(1985) 08 CAL CK 0013

In the Calcutta High Court

Case No : Mandamus Appeal No. 306 of 1977

Commercial Tax Officer APPELLANT

Vs

Bengal Potteries Ltd. RESPONDENT

Date of Decision : 19-08-1985

Acts Referred:
Central Sales Tax Act, 1956 — Section 13, 6, 6A, 7, 8

Citation : 90 CWN 10 : (1986) 61 STC 219

Hon'ble Judges : Shamsuddin Ahmed, J;C. Mookerjee, J

Bench : Division Bench

Advocate : Samarendra Nath Dutta, for the Appellant; Sanjoy Kumar Bhattacharya and Aparna Dutta, for the Respondent

Final Decision : Allowed

Judgement

C. Mookerjee, J.—The Bengal Potteries Ltd., the respondent herein, at the material time was a registered dealer both under the Bengal Finance (Sales Tax) Act, 1941./ and the Central Sales Tax Act, 1956. In exercise of his powers under Rule 27AA of the Bengal Sales Tax Rules the Commercial Tax Officer, Radha Bazar Charge, by two separate orders both dated 8th May, 1975, had refused to issue to respondent No. 1, form No. C declaration forms and form No. XXIVA declaration forms on the ground that the dealer had defaulted in submitting returns under the aforesaid two Acts since July, 1973. The principal point in this appeal is whether or not the said withholding of declaration forms to the respondent-company under Rule 27AA(2)(c) of the Bengal Sales Tax Rules was legal and valid.

2. His Lordship the Honourable Sabyasachi Mukharji, J. (as his Lordship then was), by his judgment/order dated 29th September, 1975, made absolute in part the rule obtained by the Bengal Potteries Ltd. against the aforesaid two orders withholding declaration forms. The learned Judge has held that the Commercial Tax Officer had no jurisdiction to impose any restriction or condition for obtaining declaration forms in terms of Section 8(4) of the Central Sales Tax Act, 1956.

The trial Judge pronounced as invalid Rule 4(2) of the Central Sales Tax (West Bengal) Rules, 1958, which makes Rule 27AA of the Bengal Sales Tax Rules applicable in case of issue of declaration forms referred to in Section 8(4) of the Central Sales Tax Act, 1956, read with the Central Sales Tax (Registration and Turnover) Rules, 1957. The learned Judge directed the Commercial Tax Officer to reconsider the writ petitioner''s application for granting declaration forms under the Central Sales Tax Act, 1956, in accordance with law. The learned trial Judge, however, rejected the petitioner''s further contention that Rule 27AA of the Bengal Sales Tax Rules, 1941, was also ultra vires Section 5(2) of the Bengal Finance (Sales Tax) Act, 1941, and the Commercial Tax Officer had no jurisdiction to withhold issue of declaration forms even under the said Act.

3. The Commercial Tax Officer, Radha Bazar Charge, and two others preferred this appeal under Clause 15 of the Letters Patent against the judgment of the learned trial Judge holding that Rule 4(2) of the Central Sales Tax (West Bengal) Rules, 1958, was ultra vires and that the Commercial Tax Officer had no jurisdiction to impose any condition for issue of declaration forms u/s 8(4) of the Central Sales Tax Act.

4. The Bengal Potteries Ltd. has preferred a separate appeal under Clause 15 of the Letters Patent against the aforesaid decision of the learned trial Judge holding that Rule 27AA of the Bengal Sales Tax Rules, 1941, was not ultra vires Section 6(2) of the Bengal Finance (Sales Tax) Act, 1941. The said company did not, however, press the appeal and the same has been already dismissed. Therefore, the Bengal Potteries Ltd., the respondent in this appeal, can no longer urge that the said Rule 27AA of the Bengal Sales Tax Rules was ultra vires Section 5(2) of the Bengal Finance (Sales Tax) Act, 1941. The Bengal Potteries Ltd. does not challenge the validity of the conditions imposed by the Commercial Tax Officer for issue of declaration forms u/s 5(2) of the Bengal Finance (Sales Tax) Act, 1941.

