

(1994) 05 KL CK 0006
In the High Court Of Kerala
Case No : T.R.C. No"s. 269 and 273 of 1992

Crasim Industries Limited

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Central Sales Tax Act, 1956 — Section 8A(1)

Citation : (1994) 05 KL CK 0006

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair, for the Appellant; V.C. James, Government Pleader, for the Respondent

Judgement

Viswanatha Iyer, J.—The Petitioner is a manufacturer of rayon pulp, having its Head Office at Nagada, outside Kerala and a factory at Mavoor in Kozhikode District. The pulp manufactured by the Petitioner is supplied to the buyers Century Rayon and National Rayon Corporation in the form of sheets. The buyers cut the sheets to their required sizes and return the trimmings to the head office at Nagada. It is stated that the Petitioner supplies an equivalent quantity of sheets thereafter to the buyers from its factory at Mavoor.

2. In its assessments under the Central Sales Tax Act, 1956 for the years 1974-75 and 1975-76 in respect of the turnover of the Mavoor unit the Petitioner claimed deduction of the value of the goods so returned in the computation of the taxable turnover. This was u/s 8A(1)(b) of the said Act which reads:

8A. Determination of turnover.- (1) In determining the turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale prices, namely:

(a) * * *

(b) the sales price of the goods returned to the dealer by the purchasers of such goods-

(i) within a period of three months from the date of delivery of the goods, in the case of goods returned before the 14th day of May 1966,

(ii) within a period of six months from the date of delivery of the goods in the case of goods returned on or after the 14th day of May 1966. Provided that satisfactory evidence of such return of goods and or refund of adjustment in accounts of the sale price thereof is produced before the authority competent to assess or as the case may be, re-assess the tax payable by the dealer under this Act, and....

The assessing authority did not accept this claim for either of the years but the first appellate authority who dealt with the appeals for the two years differed in their conclusion.

It was held by the authority who dealt with the appeal for 1974-75 that the claim was allowable while the authority who dealt with the subsequent year's appeal held otherwise. The Appellate Tribunal who dealt with the respective appeals of the Department and the Assessee concurred with the revenue and held that the claim was not admissible. That is how the matter is before us in these two tax revision cases.

3. The assessing authority overruled the claim of the Petitioner on two grounds. He held that in order to become eligible for the deduction u/s 8A(1)(b) the goods returned should be the very same goods, that were sold. Since the pulp sheets sold by the Petitioner had been cut, and what was returned were only the trimmings or cut ends, it cannot be said that the same ascertained and specified goods were returned. The fact that the cuttings of pulp would retain the essential character of pulp cannot tilt the decision in favour of eligibility for deduction u/s 8A(1)(b). This was one ground. The other ground was that the goods were not returned to the Petitioner at Mavoor, but to the Head Office at Nagada, which was a different unit of assessment. For this reason as well, the claim was not admissible.

4. The first appellate authority who dealt with the Appeal for 1975-76 agreed with this view. But the one who dealt with the appeal for 1974-75 took the view that the Petitioner's factories at Mavoor and Nagada produced staple fibre by means of the slurry system also, where any size of pulp sheets could be used, that the size of the pulp sheets was of no importance in the manufacture of continuous filament and staple fibre and the pulp returned did not lose any of its essential characteristics as pulp. He also held that the Head Office and the branch were not separate entities and therefore the return of the unutilised goods to the Head Office was irrelevant in considering the question of deduction.

5. We have already indicated that the Appellate Tribunal upheld the departmental point of view.

6. The contention of counsel for the Petitioner is that what was supplied, and what was returned was pulp and that simpliciter is sufficient to attract the

deduction u/s 8A(1)(b).

7. What Section 8A(1)(b) contemplates is deduction of the price of all goods returned. A sales return means a return of the very goods purchased by the buyer in whole or in part. It is a reversal of the sale, as if the sale had not taken place in respect of the returned goods, and therefore contemplates a return before the goods are appropriated and used by the buyer. A return of the left overs after use cannot be equated with a sales return. The return should be of goods of the same nature and quality as those supplied. The identity in chemical composition may not be relevant if the physical characteristics were also part of the conditions of supply. The return of cut ends or trimmings when the supply agreed was of pulp sheets cannot qualify for deduction u/s 8A(1)(b) though the chemical composition and characteristics continue to be the same. Evidently the supply envisaged to the buyers in these cases was of pulp in the form of large sheets, out of which the buyers cut the sheets to their required sizes and returned the trimmings. That the buyers wanted supply in the form of sheets only is borne out by the fact that they had no use for the trimmings, though they also constituted pulp, and therefore returned them to get further supplies in the form of sheets. Necessarily these trimmings would have had to undergo further processing to convert them into sheets again. The sale was thus of pulp sheets, which could be used by the buyers the return was of pulp trimmings which could not be further used, except after reprocessing. The fact alleged that the Petitioner had later supplied an equivalent quantity of pulp in sheet form, even if true, cannot alter the position so long as the goods returned were not of the same nature and quality as the goods sold. The analogy which counsel for the Petitioner sought to draw between the pulp and chemical granules does not merit consideration because the returned chemical granules can be used, for the purpose intended without any further processing and continue to retain their physical as well as chemical characteristics.

8. In this view of the matter, we are leaving open the other question, whether the return to the Head Office could not be a return of the goods for purposes of Section 8A(1)(b).

The decision of the Appellate Tribunal does not therefore call for any interference. The Tax Revision Cases are dismissed. No costs.