
(1979) 07 RAJ CK 0034

In the Rajasthan High Court

Case No : Sales Tax Reference Cases No's. 76, 77, 81 and 82 of 1978

Commercial Taxes Officer

APPELLANT

Vs

Foreign Import and Export Association

RESPONDENT

Date of Decision : 05-07-1979

Acts Referred:

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

Citation : (1980) 45 STC 265

Hon'ble Judges : N.M. Kasliwal, J; Dwarka Prasad, J

Bench : Division Bench

Advocate : B.K. Pathak, Additional Government Advocate, for the Appellant;
V.K. Singhal, for the Respondent

Judgement

Dwarka Prasad, J.—These four reference applications have been filed in this Court u/s 15(3A) of the Rajasthan Sales Tax Act, 1954, seeking a direction to the Board of Revenue to state the case and refer a question of law arising out of the order of the Board of Revenue for Rajasthan at Ajmer dated 28th February, 1977, to this Court for its opinion.

2. The circumstances which have given rise to these reference applications may be briefly stated. M/s. Foreign Import and Export Association, Kota (hereinafter referred to as "the assessee"), was engaged in the business of dyeing raw wool and is a registered dealer under the Rajasthan Sales Tax Act, 1954, as well as under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). The assessee was permitted to purchase materials used for dyeing raw wool on C forms. The Commercial Taxes Officer, Circle A, Kota, who is the assessing authority in respect of the assessee (hereinafter referred to as "the assessing authority"), discovered that the materials imported by the assessee on C forms at the concessional rate of tax have been used by it not only for processing raw wool belonging to it but also for processing raw wool belonging to other dealers as well. The assessing authority was of the view that the assessee should not have utilised the materials purchased by him on C forms for

processing goods belonging to other dealers and, as such, he was of the opinion that the assessee had misused the C forms and had committed an offence punishable u/s 10(d) of the Central Act. The assessing authority, therefore, levied penalty upon the assessee u/s 10A of the Central Act for the aforesaid default in respect of the assessment years 1966-67, 1967-68, 1968-69 and 1969-70.

3. The assessee, thereupon, filed appeals against the orders passed by the assessing authority before the Deputy Commissioner (Appeals), Commercial Taxes, Ajmer, who partly allowed those appeals and reduced the amount of penalty imposed u/s 10A upon the assessee. Then the assessee filed four revision petitions before the Board of Revenue for Rajasthan at Ajmer against the orders passed by the Deputy Commissioner (Appeals), Ajmer, in respect of the four assessment years referred to above. It was contended on behalf of the assessee before the Board of Revenue that there was no restriction imposed under the provisions of Section 8(3)(b) of the Central Act requiring the dealer to use the materials purchased by him on C forms for the purposes of manufacturing or processing its own goods only. According to the assessee, there was no infringement of the provisions of Section 8(3)(b) by him and there was no misuse of C forms, as he fulfilled the necessary conditions and the materials purchased by him on C forms were used by him for the processing of goods meant for sale. It was admitted by the assessee that he undertook to process or dye raw wool for other dealers and charged them for the work of processing undertaken by him. The goods received by him from other dealers for processing were returned to the respective owners, after the processing of raw wool was completed, and even such goods were intended for sale. It was also urged on behalf of the assessee before the Board of Revenue that if the interpretation urged on his behalf in respect of the provisions of Section 8(3)(b) of the Central Act may not be considered to be well-founded, yet there was reasonable basis for the assessee to accept such an interpretation, as at least two High Courts have taken the view which was advanced by the assessee and that the assessee had acted in good faith and there was no guilty intention established on his part.

4. The learned Member of the Board of Revenue disposed of all the four revision petitions by a common order dated 18th September, 1975, and accepted the contentions of the assessee that not only the goods of the assessee but goods belonging to other dealers could also be processed by the assessee, by using the materials purchased by him on C forms, provided the finished goods were meant for sale. Both the parties filed special appeals against the aforesaid order passed by the learned single Member of the Board of Revenue. All the special appeals preferred by both the parties were disposed of by a common order dated 28th February, 1977, by a Division Bench of the Board of Revenue. The Division Bench agreed with the learned single Member of the Board of Revenue that there was no misuse of the C forms by the assessee, even if he used the dyes purchased by him on C forms for processing raw wool not only belonging to himself but also to other dealers. The assessing authority filed application u/s 15(1) of the

Rajasthan Sales Tax Act before the Board of Revenue for stating a case and referring a question of law arising out of its order dated 28th February, 1977, to this Court. But as those applications filed by the assessing authority were not disposed of by the Board of Revenue within the statutory period of 180 days, the present applications u/s 15(3A) of the Rajasthan Sales Tax Act have been presented before this Court by the assessing authority.

The provisions of Section 8(3)(b) of the Central Act, which are relevant for the purposes of these cases, are as under:

(3) The goods referred to in Clause (b) of Sub-section (1) -- ...

(b) ...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 or in mining or in the generation or distribution of electricity or any other form of power.

