(1992) 02 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No''s. 12413 of 1991-C and 221 of 1992-B

Colourgraphs APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 06-02-1992

Acts Referred:

Central Sales Tax (Kerala) Rules, 1957 — Rule 11
Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12
Central Sales Tax Act, 1956 — Section 10, 7(4), 8(3), 8(4)

Citation : (1993) 88 STC 347

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : P.H. Sankara Narayana Iyer, for the Appellant; T. Karunakaran Nambiar, Special Government Pleader (Taxes), for the Respondent

Final Decision : Allowed

Judgement

K.A. Nayar, J.—The common question that arises for consideration in both the writ petitions is whether the C form can be denied to the petitioner. Since the facts are not very material, I am briefly referring the facts in O.P. No. 12413 of 1991 only. Petitioner is an offset printing press owner and is registered both under the Kerala General Sales Tax Act, 1963 and the Central Sales Tax Act, 1956 and Rules. The business of the petitioner confined to supply of printed materials, folders, duplex board, cartons, posters and other advertising materials. Petitioner has to secure large stock of papers, inks, chemicals, cotton wastes, lith films, polyester films and other allied products which are necessary for manufacturing the goods that are needed by the customers. These articles are purchased using "C" form from outside the State. Petitioner can purchase these items at concessional rate, provided they are supported by "C" form, issued by the respondents. In the absence of "C" form certificate petitioner has to pay enhanced rate of tax at 10 per cent. The "C" form certificates are usually issued by the respondents in book form, each book having not less than 25 blank certificates. These certificates are filled up with the value of purchases from outside Kerala and forwarded to the seller there and he despatches such goods supported by "C" form certificate. Petitioner was obtaining the goods on "C" form for the past several years, i.e., from 1976 onwards.

2. It is the contention of the petitioners, by Notification G.O. (P) No. 41/88/TD dated 30th March, 1988, issued by the Kerala Government u/s 10 of the Kerala General Sales Tax Act which came into force on 1st day of April, 1988, as S.R.O. No. 364/88 complete exemption in respect of tax payable under the Kerala General Sales Tax Act is granted in favour of the printing presses. Therefore, petitioner need not pay sales tax under the State Act.

3. After this notification, when the petitioner requested for "C" form on 26th April, 1991, and repeated the demand on 6th August, 1991 by exhibit P2, petitioner was not given "C" form. Hence petitioner approached this Court for a writ of mandamus to be issued to the respondents to continue the supply of "C" form book to the petitioner without interruption.

4. A counter-affidavit has been filed on behalf of the first respondent, which is, agreed to be treated as counter in both the writ petitions. In the counter it is admitted that the petitioner is a registered dealer under the Kerala General Sales Tax Act as also under the Central Sales Tax Act. But the petitioner is not entitled to get "C" forms issued to him as the conditions prescribed in Sub-section (4) of Section 8 of the Central Sales Tax Act and Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, are not fulfilled in his case. Under the Central Sales Tax Act a person who is furnishing form C to a selling dealer is liable to pay Central sales tax only at the rate of 4 per cent as against 10 per cent otherwise payable. This concession, according to the respondent, is available only to those who purchased goods for purposes specified in Section 8(3) of the Central Sales Tax Act. That means, a dealer who is not intending to use the proposed purchase in any of the purposes enumerated is not entitled to purchase goods.

5. The petitioner is admittedly carrying on business in printing. He undertakes printing on various items such as marriage invitation letters, bill books and such other items, though this is denied in reply. It is also stated that the petitioner does not undertake buying and selling of any goods. The petitioner''s business, according to the respondent, is in the nature of works contract and therefore, goods are not purchased for resale or for manufacture for resale. There is also no transfer of property in goods involved in the execution of the specific type of works contract that the assessee undertakes. It is stated that the invitation cards or bill books printed on the basis of firm contract could not be sold to any other person. All that the assessee gets, according to the respondent, is the printing charge from the person who ordered the items for printing. Hence, it is stated that the petitioner is not entitled for concession of tax. The Sales Tax Officer has power, according to the respondent, to verify, before issuing the C form book, whether the assessee is entitled to avail of the concessional rate. This, according to the counter, is the purpose of Rule 11 of the Rules. The registering authority

has also power to issue certificate. If the registering authority has power to verify the use or misuse of the form already issued, he has the duty to verify whether or not the forms are misused once they are issued, is the submission. Since it is found that the petitioner''s business is only a works contract, it is the respondents'' case that the petitioner is not entitled for "C" form and accordingly "C" form has been denied to the petitioner.