5. We proceed to consider whether the Commercial Tax Officer had acted within his jurisdiction by ordering that the company must file its returns under the Central Sales Tax Act, 1966, before declaration forms u/s 8(4) of the said Act could be issued to it. In making the said impugned order the Commercial Tax Officer had purported to invoke the provisions of Rule 27AA of the Bengal Sales Tax Rules, 1941. Sub-rule (2) of Rule 4 of the Central Sales Tax (West Bengal) Rules, 1968, made by the Governor of West Bengal makes Rule 27 AA of the Bengal Sales Tax Rules applicable mutatis mutandis in the matter of application for and issue of declaration forms referred to in Section 8(4) of the Central Sales Tax Act, 1956.

6. The learned trial Judge has followed the judgment of K.L. Roy, J., in the case of H.L. Paul & Sons v. Commercial Tax Officer, Cooch Behar [Civil Rule No. 6773 (W) of 1969 decided on 16th June, 1970] and has held that since the proviso to Section 8(4) of the Central Sales Tax Act was not amended in the same manner in which Section 5(2) of the Bengal Finance (Sales Tax) Act was amended by

inserting the words "in such manner subject to such conditions and restrictions as may be prescribed", in exercise of powers u/s 13(3) and (4) of the Central Sales Tax Act, the Governor of West Bengal could not adopt Rule 27AA of the Bengal Sales Tax Rules and impose restriction and condition for obtaining declaration forms u/s 8(4) of the Central Sales Tax Act, 1956. We regret that we are unable to uphold the trial Judge''s view that Rule 4(2) of the Central Sales Tax (West Bengal) Rules which makes Rule 27AA of the Bengal Sales Tax Rules applicable, was beyond the competence of the State Government''s rule-making power. Both K. L. Roy, J., and Sabyasachi Mukharji, J., in their respective judgments had referred in the decision of D, N. Sinha, J. (as he then was), in the case of S. N. Sugar Mills v. Commercial Tax Officer (1961) 65 CWN 1039. D. N. Sinha, J., inter alia, held that even after enactment of the Bengal Finance (Sales Tax) (Amendment) Act, 1969, the Commercial Tax Officer u/s 6(2) of the Bengal Finance (Sales Tax) Act could only check whether the transactions were real and whether the declaration forms would be confined to transactions and sales inside West Bengal. The Commercial Tax Officer under the state of law then in force could impose no other restriction or condition for issue of declaration forms. Thereafter, the proviso to Section 6(2) of the Bengal Finance (Sales Tax) Act, 1941, was further amended by West Bengal Act 4 of 1966 and Act 26 of 1969. The said proviso now reads as follows:

Provided that deduction on account of sales referred to in Sub-clause (ii) shall be allowed to the dealer who sells the goods only when he can furnish in the prescribed manner a declaration containing prescribed particulars in the prescribed form obtainable in such manner and subject to such conditions and restrictions as may be prescribed, from the prescribed authority duly filled up and signed by the registered dealer to whom the goods are sold.

7. The said amended proviso to Section 6(2) of the State Sales Tax Act, in substance, empowered the rule-making authority to prescribe, inter alia, the conditions and restrictions for obtaining declaration forms. But the Parliament did not amend in the same manner the proviso to Section 8(4) of the Central Sales Tax Act. Absence of similar provision for prescribing conditions for obtaining declaration forms in Sub-section (4) of Section 8 of the Central Sales Tax Act itself would not be, however, decisive for adjudicating whether or not in exercise of its rule-making authority u/s 13(3) read with Section 13(4) of the Central Sales Tax Act, the State Government can lawfully prescribe conditions for obtaining declaration forms. There could be no uniform pattern or arrangement for conferment of the rule-making power for prescribing such conditions for imposing restrictions and conditions. In the Bengal Finance (Sales Tax) Act the power to prescribe by rules such conditions has been conferred by inserting the aforesaid words in the proviso to Sub-section (2) of Section 6 of the State Sales Tax Act. The proviso to Section 8(4) of the Central Sales Tax Act, no doubt, only provides that the declaration referred to in Clause (a) shall be furnished within the prescribed time or within further time permitted and does not mention about the conditions which may be prescribed. The legislature ''may make different

