
(1985) 08 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Sales Tax Case No. 85 of 1983

Commercial Taxes Officer

APPELLANT

Vs

Hindustan Radiator

RESPONDENT

Date of Decision : 26-08-1985

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 5C(1), 5C(2)

Citation : (1988) 1 RLW 550 : (1986) 62 STC 374 : (1985) 2 WLN 752

Hon'ble Judges : S.N. Bhargava, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; S.K. Kackar, for assessee, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—This is an application u/s 15(2)(b) of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act"), for directing the Board of Revenue for Rajasthan at Ajmer (hereinafter referred to as "the Board") to state the case and refer the following question of law, arising out of the order dated 18th June, 1982, passed in Special Appeal No. 1/80/ST/JU which the Board refused to refer by its order dated 5th November, 1982, on the application u/s 15(1) of the Act.

Whether, under the facts and circumstances of the case, learned single Bench and double Bench were right in setting aside the penalty imposed u/s 5C(2) only for the reason that the assessing authority did not cancel the entry in R. C. whereas dealer has contravened the provision of Section 5C(1) and misused the declaration ?

2. Non-petitioner No. 1 (dealer-assessee) is a partnership firm carrying on the business of manufacture of motor radiators, etc., and is a registered dealer under the Act. The period involved is 1st January, 1970, to 31st December, 1970. The dealer-assessee purchased hydrochloric acid (tejab) worth Rs. 3,283.43 by giving

a declaration that this acid is a raw material for manufacturing of radiators by it and, therefore, he is entitled to pay to the seller concessional rate of tax at the rate of 1 per cent as provided by Section 5C(1) of the Act. The Commercial Taxes Officer (C. T. O.), Special Circle, Jodhpur, by his assessment order dated 6th December, 1972, for the period 1st January, 1970, to 31st December, 1970, was of the opinion that hydrochloric acid is not a raw material for the manufacture of radiators within the meaning of "raw material" as defined in Section 2(mm) of the Act and, therefore, the dealer was not entitled to the concessional rate of tax at the rate of 1 per cent. The assessing authority, therefore, imposed penalty of Rs. 350 u/s 5C(2) of the Act. The dealer-assessee filed an appeal against the order dated 6th December, 1972, imposing penalty of Rs. 350. The Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur, by his order dated 17th July, 1975, disagreed with the assessing authority, accepted the appeal and deleted the penalty of Rs. 350. The C. T. O., Special Circle, Jodhpur, filed a revision before the Board. A single Bench of the Board dismissed the revision on 6th February, 1980. A special appeal was lodged by the assessing authority. The Division Bench of the Board dismissed the special appeal by its order dated 18th June, 1982. The reason given by the Division Bench was that since in the case of this very assessee in Revision No. 418/75/ST/JU for an earlier year, the Board by its order dated 15th June, 1979, held that hydrochloric acid is a raw material for the manufacture of the radiator and as such the point that is agitated that hydrochloric acid is a raw material for the manufacture of radiator, cannot be investigated as the finding recorded in the earlier years on this very question operates as res judicata against the assessing authority. The other finding, which is material for the disposal of this application, is as follows :

...we are of the view that the entries in the registration certificate of a manufacturer about certain articles being raw materials for his manufacturing activities are conclusive and any modification thereof can only be made by the competent authority after following the prescribed procedure and it is not open to the taxing authorities to conclude that certain articles, though mentioned as raw materials for the manufacturing activities of the assessee in the registration certificate, are not raw materials. Apart from this general position, the present assessee had been dragged to various courts on the same ground earlier and the findings have been conclusively against the department.

3. The assessing authority submitted an application u/s 15(1) of the Act, which was rejected by order dated 5th November, 1982, on the ground that no referable question of law arises out of the order of the Board passed in special appeal. That led the assessing authority to file this application.

4. The Rajasthan Sales Tax (Amendment) Act, 1984 (Act No. 20 of 1984) (the "Amendment Act") came into force from 1st May, 1985. This application was pending on that day. In view of the provisions contained in Section 13(10) of the Amendment Act, this application has to be treated as a revision and is disposed of as such u/s 15 of the Act as substituted by the Amendment Act.

