

(2010) 12 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil (Sales Tax) Revision No. 333 of 2003

C.T.O.

APPELLANT

Vs

Grace Marble and Granite (P) Ltd.

RESPONDENT

Date of Decision : 18-12-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 10(1), 10A, 8(1), 8(2), 8(3)
Central Sales Tax Rules, 1957 — Rule 13
Rajasthan Sales Tax Act, 1994 — Section 86

Citation : (2011) 2 RLW 1125

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—The MS plates (mild steel) purchased for erection of Water Treatment plant by the Respondent Assessee, a marble and granite manufacturing industry at Udaipur, whose registration certificate under the provisions of Central Sales Tax Act, 1956 permitted "plant, machinery and accessories" to be purchased at concessional rates, whether was entitled to make such purchases at the concessional rate u/s 8(1) of the CST Act, 1956 against declaration in form "C; or whether such purchases violated the provision of Section 10(1)(d) of the said Act inviting penalty at one and half times of the difference of tax in accordance with Section 10-A of the CST Act, is the question which crops up for consideration by this Court in the present revision petition filed by the Revenue u/s 86 of the RST Act, 1994.

2. The Tax Board by its impugned order dated 2.5.2002 concurring with the first appellate Court, namely, Deputy Commissioner (Appeals), Udaipur held in favour of Respondent Assessee that such purchase of MS plates (Mild Steel Plates) for erection and fabrication of water treatment plant by the Respondent-Assessee, a marble and granite industry, did not attract the said penalty u/s 10-A of the CST Act, and penalty of Rs. 18,159/- imposed by the assessing authority was set

aside by these two appellate authorities.

3. Aggrieved by these orders of the appellate authorities, the Revenue has approached this Court by way of present revision petition on the question of law arising from these orders as to whether such penalty could be imposed on the Assessee or not.

4. Learned Counsel for the Revenue Mr. Lokesh Mathur appearing for Mr. V.K. Mathur, Standing Counsel, submitted that the provision of Section 8(3)(b) which is reproduced hereunder, permits purchase of such goods at the concessional rates only if the goods are either entered in the registration certificate as such, or are so purchased by the Assessee for use by him in the manufacture or processing of goods for sale. Since the Assessee, a manufacturer of marble and granite slabs and tiles, has used the MS plates so purchased by him for erection of water treatment plant and has failed to establish before the revenue authority that either the water treatment plant could be said to be plant and machinery for the manufacturer of such marble and granite tiles, or was used for manufacturing of goods meant for sale by the Assessee himself, therefore, the Assessee clearly fell within the mischief of Section 8(3)(b) of the act inviting penalty u/s 10-A read with u/s 10(1)(d) of the CST Act, which stipulates that after purchasing any goods for any of the purposes specified in Clause (b) of Clause (c) or Clause (d) of Sub-section (3) of Section 8 fails, without reasonable cause to make use of goods for such specified purpose. The provisions of Section 8(3)(b) of CST Act, 1956 relevant for this controversy are reproduced hereunder for ready reference.

8(3) (b): The goods referred to in Clause (b) of Sub-section (1).

(b) ...are goods of the class or classes specified in the certificate of 5 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 distribution of electricity or any other form of power:

5. Mr. Lokesh Mathur, learned Counsel for Revenue relies upon the decision cited by the assessing authority in the impugned order in the case of (i) The Coimbatore District Central Cooperative Supply and Marketing Society Ltd. v. The State of Tamil Nadu reported in (1980) 45 STC 21; (ii) India Pistons Repco Ltd. v. State of Tamil Nadu reported in (1994) 93 STC 48 (Mad); (iii) Koodal Industries Ltd. v. State of Tamil Nadu reported in (1994) 93 STC 446 (Mad) and; (iv) J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another,

