burner.

32. De-super-heating station containing archa valves, etc.

33. Over head cranes.

34. Double reduction gear.

35. Weighting machine.

36. Centrifugal pumps.

37. Diesel generating set.

38. Vacuum filter.

39. Brass tubes.

40. Chain and slates.

41. Filter press plates and frames.

42. Cane cutting knives.

43. Power capacitors.

44. Fire fighting equipments.

45. Electrical equipments and other electrical goods:

(1) Electric motors.

(2) Starters.

(3) Ammeters.

(4) Thermal and cold insulation material.

(5) Cables.

(6) Electric wire switches, etc.

The learned counsel for the appellant submitted that the "paints and varnish" are covered under the entry "chemicals". But he could not point out any material in support of his argument that the "paints and varnish" are chemical. He could not explain with the help of any authority or case law or otherwise in support of his argument that the chemical includes paint and varnish. Since an exhaustive list of various items was attached along with the registration certificate, the burden lay upon the applicant to justify that the paint and varnish is covered under chemical.

9. It was then urged that the applicant is a semi Government organisation and is unit taken over by the U.P. State Sugar Corporation. The applicant has been issuing form C in respect of these items and was never objected by the department earlier. The registration certificate was granted as far as back with effect from July 20, 1976 and the department raised objection for the first time in the assessment year 1984-85. It was submitted that since it is unit of U.P. State Sugar Corporation therefore it stands on a different footing as there is no personal gain to anybody. At the most it is a case of making wrong representation. Elaborating the argument it was submitted that there is a difference between false representation and the wrong representation. The finding recorded by the Tribunal on the question of false representation and metis rea were also attempted to be challenged. Reliance was placed on two decisions of this Court in the case of Commissioner of Sales Tax v. Kisan Sahkari Chini Mills Ltd. 1995 UPTC 1137 and Kisan Sahkari Chini Mills Ltd. v. Commissioner of Sales Tax 2003 UPTC 1197.

10. On facts the aforesaid decisions are distinguishable. Firstly, no such plea was taken by the dealer in reply to the show cause notice. There is nothing on the record to suggest that the dealer had been issuing form C in respect of the aforesaid three items in dispute since the time of registration. The learned counsel for the applicant could not point out any material from which it can be inferred that the dealer had been issuing form C in respect of the aforesaid materials to the knowledge of the department continuously over a period of

number of years. Secondly, this plea was not pressed before any of the three authorities below. There is no whisper either in the penalty order or in the order of the first appellate authority or in the order of the Tribunal that the dealer had been issuing form C in respect of the aforesaid items to the selling dealer with the knowledge of the department. Therefore it appears that the dealer issued form C in respect of the aforesaid items for the first time in the assessment year in question and the department on coming to know of it initiated penalty proceedings. No period of limitation has been prescribed for initiation of penalty proceedings nor such an objection was raised before the authorities below.

11. The Tribunal has recorded a finding of fact that the dealer made false representation to the selling dealer that the goods purchased by it are covered by the registration certificate issued to it. The Tribunal rightly pointed out that form C contains a clause to the effect that the goods purchased are included in the buyer''s certificate. By signing the said declaration on form C it cannot be said that the dealer has not made the representation. The finding of fact recorded by the Tribunal is based on the material on record and cannot be said to be perverse.

12. Lastly, on question of quantum of penalty was argued. From the penalty order it is clear that the dealer has unauthorisedly issued form C for the value of Rs. 4,83,832.62 and the assessing officer has levied penalty at the rate of 12 per cent on Rs. 22,213, on Rs. 4,04,621.82 at the rate of 15 per cent and on Rs. 36,168 at the rate of 18 per cent. There is some substance in the argument of the learned counsel for the applicant that the minimum penalty should have been levied as the applicant is a unit of State Government, namely, U.P. State Sugar Corporation and is run by officers and there is no personal gain to them by making false representation. Therefore the matter is remanded to the Tribunal for levy of minimum amount of penalty, i.e., equivalent to the difference amount of tax which has been avoided by issuing form C.

13. In the result, the revision is allowed in part as indicated above. The Tribunal shall pass a consequential order u/s 11(8) of the U.P. Trade Tax Act and levy the minimum amount of penalty u/s 10A of the Central Sales Tax Act in accordance with law.