5. We have heard Mr. K. C. Bhandari, the learned counsel for the C. T. O., and Mr. S. K. Kackar, for the dealer-assessee, treating this as an application for revision.

6. In the first instance, Mr. K. C. Bhandari, learned counsel for the C. T. O., sought to raise a contention that hydrochloric acid consumed by the dealer-assessee is not raw material as defined in Section 2(mm) of the Act. Mr. S. K. Kackar, learned counsel for the dealer-assessee, urged that the point whether hydrochloric acid is raw material for the manufacture of the radiators, cannot be reagitated by the assessing authority on the ground that in the case of this very assessee for an earlier year, the Board by its order dated 15th June, 1979, held that hydrochloric acid is raw material for the manufacture of the radiators and as such this operates as res judicata and the finding cannot be reagitated again. The objection raised by the learned counsel for the dealer-assessee regarding res judicata has no substance. In this case, we are concerned with the period : 1st January, 1970, to 31st December, 1970. The order dated 15th June, 1979, was passed by the Board for earlier year holding that the hydrochloric acid is raw material for the manufacture of radiators. Under the Act the year or the period for which the assessment is to be made is the unit of assessment and so, the decision of the C. T. O. or for that matter decision in appeal or revision given in respect of a particular year does not operate as res judicata in the matter of assessment of the subsequent year. While considering whether the doctrine of res judicata applies to the Income Tax assessment, it was observed by the Supreme Court in M.M. Ipoh and Others Vs. Commissioner of Income Tax, Madras, that the doctrine of res judicata does not apply so as to make a decision on question of fact or law in a proceeding for assessment in one year binding in another year, and that the assessment and the facts found are conclusive only in the year of assessment, the findings on questions of fact may be good and cogent evidence in subsequent years, when the same questions falls to be determined in another year, but they are not binding and conclusive. It is clear from the aforesaid decision that the doctrine of res judicata is not applicable to the assessment proceedings under the Income Tax Act. The reason given is that the period for which the assessment is made is only the unit for the assessment and whatever material is brought on record, on that basis the assessing authority records the finding with respect to that particular year. It was held by the Calcutta High Court in State of West Bengal v. Hind Tea Company (P.) Ltd. [1984] 57 STC 97, in a matter under the Bengal Finance (Sales Tax) Act (No. 6 of 1941) that each assessment proceeding under the said Act being a separate and distinct proceeding, the determinations in earlier proceedings would not ordinarily operate as a bar on application of the rule of res judicata or principle analogous thereto on subsequent proceedings. It was also held that an assessment for a particular year is final and conclusive between the parties only in relation to the assessment for that year and the decisions given in an assessment for an earlier year are not binding on the assessee or the department in a subsequent year. It is, thus, clear that the finding recorded by the Board in the earlier year in its order dated 15th June, 1979, that hydrochloric

acid is raw material for the manufacture of radiator is not *res judicata* against the department and can be re-agitated in the subsequent year or period. This conclusion of ours stands fortified by the aforesaid decisions. The objection raised on behalf of the dealer-assessee that the finding operates as *res judicata* is, therefore, overruled and now we proceed to determine the matter afresh.

7. The only question that, therefore, now arises is whether in the facts and circumstances of the case, the imposition of penalty u/s 5C(2) of the Act was justified or not. We may read the material part of Section 5C of the Act:

(1) Notwithstanding anything contained in this Act, but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture in the State of goods other than exempted goods for sale by him within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India shall be at a concessional rate of 1 per cent of the sale or purchase price of such raw material.

(2) Where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified therein, such dealer shall be liable to pay as penalty, such amount, not less than the difference between the amount of tax on the sale of such raw material at the full rate applicable thereto u/s 5 and the amount of tax payable under Sub-section (1) but not exceeding one and one quarter times the amount of tax at such full rate, as the assessing authority may determine, having regard to the circumstances in which such use was made.