6. A reply affidavit is also filed, in which it is stated that the goods, enumerated in the application for registration and the certificate of registration mentioned, have been used only for the purpose covered by the Rules. Goods are not sold as such without subjecting them to manufacturing or processing as cartons. It is stated that the petitioner has standing customers like Fertilisers and Chemicals of Travancore Limited, Kerala Drugs and Pharmaceuticals, Kerala Soaps and Oils, Federal Bank, Travancore Chemicals and Manufacturing Company, Keltron, etc. These firms in the course of business used cartons, labels, folders, posters, booklets, which are requisitioned from time to time and such printed materials are supplied by the petitioner. It is also stated that these goods so supplied cannot be used by any person other than these firms because need differs from customer to customer. It is also stated that the printing business requires large quantities of paper of all varieties, duplex boards, films, inks and varnishes which have necessarily to be purchased from the manufacturers outside Kerala and for purchase "C" form has been used.

7. Though detailed counter-affidavit and reply affidavit have been filed and arguments have been advanced elaborately on the question of works contract and whether it will amount to sale under the Central Sales Tax Act, for the purpose of deciding this case I do not think that this question is very material.

8. Admittedly the petitioner is a registered dealer under the Central Sales Tax Act and he has registration certificate. Section 8 of the Central Sales Tax Act says that every dealer, who in the course of inter-State trade or commerce sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3) shall be liable to pay tax under the Act, which shall be four per cent of the turnover. So, u/s 8(1) of the Central Sales Tax Act selling dealer of the petitioner needs pay only 4 per cent of his turnover if he sells to a registered dealer. Sub-section (3) describes the goods which can be purchased issuing "C" form. Those goods are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale. In other words, the goods which are described in the registration certificate, which the petitioner intends to sell or use in the manufacture or processing of goods for sale can be purchased by issuing C form. Section 8 makes a difference between dealer and a registered dealer. The petitioner, to avail the benefit of C form, must be a registered dealer and the procedure for registration is contained in Section 7. Detailed provision has been made for registration. Any dealer liable to pay tax

under the sales tax law of the appropriate State, or every dealer liable to pay tax under the Central Act can make application for registration under the Act.

9. Sub-section (3) of Section 7 says that if the authority to whom an application is made is satisfied that the application is in conformity with the provisions of the Act and Rules made thereunder shall register the applicant and grant him certificate of registration in the prescribed form. The provision for investigating and granting certificate has been mentioned in the Central Rules, namely, the Central Sales Tax (Registration and Turnover) Rules, 1957. Application for registration shall be made by the dealer to the notified authority in form A. When the notified authority is satisfied after making necessary enquiry, that the particulars contained in the application is correct and complete and that prescribed fee has been paid it shall register the dealer and grant him certificate of registration in form B. If the authority is not satisfied naturally the application will be rejected after giving an opportunity to the dealer to be heard and if need be correcting or completing the particulars. The petitioner has produced form B registration certificate along with a statement. On a reading of the registration certificate it will be seen that it authorises the petitioner to purchase the paper, paper boards, aluminium plates, zinc and copper plates, printing ink, printing chemicals, photographic papers and films, varnish for printing, laminate copper clad sheets, offset printing machines, spares and camera spares, enlargers, cutting machine, folding machine, screens and filters, lenses, prisms, corrugated papers and cartons, staples, gum, carbon papers, brushes, etc. Thus, the petitioner has been given registration in form No.B authorising him to obtain the goods mentioned in the certificate. Section 13 of the Central Act enumerates power to make Rules. It gives power to the Central Government to make rules and also power is given to the State Government to make rules. Power to make rules regarding manner of application for registration, the particulars to be contained therein, the circumstances in which registration can be refused or cancelled, the enumeration of goods used in the manufacture or processing of goods for sale, etc., are all vested in the Central Government. By virtue of the power given to the Central Government to make rules, the Central Sales Tax (Registration and Turnover) Rules, 1957, have been made. That makes detailed provisions by the Central Government for registration and issue of C form, etc. u/s 13, Sub-section (4), power is given to the State Government also to make rules. Rules made by the State Government shall not be inconsistent with the provisions of the Central Act and the Rules made by the Central Government. Section 13(4)(e) clearly says that rules can be made by the State Government prescribing the authority from whom, the conditions subject to which and the fees subject to payment of which, any form of certificate prescribed under Sub-section (4) of Section 8 may be obtained, among others. In exercise of such power, rules have been made by the State Government as the Central Sales Tax (Kerala) Rules, 1957. Rule 11 of the Central Sales Tax (Kerala) Rules provides that the registered dealer who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act, to sales of goods

