(1988) 11 RAJ CK 0040

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No''s. 188, 189 and 190 of 1987

Commercial Taxes Officer — APPELLANT

Vs

Umed Sizing Factory — RESPONDENT

Date of Decision : 29-11-1988

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 5C(1)

Citation : (1989) 73 STC 126

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

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant; B.C. Mehta and Anil Mehta, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—These three revision petitions arise from a common order passed by the Tribunal, therefore, these petitions are disposed of by a common order.

2. The question involved in these revision petitions is that whether the respondent-assessee is entitled to the benefit u/s 5C(1) or not.

3. The assessee is a manufacturer of sized yarn. He purchases the yarns and then processes them in order to produce sized yarn. A notice was given to him by the assessing authority, Commercial Taxes Officer, Special Circle, Jodhpur, that the sized yarn does not involve a manufacturing process and, therefore, he is not entitled to the benefit u/s 5C(1) of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"). The assessing authority found that the processing of the yarn with the help of other ingredients does not involve manufacturing in terms of Section 2(k) of the Act. Aggrieved against this order the assessee approached the appellate authority, but without any result. Aggrieved against the order of the appellate authority he approached the Tribunal and the Tribunal after examining the matter in detail found that sizing of

the yarn involves a processing and that is included in the definition of "manufacture" u/s 2(k) of the Act. The Tribunal held that since there is entry in the registration certificate that the gum, starch and cellulose derivatives are necessary ingredients for manufacturing of the sized yarn, therefore, the assessee is entitled to the benefit of concessional rate of tax u/s 6C(1) of the Act and he is not liable to pay a penalty u/s 5C(1) of the Act, hence penalty was set aside. Aggrieved against the order of the Tribunal these three revision petitions have been filed by the State.

4. Mr. Bhansali, learned counsel for the department, has submitted that in fact the Tribunal has not perused the registration certificate and in the registration certificate the names of the items for manufacturing do not find mention, therefore, learned counsel submits that as the manufacturing items on which the assessee has claimed at concessional rate u/s 5C(1) have not been mentioned, therefore, the assessee is not entitled to any concessional rate of tax on these items. Mr. Mehta, learned counsel for the respondent, submits that it is not necessary to mention the items in the form ST-17, so as to obtain the concessional rate of the constituent items which are used for manufacturing of the product. The learned counsel submitted that Section 5C(1) of the Act does not require that the assessee should mention in the registration certificate that what are the items which are required for manufacturing so as to enable him to obtain a concessional rate of tax on the purchases made by him u/s 5C(1) of the Act. Secondly, learned counsel submitted that it is the department who has to enter the items in the registration certificate. Before dealing with the rival contentions of the parties it will be better to refer to the necessary provisions of the Act bearing on the subject. Section 5C(1) of the Act reads as under :

5C. Concessional rate of tax for raw materials.-(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 2 per cent of sale or purchase price of such raw material.

Explanation.-For the purpose of this Sub-section, ''exempted goods'' means (i) goods exempted under Sub-section (1) of Section 4 and (ii) goods liable to additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and which are exempt from the payment of tax by or under the provisions of this Act.

5. According to Section 5C(1), any registered dealer who purchases any raw material for manufacturing of the goods can claim a concessional rate on sale or purchase. Section 5C(2) says that if he has not utilised that goods on which he has obtained a concession u/s 5C(1) for manufacturing purposes then he will be subjected to a penalty.

6. Under this a form has been prescribed by the Government under Rule 17 of the Rajasthan Sales Tax Rules, 1955 (hereinafter referred to as "the Rules"). The form ST-3 is reproduced as under :

To,

The Commercial Taxes Officer,

...Circle.

I...Proprietor/Manager/Partner/Director of the business known as... Officer-in-charge of the business of buying, selling or supplying goods carried on by the Central Government/State Government of... in the... Department whose only place of business/Head Office in Rajasthan is situated at... Town/Village... Post Office... Tehsil... District... hereby apply on behalf of the said business for a Certificate of Registration under the Rajasthan Sales Tax Act, 1954, desire to be registered voluntarily u/s 6A/6B of the Act.

***The business is

Wholly

Mainly

Partly

Partly

Partly

**2. The name and address of the proprietor/the names and addresses of the partners of the business/of all persons having any interest in the business together with their age, father''s name, permanent home address are as follows (to be filled in if the applicant is not a company incorporated under the Indian Companies Act, 1956, or under any other law):

Name Address Age Father''s name 1 2 3 4

Permanent home Signature Name, address address and signature of witness 5 6 7 (1) (2) (3)

3. The proprietor or any partner or any other person having any interest in the business has interest in no other business anywhere in India/has interest in the following other business in India :-

Name of the Propr- Name and par- Address of ietor, Partner or ticulars of the place other person the business of business 1 2 3

The business in respect of which this application is made has been registered with the Registrar of Companies, Rajasthan (if registered in any other State name of such State...) on....

4. I/We am/are members of... (here insert, the name of the Chamber of Commerce or Trade Association of which the dealer is a member).

5. I/We keep our accounts in the... language and script.

6. I/We observe...calendar and for purposes of accounts our year

runs from (English date)... day of... to the... day of... (Indian date)... date of... to the... day of...

*7. My/Our turnover of sales/aggregate of purchase prices during a period of 12 months immediately preceding the commencement of the Act has been during the 12 months preceding the month in which this application is made during the current assessment year has been Rs....

Reasons for believing that the sales/purchases are likely to exceed the limit specified in Sections 3, 5A and 5E are....

And our business commenced on....