8. Under Sub-section (1) of Section 5C, the concessional rate of tax is payable by a registered dealer for raw material to be used in the manufacture in the State of goods for sale within the State. If the registered dealer purchases any raw material for manufacture of goods for sale in the State, then concessional rate mentioned therein, of sales tax is payable on the purchase price of such raw material. The dealer-assessee in this case purchased hydrochloric acid for the manufacture of the radiators and paid the concessional rate of tax on it. u/s 5C(1) for paying concessional rate of 1 per cent on the sale or purchase price of raw material, the following conditions are to be satisfied : (1) the purchaser should be a registered dealer; (2) the purchase should be of raw material; (3) the raw material should be for manufacture of goods in the State; and (4) the goods so manufactured should be sold within the State or in the course of inter-State trade. The learned single Member of the Board, in his order passed in revision, held that the dealer-assessee was a registered dealer; and hydrochloric acid was purchased by him in pursuance of an entry made in his registration certificate and that was on the basis of the declaration filed by him. He also observed that the declaration made by him (dealer-assessee) that he has purchased the hydrochloric acid for the manufacture of the radiator was accepted by the department. This shows that the department accepted that hydrochloric acid is raw material for the manufacture of radiators. So, according to the

learned Member, till the entry stood in the registration certificate, he could not be said to have contravened the provisions of Section 5C(1) of the Act. He opined that it cannot be said that he is using or utilising acid for any purpose other than the one mentioned in Section 5C(1) of the Act, and so no penalty could be imposed u/s 5C(2) of the Act. In the special appeal before the Division Bench, on behalf of the department, a contention was raised that hydrochloric acid is not raw material for the manufacture of the radiators in view of the definition of "raw material" contained in Section 2(mm) of the Act, and that the department is not bound by the statement made in the registration certificate that hydrochloric acid is raw material. The Division Bench of the Board repelled the argument and relying on *Bowen Press Vs. State of Maharashtra*, observed as under :

In view of this, we are of the view that the entries in the registration certificate of a manufacturer about certain articles being raw materials for his manufacturing activities are conclusive and any modification thereof can only be made by the competent authority after following the prescribed procedure and it is not open to the taxing authorities to conclude that certain articles, though mentioned as raw materials for the manufacturing activities of the assessee in the registration certificate, are not raw materials.

9. The sheet-anchor of the argument of the learned counsel for the C. T. O. is that the hydrochloric acid is not raw material for the manufacture of radiators and, therefore, even the utilisation of hydrochloric acid for the manufacture of radiators entails the imposition of penalty u/s 5C(2) of the Act. The application for registration certificate is required to be made in form S.T. 3 and the certificate of registration is granted to the assessee in form S.T. 4 on the basis of that application. It will be useful to extract the relevant portion of that form :

The following raw materials are required by the dealer/manufacturer for use by himself in the manufacture of goods for sale...from...(date) the dealer is dealing in/or intends to deal in the following goods exempted under Sub-section (2) of Section 4 of the Act.

This certificate shall remain in force up to...(To be mentioned in case of registration u/s 6B).

10. The raw material, hydrochloric acid, was mentioned in form S.T. 3 and, therefore, in form S.T. 4, this was stated to be raw material. The contention of Mr. K. C. Bhandari in this regard is that the dealer-assessee made a statement in form S.T. 3, which is an application for registration certificate regarding hydrochloric acid as raw material and so, in form S.T. 4, it was also stated without any enquiry as to whether the raw material mentioned by him in the application is in fact raw material or not; as there is no provision for making enquiry and so, the Board went wrong when it came to the conclusion that the entry in the certificate of registration is conclusive against the department. The effect of granting recognition certificate was considered by a Division Bench of the Bombay High Court in *Bowen Press's case* [1977] 39 STC 367 , while