arrangement in a particular statute by providing in a separate section the power to prescribe conditions for obtaining declaration forms. The power to prescribe conditions for obtaining such declaration forms would be found in Section 13(4)(e) of the Central Sales Tax Act. The different sub-sections of Section 13 of the Central Sales Tax Act deal with power to make rules which is shared by the Central and the State Governments. The Central Government under Sub-section (1) of Section 13 of the Act, may make rules for providing for the matters specified in the said sub-section. The State Government u/s 13(3) of the said Act may make rules not inconsistent with the provisions of the Act and the Rules made under Sub-section (1) of Section 13 of the Central Act. Sub-section (4) of the section mentions some of the purposes for which the State Government may make such rules. Clause (e) of Section 13(4) deals with the scope of rules which may be made in respect of issue of declaration forms. The original Clause (e) of Sub-section (4) of Section 13 was amended by Section 9(ii) of the Central Sales Tax (Second Amendment) Act, 1958 (Act 31 of 1968), by first time inserting the words "the authority from whom, the conditions subject to which and the fees subject to payment of which". Thus, the scope of the said Clause (e) was enlarged by empowering the State Government to frame rules, infer alia, prescribing conditions subject to which declaration forms prescribed under Sub-section (4) of Section 8 of the Central Sales Tax Act may be obtained. With effect from 1st April, 1973, Act 61 of 1972 again amended the said Clause (e) of Section 13(4) of the Act. The Clause (e) now reads as follows :

The authority from whom, the conditions subject to which and the fees subject to payment of which any form of certificate prescribed under Clause (a) of the first proviso to Sub-section (2) of Section 6 or of declaration prescribed under Sub-section (1) of Section 6A or Sub-section (4) of Section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished.

8. Thus, Clause (e) of Section 13(4) of the Central Sales Tax Act (since enactment of Act 31 of 1958) authorises the State Government to prescribe by rules also the conditions subject to which any form of declaration prescribed under Sub-section (4) of Section 8 may be obtained.

9. Thus, the State Government u/s 13(4)(e) of the Central Sales Tax Act has been authorised to, inter alia, prescribe the conditions subject to which the declaration forms u/s 13(4) of the same Act may be obtained. Mr. Bhattacharya, the learned Advocate for the respondent, has urged that unlike the proviso to Sub-section (2) of Section 6 of the Bengal Finance (Sales Tax) Act the said Clause (e) of Section 13(4) of the Central Sales Tax Act only uses the word "condition" and not "restriction" and, therefore, according to Mr. Bhattacharya, the State Government could not enact Rule 4(2) of the Central Sales Tax (West Bengal) Rules for application of Rule 27AA of the Bengal Sales Tax Rules in the matter of issue of declaration forms u/s 8(4) of the Central Sales Tax Act. But the

difference in language used in the two provisions was not material.

10. Sub-rules (1) and (2)(a) and (b) of Rule 27AA of the Bengal Sales Tax Rules empower the Commercial Tax Officer to be satisfied about the bonafide use of the declaration forms applied for by a dealer. Mr. Bhattacharya conceded that in view of Section 7(4)(a) of the Central Sales Tax Act, the Commercial Tax Officer under Rule 27AA(2)(b) could demand security. Thus, when Mr. Bhattacharya does not dispute that before issuing declaration forms u/s 8(4) of the Central Sales Tax Act the Commercial Tax Officer may lawfully invoke the said Sub-rules (1) and (2)(a) and (b) of Rule 27AA, Sub-rules (1), (2)(a) and (b) of Rule 27AA in any view cannot be considered as ultra vires Section 8(4) of the Central Sales Tax Act. Accordingly at least to the said extent Rule 4(2) of the Central Sales Tax (West Bengal) Rules cannot be declared as ultra vires.