*8. I/We make up our account of sales every month/quarter/half year/year.

*9. I/We sell/do not sell goods in the course of inter-State trade or commerce.

*10. I/We am/are not registered under the Central Sales Tax Act, 1956.

I/We hold Registration Certificate No... issued by the Commercial

Taxes Officer... Circle....

11. The following goods or classes of goods are ordinarily purchased by me/us for use as raw materials in the manufacture of goods for sale.

12. I/We manufacture and/or produce for sale the following classes of goods:

(1)

(2)

(3)

*13. I deal or intend/do not intend to deal in the following goods exempted u/s 4(2).

*14. I/We intend/do not intend importing goods direct from overseas.

15. I/We enclose a treasury receipt for Rs. 10 as fee.

Declaration

16. I/We shall start selling goods manufactured by me/us within... months... years from the date of this application.

17. I/We hereby declare that the value of goods intended to be manufactured by me/us for sale shall exceed rupees ten thousand a year.

18. I/We have... (No.) additional place of business(es) and warehouse(s) at the address given below and have no other warehouses or place of business :-

Additional place of business Warehouses at 1. 1. 2. 2. 3. 3. 4. 4.

19. I/We hereby undertake to furnish security of an amount considered necessary by the assessing authority in a manner prescribed by him.

20. I/We certify that the particulars stated above are true to my/ our best of knowledge and belief and nothing has been wilfully omitted therein.

Dated.... Signature.... ....

***Enter whether business is wholly/agriculture, mining, manufacturing, wholesale distribution, retail distribution, contracting or catering, etc., or any combination of two or more.

**Signature of each of the persons concerned be obtained and attested.

*Strike out whatever is not applicable.

7. In this form the item No. 11 clearly lays down that the following goods or classes of goods are ordinarily purchased by the dealer for use as a raw material in manufacturing of goods for sale. It has been clearly mentioned that while certifying in the certificate of registration he will mention that the following materials are required by the dealer or manufacturer for use of manufacturing of the goods for sale. From the scheme of the Act and Rules it is apparent that whoever want to avail the benefit u/s 5C(1) of the Act shall apply first before the registering authority that the following items are required for manufacturing of the goods for sale and thereafter while the certificate of registration is being granted to him it shall be mentioned in that certificate that the following items are required by the manufacturer for manufacturing of the goods for sale. In this background we have to examine the facts of the present case.

8. It is true that from the original record made available to me it appears that entries made therein are not very happy, but both the parties have accepted that the assessee is a manufacturer of the sizing yarn. But the question before me is whether sized yarn processed by him fall in the definition of the manufacture or not.

9. Section 2(k) of the Act defines "manufacture". Section 2(k) reads as under:

2. (k) ''Manufacture'' includes any process or manner of producing, collecting,

extracting, preparing or making any goods but does not include such manufactures/or manufacturing processes as may be notified by the State Government.

10. The manufacture as defined in the present Act includes processing also. The process has been defined in the Webster''s Third New International Dictionary and reads as under :

Process : to subject to a particular method, system or technique of preparation, handling or other treatment designed to effect a particular result; put through a special process as....

11. So, in the wider context of the definition the manufacture includes the processing also. Mr. Mehta, learned counsel for the respondent, has also produced before me the extract from a book " ''sizing'' materials, method, machines". This is a publication of the textile trade process. In this, chapter 7 under the heading of the "Adhesives-3, starch, gum and cellulose derivatives", it has been observed as under :

It has been seen that natural materials like starch, gum and other polysaccharides like TKP, proteins and pectins are some of the oldest adhesives used. However, no single natural adhesive has ideal properties.

12. From this it appears that for sizing the yarn, materials like starch, gum and cellulose are required. The Tribunal, however, has observed that all these manufacturing items have been mentioned in the registration certificate but that is not factually correct. In the registration certificate no mention has been made that what goods are going to form part of the manufacturing process of the sized yarn. Be as it may, but looking to the nature of the item manufactured in reference to the book mentioned above there cannot be any doubt that such materials are used in the present process as the necessary ingredients for sizing of the yarn. In fact, the whole controversy started on account of the fact that processing does not involve manufacturing, but that it is not correct. In view of Section 2(k) as quoted above even processing includes in the wider definition of a manufacture under the Act. In the present case it is not disputed that the sized yarn is prepared by the processing through a process in which gum, starch, etc., are required for sizing of the plain cotton yarn. Thus, in the result, the conclusion drawn by the Tribunal is correct. Though, not by way of analysis that whether these items are necessary ingredients of manufacturing of the sizing yarn, but since I have examined myself and I am satisfied that these items are used for processing of the yarn and the result is the sized yarn, therefore, there is no hesitation in saying that the assessee is entitled to the benefit u/s 5C(1) of the Act. But before parting with this case, I may observe that in fact the department should insist that whoever wants to get the benefit of ST-17, the applicant must fill in all columns of ST-3 and mention that what are the raw materials for manufacturing of the goods for sale on which the assessee wants to claim any benefit, if any. The department should also fill in the registration certificate given

in the form ST-4 and should enumerate that what are the raw materials required for manufacturing of the goods for sale. These requirements if adhered to, perhaps will leave out the doubtful situation and it will cut short arguments which are normally raised. In case, where such formality is not complied with, then it is the discretion of the Sales Tax Officer to come to the conclusion after examining necessary evidence of both the parties that whether the raw materials are actually used or capable of being used in manufacturing of the goods for sale or not.

13. In the result, I do not find force in these revision petitions, therefore they are dismissed. No order as to costs.