6. On the side opposite, Mr. Dinesh Mehta, learned Counsel appearing for the Respondent-Assessee submitted that the MS plates in question purchased by the Respondent-Assessee on the strength of "C Form declaration at concessional rates were purchased in the course of inter-State trade and commerce from a registered dealer or Faridabad within the State of UP for erection and fabrication of a water treatment plant by a contractor M/s. Gorana Engineering Works, Udaipur and such Water Treatment plant was used for treatment of water and

slurry produced as a waste product by the Respondent-Assessee in the course of manufacturing process and, therefore, such water treatment plant fell within the definition of "plant and machinery", which was certainly included in registration certificate under the CST Act of the Respondent-Assessee. He also urged that definition of word "Plant" is of wide import and the water treatment plant is integrally connected with the production process of the marble and granite slabs and tiles undertaken by the Respondent-Assessee and, therefore, there was no misuse of the declaration in Form-"C by the Respondent-Assessee; and the appellate authorities rightly set aside such penalty u/s 10-A of the Act. In the alternative, he submitted also said MS plates purchased for erection and fabrication of water treatment plant could be held to be "accessories" of such plant and machinery and still it would be covered within the ambit and scope of word "Plant Machinery and Accessories" entered in the registration certificate of the Respondent-Assessee and thus no question arose of imposition of penalty u/s 10-A of the Act. he also submitted that in any case the Assessee bona fide used this declaration form for purchase of MS plates at concessional rates, therefore, no misuse of declaration in C Form can be attributed to him for imposition of penalty, as there was complete absence of any mens rea on the part of Assessee. he also relied upon the decision of Hon"ble the Supreme Court in the case of M/ s. J.K. Cotton Spinning and Weaving Mills Co. Ltd. (supra).

7. I have heard counsels for the parties at length and given my thoughtful consideration to the rival submissions, relevant provisions of the CST Act and judgments cited at the bar.

8. The offences enumerated in Section 10 inviting penalty and prosecution u/s 10-A of the CST Act, 1956 in Clause (b) and (d) thereof invites these penal retributions, if any person being a registered dealer, falsely represents when purchasing any class of goods, that such goods are covered by his certificate of registration, [Clause (b)], or after purchasing any goods for any of the purposes specified in the Clause (b), Clause (c) or Clause (d) of Sub-section (3) of Section 8 of the act fails, without reasonable cause to make use of the goods for any such purpose. [Clause (d)]. The two offences in Clause 10(b) and 10(d) are quite distinct and separate and operate in different fields. Section 10(b) offence is prior to the point of purchase of goods in question where such offence is made out if an Assessee falsely makes a representation, and; Clause 10(d) offences can occur after the point of purchase of goods in question which makes out such offence, if the Assessee fails to use the goods so purchased for the specified purposes without any reasonable cause, and thus makes himself liable for penal action for misuse of the declaration in Form "C. The penalty, however, for both these offences is prescribed u/s 10-A of the said Act, namely a sum not exceeding one and half times the tax which would have been levied at full rate u/ s 8(2) of the Act if such concessional rate of tax was not availed or allowed the Assessee on the strength of such declaration form. The proviso of Section 10-A further stipulates that no prosecution for an offence u/s 10 shall be instituted in respect of same facts on which a penalty has been imposed u/s 10-A of the Act.

Thus, penalty and prosecution u/s 10-A of the Act are mutually exclusive to each other and one cannot be imposed if other has been imposed for the same offence.

9. With the aforesaid analysis of these relevant provisions, it has to be examined by this Court as to whether the imposition of penalty by the assessing authority under the provisions of Section 10(d) read with Section 10-A of the Act is justified in the present set of facts or not.

10. The water treatment plant erected at the cost of Rs. 2,25,000/- with aforesaid MS plates purchased by the Assessee during the relevant Assessment Year cannot be said to be a thing got constructed and erected by the Respondent-Assessee without any purpose. Indisputably, the process of manufacturing of marble and granite tiles and slabs requires use of water in the manufacturing process. Depending upon the quality of water, if the business expediency requires erection of a water treatment plant, the treated water of which is used in the manufacturing process of marble and granite tiles and slabs, there is no valid reason to exclude such water treatment plant from the definition of the word "Plant & Machinery". The common parlance test to be deployed in such circumstances makes it incumbent on the Courts of law and Revenue Authorities to give practical and purposeful interpretation to the definition of word "Plant & Machinery". The narrow meaning of the word "Plant & Machinery" can mean to somebody, a plant and machinery manufacturing the finished products or goods itself only but a broader meaning at the same time can include within its ambit and scope any plant, which may not be directly used in producing the goods but does not being something to help the manufacturing process itself, for production of finished goods. The water treatment plant erected by the Respondent-Assessee, a marble and granite industry, cannot be assumed to be a plant which had nothing to help in the manufacturing process. Whether, it is sued to convert heavy water into soft water while manufacturing the tiles and slabs or whether it processes the slurry, "waste product", during the process of manufacturing of marble and granite slabs or tiles, still the water treated by such water treatment plant can definitely be assumed to be necessary and integral part of the manufacturing process by the Respondent-Assessee. The business or commercial expediency in this regard has to be judged by the Assessee himself and it is neither for the Respondents revenue authorities or even this Court to lay down any compartmentalized definitions in this regard.