by one registered dealer to another for the purpose specified in the purchasing dealer''s certificate of registration, shall obtain from the registering authority blank declaration prescribed under Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, on payment of a fee at the rate of Rs. 20 per book of 25 forms and Rs. 80 per book of 100 forms for furnishing it to the selling dealer. This rule is made by the State Government prescribing the authority to whom and the manner in which the form should be obtained. Sub-rule (12) requires the dealer to submit to the assessing authority a true copy of the register in form VI maintained by him so as to reach the assessing authority on or before 30th April of the succeeding financial year. This is preferably for the purpose of penalising the dealer if form has been wrongly used. On a reading of the provisions of the Act and the Rules, it will be seen that once the registered dealer obtains certificate authorising him to purchase the goods mentioned therein, he is entitled to get C form from the officer authorised under the Act to issue. When registration certificate is shown, he has to issue C form and the assessing officer has no discretion in this regard. If it is found that he has misused the form, there are provisions in the Act and the Rules to penalise the registered dealer. The Central Rules also give the power to the notified authority to cancel or amend the certificate. Section 7(4) gives power to the registering authority to amend or cancel the registration certificate. Of course such action can be taken in consistent with the principles of natural justice. The fact that the form if issued will be misused or the suspicion that it is likely to be misused is not a ground for denying the C form to the petitioner. I am concerned in this only with the right of the petitioner to get C form. Once the petitioner satisfies with respect to the registration certificate in his possession and he is authorised to purchase C form, issue of that cannot be denied on the ground that the petitioner may misuse the C form. That power has not been given to the assessing authority under any provisions of the Act or the Rules. While interpreting the existence of right to get the C form the fact that once the C form is granted it will be misused by the dealer will not be a ground to deny the existence of such right. If a licence is given to any person to obtain any medicine, the fact that medicine will be misused will not be a ground for denying the medicine to him when he approaches with the relevant licence or prescription to the authority. In T.V.P, Nambiar v. State of Madras, a Bench of the Madras High Court held in W.P. Nos. 1379 and 1380 of 1967 and 840 of 1971 that :

"There is no provision in the Act which authorised the Commercial Tax Officer to refuse to provide the assessee with C forms. If the assessee misused the C form, that will be punishable u/s 10 of the Central Act. Beyond that, it had no effect, not even in tax. The Commercial Tax Officer was not constituted as a policeman to regulate and conduct the assessee along with virtuous path. If the assessee had registered himself under the provisions of the Central Act, he was, as a matter of right, entitled to get C forms from the officer, who had no authority to refuse the same."