5. If a dealer, after purchasing any goods for any of the purposes specified in Clause (b) of Sub-section (3) of Section 8, fails, without reasonable excuse, to make use of the goods for such purpose, he shall be liable to be punished u/s 10(d) of the Central Act. Section 10A of the Central Act, as it stood at the relevant time, provided that any person purchasing goods who is guilty of an offence under Clause (d) of Section 10 may be subjected to a penalty not exceeding one and half times the amount of tax which would have been levied under the Act, in respect of the sale to him of the goods, if the offence had not been committed. It is also provided in Section 10A that the imposing of penalty shall be in lieu of prosecution. Thus, a person, who has misused the goods purchased on C forms at the concessional rate of tax without reasonable excuse, would either be punished u/s 10(d) of the Act or, in lieu thereof, penalty, as provided in Section 10A, could be imposed on him.

6. The question which, therefore, emerges is as to whether C forms could be said to be misused if the goods purchased on the basis thereof are used for manufacturing or processing of goods belonging to third parties. Only three conditions are required to be fulfilled in order to attract the provisions of Section 8(3)(b) of the Central Act, namely, (1) that the goods specified in the certificate of registration of the registered dealer, which he could purchase on C forms, should be used by him, (2) such goods should be used for the manufacturing or processing of goods, and (3) the goods, for the manufacturing or processing of which the materials purchased on C forms are used, should be meant for sale or are sold. But there is no such condition that such goods should be sold by the assessee himself. In *East India Cotton Manufacturing Company Pvt. Limited v. Assessing Authority-cum-Excise and Taxation Officer, Gurgaon* [1972 30 S.T.C. 489, a Division Bench of the Punjab and Haryana High Court held that "under the provisions of Section 8(3)(b) of the Central Sales Tax Act, the goods purchased on C forms could be used in the manufacture or processing of goods for sale,

irrespective of to the dealers themselves or to third parties". The same view was also taken by a Division Bench of the Bombay \\\ High Court in *Empire Dyeing and Manufacturing Company Ltd. v. State of Maharashtra* [1977] 40 S.T.C. 1. These two High Courts have taken the same view as has been taken by the single Member of the Board of Revenue as well as by the Division Bench of the Board in this case. However, in *Navsari Cotton Silk Mills Ltd. v. State of Gujarat* [1976 37 S.T.C. 140, a Bench of the Gujarat High Court took a different view than that taken by the High Courts of Punjab and Haryana and Bombay. The Gujarat High Court held that the goods which are purchased on C forms should not only be used by the dealer himself for the purpose of manufacturing or processing of goods for sale, but such goods must belong to the dealer himself. The Karnataka High Court also appears to have taken the same view in *S.S. Umadi v. State of Mysore* [1974] 34 S.T.C. 228, as has been taken by the Gujarat High Court. Thus, the two High Courts, namely, Punjab and Haryana and Bombay, have taken a view favourable to the assessee, while the two other High Courts, namely, Gujarat and Karnataka, have taken the opposite view.

7. It has been urged before us by the learned counsel for the assessee that, in such circumstances, where there was a difference of opinion amongst the various High Courts in the country over the correct interpretation of the provisions of Section 8(3)(b) of the Central Act, in respect of the question as to whether the goods which were subjected to manufacture or processing should belong to the assessee himself or may belong to him as well as to other persons, the assessee cannot be said to be unjustified in using the materials purchased on C forms for processing the goods belonging to other dealers meant for sale nor the conduct of the assessee in doing so could be held to be without reasonable excuse or mala fide. There is no doubt that the fact that two High Courts in the country have taken a view favourable to the assessee and there is no decision of this Court or the Supreme Court of India on the point, go to show that there was reasonable excuse for the assessee to make use of the materials purchased by him on C forms for processing the goods of others on job-basis and it cannot be said that the assessee was not acting in good faith. In *State of Rajasthan Vs. Jaipur Udyog Ltd.*, their Lordships of the Supreme Court held that when two Judges of the High Court and one Member of the Board of Revenue had taken a view favourable to the assessee, then, even accepting for argument sake that the view taken by them is incorrect, it is impossible to say that the assessee was guilty of making any false representation. The principles applied by their Lordships in the aforesaid case are also attracted to the facts of the present case. Here also, at least four Judges of the two High Courts, namely, Punjab and Haryana and Bombay, have taken a view of law, which is favourable to the assessee. The same view has also been taken by the learned single Member of the Board of Revenue as well as by the Division Bench of the Board of Revenue. Even if we assume, without deciding, that the view taken in those decisions may not be correct, yet, in such circumstances, we cannot hold that there was no reasonable excuse for the assessee to have acted in the manner he did, in using

the materials purchased by him on C forms for processing the goods belonging to himself as well as to other dealers.

8. In *Hindustan Steel Ltd. Vs. State of Orissa*, it was observed by their Lordships of the Supreme Court that the liability to pay penalty does not arise merely upon proof of default in registering as a dealer, but an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the dealer either acted deliberately in contravention of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligations.

9. As we have observed above, in the circumstances of the present case, it cannot be held that the assessee has acted deliberately in contravention of law without any reasonable excuse, in undertaking on job-basis the work of processing the goods belonging to other dealers meant for sale. We, however, make it clear that, in the present case, we are not expressing any opinion about the correctness or otherwise of the interpretation taken by the Board of Revenue of the provisions of Section 8(3)(b) of the Central Sales Tax Act.

10. In view of the aforesaid discussion, we do not think that any useful purpose will be served by calling for a reference in the present case relating to the interpretation of Section 8(3)(b) of the Central Sales Tax Act. All the four reference applications, in these circumstances, are rejected. The parties are left to bear their own costs in this Court.