

(1986) 11 RAJ CK 0017

In the Rajasthan High Court

Case No : S.T. Revision No's. 67, 68, 69, 70, 71 and 74 of 1986

Commercial Taxes Officer

APPELLANT

Vs

Foreign Import and Export Association

RESPONDENT

Date of Decision : 09-11-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8

Citation : (1988) 70 STC 295

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : G.S. Bafna, for the Appellant; V.K. Singhal, for the Respondent

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—These are references made by the Board of Revenue for Rajasthan to this Court which are now to be treated as revisions as per the orders of this Court dated 5th December, 1986.

2. In all these cases the question of law being common, I am deciding them by one common order as agreed by both the learned counsel.

3. The facts giving rise to these references have been discussed in para 2 of the statement of cases, which reads as under :

The facts of the case are not disputed and are as follows. The non-applicant-assessee is a manufacturer of wool tops. He is also registered under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). During the years 1964-65, 1965-66, 1966-67, 1967-68, 1968-69, 1969-70, the assessee purchased dyes in the course of inter-State trade and commerce on furnishing declarations in form C on payment of Central sales tax on these purchases at the rate provided under Clause (b) of Sub-section (1) of Section 8 of the Central Act. The goods thus purchased were utilised by the assessee for dyeing raw wool of other dealers and he charged for the labour and the cost of material used by him in the dyeing and cleansing process. The assessing authority held that the

assessee failed to use the goods thus purchased by him on furnishing of declarations in form C for the declared purposes without reasonable excuse and thus committed offence u/s 10(d) of the Central Act. Accordingly, he imposed penalties on the assessee for the years in question u/s 10A of the Central Act as follows. The penalties reduced by the Deputy Commissioner (Appeals) on appeals by the assessee have also been indicated.

4. Following the judgment of the Punjab and Haryana High Court in *East India Cotton Manufacturing Company v. Assessing Authority, Gurgaon* [1972] 30 STC 489 the learned single Member of the Board allowed the revision and held that the purpose to which the purchases of the goods were put was in conformity with Section 8(3)(b) of the Central Act.

5. The reference which has been now made is contained in para 7, which reads as under :

Whether, under the facts and circumstances of the case, the Board of Revenue was justified in setting aside the penalty imposed u/s 10A for contravening the provisions of Section 10(d) of the Central Sales Tax Act, 1956 although the goods were not used for declared purpose for which it was purchased in accordance with the provisions of Section 8(3)(b) of the Central Sales Tax Act, 1956 ?

6. There was a conflict of judgments of the various High Courts as would be clear from the discussion in para 9, which reads as under :

9. Three important authorities of the High Courts were cited before us. In *Navsari Cotton Silk Mills Ltd. v. State of Gujarat* [1976] 37 STC 140, an identical question was considered by the Gujarat High Court. The High Court held the words for use by him in Section 8(3)(b) of the Central Act govern all the remaining words of the phrase, viz., "in the manufacture or processing of goods for sale". The phrase on proper analysis involves three concepts as follows :

(i) The goods which are purchased should be for the use of dealer himself; (ii) such use should be for the purpose of manufacture or processing of goods; (iii) such manufacture or processing of the goods should be for sale. All these three concepts are so interlocked and interdependent that they cannot be read independently of each other. The Gujarat High Court therefore held that if the dealer does not himself sell the manufactured or processed goods prepared from such raw materials, he commits a breach of the undertaking given by him in the C form declaration. Reliance was placed by the Gujarat High Court on the judgments of the High Courts of Karnataka, Kerala and Madhya Pradesh reported in [1974] 34 STC 228 (*S.S. Umadi v. State of Mysore*) 1971 Tax LR 1241 (*Paramasivan v. State of Kerala*) and [1973] 31 STC 480 (*Commissioner of Sales Tax v. Sheocharan Radheshyam Sharma*). Contrary view was, however, taken by the Punjab and Haryana High Court in *East India Cotton Manufacturing Company v. Assessing Authority, Gurgaon* [1972] 30 STC 489 relied upon by the single Bench of the Board in its judgment dated 18th September, 1975 as stated above. This view was also followed by the Bombay High Court in *Empire Dyeing &*

Manufacturing Company v. State of Maharashtra [1977] 40 STC 1. The Bombay High Court held in that case that utilising the materials purchased in form C for processing cotton fabrics belonging to others and not to the applicants would not amount to failure to make use of goods for the purpose mentioned in form C, inasmuch as what was required by Section 8(3)(b) was not the sale by the purchasing dealer himself but the use by the purchasing dealer himself of goods purchased in the manufacture or processing goods, which manufactured or processed goods should be for sale, irrespective of whether such sale would be by the purchasing dealer or by others.

7. In view of the above the following reference has been made now which is contained in para 10, which reads as under :

Whether, on the facts and the circumstances of the case, utilising the materials purchased by the assessee on furnishing of declarations in form C prescribed in the Central Sales Tax (Registration and Turnover) Rules, 1957 for processing of wool belonging to others, amounted to failure on his part to make use of the goods for any of the purposes mentioned in Section 8(3)(b) of the Central Sales Tax Act, 1956 ?

8. Mr. Bafna's submission is that even though the Supreme Court in Assessing Authority-cum-Excise and Taxation Officer, Gurgaon v. East India Cotton Mfg. Co. Ltd. [1981] 48 STC 239 has laid down that even when goods are sold by some other person than the one who has given declaration in form C, it cannot be said that he has violated terms of the declaration form; in these cases it has not been shown that some other persons have sold the goods. I am of the opinion that the reference which has been made is fully answered by the above judgment of the Supreme Court as mentioned above and therefore it will have to be held that the Board of Revenue was justified in setting aside the penalty, as there was no contravention of Section 10(d) of the Central Sales Tax Act.

9. In view of the above the revisions are dismissed.