10. The question arose for consideration in the decision Chanda Paints (Madras)

Ltd. v. Commercial Tax Officer 1986 61 STC 335 Mad. was whether C form can be denied to a registered dealer under the Central Sales Tax Act, when request is made by the dealer to the officer, on the ground that the dealer may use the form for purchase of goods for utilising in works contract. The court, following the earlier Bench decision aforesaid, held that on request for the supply of forms being made by the registered dealer, the notified authority has no power to refuse the forms on the ground that the goods that are purchased using C form may be utilised in works contract. The court, it would appear, took the view that the notified authority cannot even defer the issue for making a thorough investigation of the nature of the business of the registered dealer.

11. In Bengal Potteries Ltd. v. Commercial Tax Officer 1976 Tax LR 1574 the question was whether denial of C forms to a registered dealer on the ground that he is a defaulter in furnishing returns regularly was justified. The court held that Section 8(4) of the Central Sales Tax Act gave dealers the right to obtain C form and that right cannot be taken away without authority of law. In fact in Dawar Brothers Vs. State of Madhya Pradesh and Others, the State rule empowering the Sales Tax Officer to withhold the issuance of blank C forms on the ground that he is in arrears of tax or a defaulter in furnishing return has been held ultra vires.

12. In Unitech Ltd. Vs. Commercial Tax Officer, Gajuwaka, Visakhapatnam, the question was whether the correct or incorrect use of the form can be gone into at the time of supply of forms. The petitioner in that case was a registered dealer. But when he applied to the authorities for C form, it was refused on the ground that so long as Section 8(3) of the Central Sales Tax Act is not amended, C form cannot be supplied to the petitioner. Since the certificate of registration issued to the assessee mentions the goods to be purchased, it was contended that the assessee is entitled to supply of C form. That contention was allowed. The court held :

"The certificate of registration also shows that the said goods are meant for resale. Learned counsel also points out--and rightly in our opinion--that after the Forty-sixth Amendment to the Constitution, the goods used in executing works contracts are deemed to be sold and therefore there is a sale of the material used in execution of the works contracts. Be that as it may, as stated above, the question whether a particular ''C'' form has been issued rightly or wrongly is not a question which is relevant at this stage. We are concerned at this stage only with the supply of ''C'' forms to the petitioner by the commercial tax authorities."

13. The learned Special Government Pleader for Taxes brought to my notice the decision of this Court reported in Deputy Commissioner of Agricultural Income Tax and Sales Tax v. P.K. Biriyumma [1991] 83 STC 276 and submitted that Section 2(g) of the Central Sales Tax Act, 1956, has not been amended so as to take in works contract also part of sale. That may be so. But the question considered in that case is whether the cancellation of the registration certificate was correct or not. As soon as it is found that the dealer was not entitled to use C form, the items included in the registration certificate authorising the purchase

using C form for the purpose of using the goods for tyre retreading business was cancelled. If such a cancellation has taken place in this case the assessee could have taken the matter in appeal. The question that was considered by the Division Bench of this Court is whether the cancellation of certain articles included in the registration certificate was correct or not. The cancellation was on the ground that tyre retreading would not amount to sale as defined under the Central Sales Tax Act, but was only works contract, and therefore, it was held that till Section 2(g) of the Central Sales Tax Act, 1956, is amended so as to take in works contract also as sale, the authorities were right in cancelling and deleting the goods used in tyre retreading. In Unitech Ltd. Vs. Commercial Tax Officer, Gajuwaka, Visakhapatnam, Sl. No. 11 (Commercial Tax Officer v. MacCharles Bros. P. Ltd.), and Studio Sen & Sen v. State of Tripura [1990] 79 STC 168 (Gau) it was held that the officer had to give C form as and when it was asked for. The nature of works contract has been detailed in several decisions. The counsel for the respondents referred to the decisions reported in Pioneer Enterprise v. State of Tripura [1991] 80 STC 125 (Gau) S.R.P. Works and Ruby Press v. State of Andhra Pradesh [1972] 30 STC 195 (AP) P.T. Varghese Vs. State of Kerala, ; T.V. Sundram Iyengar and Sons Vs. The State of Madras, ; Builders Association of India and Others Vs. Union of India (UOI) and Others, ; The State of Madras Vs. Radio and Electricals Ltd. etc., , State of Madras Vs. R. Nand Lal and Co., , Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, and Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, . These are decisions to show that the Works contract has not got a fixed meaning to be given.

