
(2007) 03 AHC CK 0222
In the Allahabad High Court

Chokrayat Cold Storage

APPELLANT

Vs

The Commissioner Trade

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

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

Citation : (2008) 15 VST 338

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U. P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 01.02.2006 relating to assessment year 1997-98 under the Central Sales Tax Act.

2. The brief facts of the case are that the applicant was granted registration u/s 7 (2) read with Section 8(3) (b) of the Act for the period 24.05.1997 to 01.09.1997 for processing of Potato, vegetable and fruits and for manufacturing and sales of Ice and was authorized to purchase machinery, machinery spare parts, Compressor, Electrical Motor, Pump Starter, Amoniya Gas, Tools, Iron Pipes, electric goods, iron steel, Hardware, Cement, Wood, Rodi Buderpur etc. During the year under consideration, applicant had purchased machinery for Rs. 7,74,482/-from outside the State of U. P. and issued Form-C in respect thereof. Such machinery were admittedly used in the construction of Cold Storage. Admittedly, during this year, Ice had not been manufactured and sold. The Assessing Authority issued notice u/s 10-A of the Act on the ground that the dealer had imported Compressor, Electrical Motor etc. and used in the construction of Cold Storage while these goods should have been used in the manufacturing of goods for sale. According to the Assessing Authority, Registration Certificate had been misused and as such, applicant was liable for penalty. Applicant filed reply to the Show-cause-notice and stated that the machinery etc. were used in the construction of Cold Storage required for

processing of Potato, vegetable goods and fruits. It has been stated that due to non completion of Ice Chamber, Ice have not been manufactured and sold. The Assessing Authority, however, had not accepted the plea of the applicant and levied the penalty at Rs. 1, 12,568/-under Section 10-A of the Act. The Assessing Authority held that the applicant had not manufactured any goods for sale and admitted that it had not manufactured Ice. Being aggrieved by the penalty order, applicant filed appeal before the Deputy Commissioner (Appeals), Trade Tax. The Deputy Commissioner Appeals), Trade Tax vide order dated 29.7.2002, allowed the appeal and set aside the penalty order. Being aggrieved by the order of the Deputy Commissioner (Appeals), Trade Tax, Commissioner of Trade Tax filed appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal in part. The Tribunal held that the applicant has violated the provisions of Section 10(b) of the Central Sales Tax Act, but has reduced the amount of penalty to Rs. 62,000/-.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the applicant had been granted registration for processing of Potato, vegetable and fruits and for manufacturing and sales of Ice. He submitted that the machinery, which were purchased, were used in the construction of Cold Storage and for Ice Factory. He submitted that during the year under consideration, Ice could not be manufactured MI because Ice Chamber could not be constructed. He submitted that the machinery which were installed, were for Cold Storage as well as for manufacturing of Ice. He submitted that in the Cold Storage during the preservation, processing of Potato, vegetable and fruits are involved, therefore, there was no violation of Section 10(d) of the Act. He further submitted that under the bonafide belief that since the registration was granted for the purposes of processing of Potato, vegetable and fruits, applicant had imported machinery from outside the State of U. P. against Form-C and used in the construction of Cold Storage, in which, the processing of Potato vegetable and fruits were involved. He relied upon the decision of this Court in the case of Raghbir Cold Storage, Mainpuri v. Commissioner of Sales Tax, U. P. Lucknow reported in 1995 STI 18 . Learned Standing Counsel submitted that the Apex Court in the case of Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax, New Delhi, held that in a Cold Storage, the goods are preserved by refrigeration and in the process, articles does not undergo processing.

5. Having heard learned Counsel for the parties and perused the order of Tribunal and the authorities below.

6. Section 10(d) of the Central Act reads as follows:

10. Penalties.- If any person.-

(d) after purchasing any goods for any of the purposes specified in Clause (b) or Clause (c) or Clause (d) of Sub-section (3) of section 8 fails, without reasonable excuse, to make use of the goods for any such purpose.

7. I find substance in the argument of learned Counsel for the applicant. In the case of *Delhi Cold Storage Private Limited v. CIT* (supra), the Apex Court may have held that in the preservation of goods in the Cold Storage there may not be processing for the purposes of being an industrial undertaking for the purposes of exemption under the Income Tax Act, but in the present case, registration was granted to the applicant under the Central Sales Tax Act for the processing of Potato, vegetable and fruits and it appears that at the time of grant of registration, it was known that the applicant was going to establish Cold Storage and thus, use of machinery in the construction of Cold Storage was under the bonafide belief and cannot said to be without any reasonable excuse.

8. In the case of *Raghubir Cold Storage, Mainpuri v. Commissioner of Sales Tax* reported in (1995) 30 STI 18, the dealer applied for registration under the Central Sales Tax Act. In the application, the business of the assessee was mentioned as " Nirman cold storage barf ka nirman baad main karenge our suchit kiya jayega". In the list of goods required for production or construction of goods for sale steel, cement, timber, machinery, electrical goods, pipe etc was mentioned. Assessing Authority granted a registration certificate under the central Act to the assessee allowing him to purchase the aforesaid items against declaration form-C. The assessee purchased the goods against Form C in the construction of cold storage, but did not establish an ice factory and has not produced any goods for sale. Assessing authority imposed the penalty u/s 10A read with Section 10(d) of the Central Act. Penalty order has been upheld by the Tribunal. This Court held as follows:

Although there was a default within the meaning of Section 10(d) of the Central Sales Tax Act inasmuch as the revisionist was not to manufacture any goods for sale, yet it purchased the materials and used them for the construction of the cold storage. But it was led to this default by the belief that it can do so and for which it found support from the action of the assessing officer in granting it a registration certificate knowing fully well that the dealer is establishing only a cold storage. In my view, therefore, the dealer did have reasonable cause for the default and could not be subjected to penalty.

9. Thus, in my view, on the facts and circumstances of the case, the dealer used the goods purchased against Form C in the construction of cold storage under the bonafide belief and there was a reasonable excuse, the penalty is not sustainable and liable to be set aside.

10. In the result, revision is allowed. The order of the Tribunal is set aside and the penalty u/s 10A of the Central Act is quashed.