considering Sections 12 and 15 of the Bombay Sales Tax Act (No. 51 of 1959). The Division Bench of the Bombay High Court consisting of D. P. Madon, J. (as he then was), and M. H. Kania, J., observed that when a recognition certificate is granted by the officer and any particular goods are included in the list appended to the recognition certificate, the grant of this certificate implies a finding by the officer that the goods listed are goods in respect of which recognition has been granted. We agree with the view taken in *Bowen Press Vs. State of Maharashtra*, that the entry in the registration certificate of the dealer-assessee that certain articles are raw material for the manufacture of goods is conclusive and in face of the entry in the registration certificate, it is not open to the assessing authority to contend that though a particular article has been mentioned in the registration certificate as raw material, is not in fact a raw material within the meaning of Section 2(mm) of the Act and if any cancellation or modification is sought in respect of that entry, then, it is only by following the procedure laid down under the Act and the Rules framed thereunder that entry can be cancelled or modified. It follows, therefore, that entry in the registration certificate shows that hydrochloric acid was purchased as raw material for the manufacture of the radiators by the dealer-assessee and until and unless it is cancelled or modified it is binding on the department and is conclusive proof of the fact that hydrochloric acid is raw material for manufacture of the radiators by the dealer-assessee.

11. The further question that, now, engages our attention is whether in face of the entry, the imposition of penalty on the dealer-assessee is justified u/s 5C(2) of the Act. A somewhat similar question arose in *Rajasthan Spinning and Weaving Mills Ltd. Vs. State of Rajasthan and Others*, For the purpose of availing the concessional rate of tax provided in Section 5C(1) of the Act, the conditions mentioned hereinabove are to be fulfilled and if any of the conditions is broken, the dealer who has availed the concession is bound to pay the penalty as prescribed u/s 5C(2). In order to justify the penalty u/s 5C(2), it has to be shown that there has been contravention of the conditions attached to the concession that has been made available to the dealer-assessee u/s 5C(1) of the Act. In the case on hand, as stated above, there is nothing to show that the dealer-assessee has committed any breach of the conditions attached to the concession that was made available to it u/s 5C(1) of the Act for the reason that the registration certificate itself shows that the hydrochloric acid was purchased as raw material for being used for the manufacture of radiators by the dealer-assessee and in this view of the matter, u/s 5C(2) of the Act, the penalty could not be imposed.

12. Mr. K.C. Bhandari, learned counsel for the assessing authority, contended before us that hydrochloric acid is not raw material as defined in Section 2(mm) of the Act and so, the dealer-assessee has wrongly availed of the concession u/s 5C(1) of the Act and when such is the case, the penalty could be imposed u/s 5C(2) of the Act. We may straightway mention that this is an inconsistent stand taken by the department.

13. In the first place, the registration certificate, which was issued in form S.T. 4, contains the statement that the hydrochloric acid is raw material for being used for the manufacture of radiators, which, as held above, is binding on the department until and unless the entry in the registration certificate is cancelled or modified in accordance with the procedure laid down under the Act or the Rules framed thereunder. Secondly, even if for arguments sake it is accepted that hydrochloric acid is not raw material, as contended by the learned counsel for the C. T. O., Section 5C(2) will not be attracted, for, it comes into play when any raw material purchased by a registered dealer is utilised by him for any purpose other than the purposes specified therein, then, the dealer-assessee render himself liable to pay penalty in accordance with Section 5C(2) of the Act. When the department itself contends that it is not raw material, one fails to understand as to how the provisions of Section 5C(2) can be attracted. The two contentions raised by the learned counsel for the C. T. O. are, therefore, devoid of force. It is held that no penalty was leviable u/s 5C(2) of the Act on the dealer-assessee. The view taken by the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur, the learned single Member of the Board in revision and the Division Bench of the Board in special appeal in their orders dated 17th July, 1975; 6th February, 1980, and 18th June, 1982, respectively is correct.

14. The result is that the application u/s 15(2)(b) of the Act, as substituted by the Amendment Act, has no merit and it is, accordingly, dismissed.

15. In the circumstances, of the case, we leave the parties to bear their own costs of this application.