14. The counsel for the respondents referred to the decisions reported in State of Madras v. Richardson & Cruddas Ltd. [1968] 21 STC 245 (SC) Deputy Commissioner of Agricultural Income Tax and Sales Tax v. P.K. Biriyumma [1991] 83 STC 276 (Ker) and Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Vidyarambham Press and Book Depot, and pointed out that the petitioner was doing works contract and he is not entitled to C form. It is his specific case that he is not selling the goods as obtained and he is not using the same for manufacturing goods for sale and hence the petitioner is not entitled for C form. Counsel also referred to the unreported decision covering the petitioner''s own case, in which it is clearly stated that he is a works contractor and is not obliged to pay sales tax under the State law. Submission is that admittedly petitioner is only a works contractor and therefore he is not entitled to get C form.

15. The works contract can be a composite contract, indivisible contract, service contract, etc. The form of contract is not determinative of the nature. We have to look into the substance of the contract. If a printer gets bond papers and the customer is given the option to select the bond paper which he wants to be utilised for printing of invitation cards, etc., it may be a sale of the bond paper and he may charge for the works executed by him separately. In that case, perhaps that may be a divisible contract. In Deputy Commissioner of Sales Tax v.

Vidhyarambham Press & Book Depot [1985] 58 STC 322 the Division Bench of this Court has held that when the assessee/printer supplies letter heads, visiting cards, bill books, account books, balance sheet, ration cards and the like to a customer in pursuance of orders placed by a customer, the transaction will be in the nature of works contract. In the decision reported in the State of Madras v. Richardson & Cruddas Ltd. [1968] 21 STC 245 the Supreme Court held that composite contract for designing the fabrication, supply and erection at customer''s site of steel work for customer''s factory will be in the nature of works contract. These decisions are referred to by the Special Government Pleader, Taxes, on behalf of the respondents to show that the nature of work done falls in the realm of works contract. He also referred to the unreported decision in T.R.C. No. 8182 of 1984 of one of the petitioners, in which it is held that the petitioner is carrying on works contract.

16. If the petitioner has proper registration certificate and he is authorised to purchase materials against C form, the authority has adequate power to penalise him if the petitioner misused C form. In the decision reported in Studio Sen & Sen v. State of Tripura [1990] 79 STC 168 (Gau) it was so held. If the goods purchased on the strength of C form issued under the Central Sales Tax (Registration and Turnover) Rules were not used for the purpose for which they were purchased, the authorities can take such action against the dealer for misuse of C form as may be permissible under the Act, such as u/s 10(b) of the Central Sales Tax Act, 1956.

17. In P.T. Varghese Vs. State of Kerala, the question was that the assessee conducting a press and printing bill books, vouchers, receipt books, letter heads, etc., as ordered by his clients is selling any paper used for printing so as to attract the sale contract. If it was a contract for sale of paper and for work, it would be a composite contract, where it may be possible to separate sale from the work. If on the other hand it was a contract for printed materials that was sold, it will be a works contract. It was held in that case the supply of bill books, vouchers, receipt books, etc., are liable to be taxed as finished products. In T.V. Sundram Iyengar and Sons Vs. The State of Madras, the question was whether construction of bus bodies on chassis provided by customers would involve sale. It was held that supply of bodies on chassis constituted a sale and the assessees are liable to pay tax. In the decision reported in Builders Association of India and Others Vs. Union of India (UOI) and Others, works contract was referred to. In that case the enlargement of definition of tax on sale came up for consideration. In this case we are not concerned about that. All these are decisions to show that the registration may be wrong in certain identified cases. If the registration is wrong, it is for the respondent to cancel or amend the same as provided for in Section 7(4). So long as the registration is not cancelled, petitioners are entitled to C form. Therefore, I hold that the petitioners are entitled for C form so long as the registration certificates are not cancelled.

18. Original petitions are allowed as above.