11. In our view, Rule 4(2) of the Central Sales Tax (West Bengal) Rules also lawfully made Rule 27AA(2)(c) applicable to issue of declaration forms referred to in Section 8(4) of the Central Sales Tax Act. Thus, provisions of Sub-rule (2)(c) of Rule 27AA of the Bengal Sales Tax Rules are in the nature of conditions within the meaning of Section 13(4)(e) of the Central Sales Tax Act. Therefore, the State Government was fully competent to make the entire Rule 27AA applicable to issue of declaration forms u/s 8(4) of the Central Sales Tax Act.

12. The expression "condition" in ordinary parlance, inter alia, means something demanded or required as prerequisite to the granting or performance of something else, a provision or stipulation, in a legal instrument a provision on which its legal force or effect is made to depend...a restriction or qualification (Shorter Oxford Dictionary, Vol. I, page 364). The word "restriction" has been also often interpreted to mean "permitted to use a thing to a certain extent or subject to certain conditions".

13. The State Government u/s 13(4)(e) of the Central Sales Tax Act, 1956, may make Rules for the purposes of specifying 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. The expression "condition subject to..." in the above Clause (e) has been used in the sense of prerequisite qualification, dependent upon. Thus, u/s 13(4)(e) of the Central Sales Tax Act the State Government has been authorised to impose conditions for issue of declaration forms, i.e., to lay down prerequisite for obtaining the said forms. Rule 27AA(2)(c) of the said Rules empowers the Commercial Tax Officer to insist upon filing of return as a condition for issue of declaration forms. He has thus lawfully called upon the dealer to fulfil the said obligation on its part to submit returns before he would issue declaration forms. Therefore, we are unable to hold that Rule 4(2) of the Central Sales Tax (West Bengal) Rules is ultra vires or that Rule 27AA of the Bengal Sales Tax Rules cannot be lawfully made applicable in the matter of issue of declaration forms u/s 8(4) of the Central Sales Tax Act.

14. On 16th June, 1970, K. L. Roy, J., had delivered his judgment in the case of H. L. Paul & Sons v. Commercial Tax Officer, Cooch Behar [C. R. No. 5773 (W) of 1969] whereas Clause (e) Section 13(4) of the Central Sales Tax Act was substituted by Amendment Act 61 of 1972 on 1st April, 1973, K. L. Roy, J., did not also at all consider whether or not u/s 13(4)(e) of the Central Sales Tax Act [as Clause (e) stated there], the State Government could lawfully make or adopt rules imposing conditions for issue of declaration forms.

15. D.N. Sinha, J., in his judgment in the case of S. N. Sugar Mills v. Commercial Tax Officer, Cooch Behar (1961) 65 CWN 1039 did not make any pronouncement about the scope and effect of Section 13(4)(e) of the Central Sales Tax Act. Therefore, by relying upon the said reported decision Rule 4(2) of the Central Sales Tax (West Bengal) Rules ought not to have been struck down.

16. The learned trial Judge, in his judgment, no doubt, has mentioned Section 13(4)(e) of the Central Sales Tax Act, but with respect, did not correctly consider the import and effect of the said provision. Under Clause (e) of Sub-section (4) of Section 13 of the Central Sales Tax Act the State Government was fully competent to prescribe by rule, inter alia, the conditions for issue of declaration forms u/s 8(4) of the said Act. Therefore, the State Government could lawfully frame or adopt a rule by laying down prerequisites for issue of declaration forms. Therefore, Rule 27AA(2)(c) of the Bengal Sales Tax Rules has been lawfully made applicable by Rule 4(2) of the Central Sales Tax (West Bengal) Rules. Absence of authority to prescribe such Rules in Section 8(4) of the Central Sales Tax Act is not fatal.

17. Therefore, we conclude that the Commercial Tax Officer had jurisdiction to direct that unless the dealer, i.e., the writ petitioner, submitted returns under the Central Sales Tax Act, no declaration form referred to in Section 8(4) of the said Act would be issued. Accordingly, the writ petition filed by the respondent, M/s. Bengal Potteries Ltd., ought to fail in its entirety.

18. We accordingly allow this appeal, set aside the judgment and order of the trial court and dismiss the writ petition. There will be no order as to costs.

Shamsuddin Ahmed, J.

18. I agree.