11. In penal proceedings u/s 10-A of the Act initiated by the revenue authorities, the burden of proof definitely lies upon the assessing authority to establish and returning the findings of facts based on cogent materials that such water treatment plant had absolutely no connection with the manufacturing process undertaken by the Respondent-Assessee; and therefore, the same would not fall within the definition of "Plant or Machinery or Accessories", and consequently, the MS plates purchased by he Respondent-Assessee on the strength of declaration of Form "C" at concessional rate would amount to misuse of such declaration in "C" Form, falling within the mischief of Section 10(d) of the Act

and thereby attracting penalty u/s 10-A of the Act. Nothing of the aforesaid nature appears to have furnished the foundation of the impugned penalty order by the assessing authority. On the other hand, a perusal of the said penalty order shows that the Assessee clearly contended before the assessing authority that goods in question, MS plates were not machinery unto themselves but they were used for erection of plant and machinery; and the assessing authority accepted this contention by observing that MS plates were used for Assessee's own purpose of own construction. The assessing authority has found the violation of Section 10(d) of the Act only on the ground that plant so manufactured was neither meant for resale nor the said water treatment plant was itself plant and machinery. Therefore, relying upon the provisions of both sections, viz., 10(b) and (d) of the Act, the learned assessing authority imposed the penalty in question referring to certain judgment(s) in its order, which would be discussed by this Court hereinafter.

12. The judgment in the case of Coimbatore District Central Cooperative Supply and Marketing Society Ltd. (supra) arose in the circumstances where the Assessee purchased sunflower oil plant, pop-corn machines, 3 YDA machines etc. by use of "C Form, which according to the revenue authority did not fall within the class or classes of goods enumerated in "C Form certificate. The Assessee while admitting that purchased goods are not in pari material with the enumerated goods in the registration certificate; still contended that they were under the bona fide impression that they were entitled to buy the goods in question by the issue of "C Forms in view of the registered certificate itself. This explanation having not been accepted by the authorities of the revenue concurrently, the Madras High Court chose not to interfere with these findings in the aforesaid judgment and upheld the penalty in question. This judgment is of little avail to the revenue in the present case, where the contention of the Respondent-Assessee as well as the nature of the goods and entries in the registration certificate in the present case are entirely different. There is neither any admission on the part of the Assessee here, nor the purchased commodity and entry in the registration certificate is similar, therefore, this judgment is distinguishable.

13. So far as the other decisions relied upon by the learned Counsel for the Revenue in the case of India Pistons Repco Ltd. as well as Koodal Industries Ltd. (supra) are concerned, they are also distinguishable for the following reasons.

14. In the case of India Pistons Repco Ltd. (supra), the offence found to have been committed by the Assessee was u/s 10(b) of the Act where that Assessee purchased steel flats on the strength of declaration in form "C", whereas upon verification of registration in form B issued to the Assessee revealed that Assessee was not permitted to purchase steel flats on the strength of declaration in form C, whereas upon verification of registration in form B issued to the Assessee revealed that Assessee was not permitted to purchase steel flats against the "C form; and that the Petitioner was aware of this and in these

circumstances, the Court held that a false representation was made by the Assessee while upholding the penalty in question. Again in the said case, the authorities below had concurrently found as a fact that the Assessee was fully aware of the fact that he was not entitled to use the "C form for purchase of steel flats. No such circumstances is available in the case before this Court.

15. Again in the case of Koodal Industries Ltd. (supra), the offences attracting the penalty u/s 10-A was u/s 10(b) of the Act and the Assessee was entitled to purchase "machinery connected with flour milling" and it purchased a generator on the strength of "C Form at concessional rate, the Court held that generators were not covered by the certificate of registration since the certificate used the expression "machinery connected with flour milling" and not simply machinery. In these circumstances, the penalty was upheld. With respects, the said authorities are of little help to the case of the revenue before this Court in the present matter.

16. The leading case on these provisions appears to have been rendered by the Apex Court way back in the year 1965 in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. (supra), and it is found useful to extract the relevant paras 8 to 12 of the said judgment of ready reference:

8. Section 8(3)(b) authorizes the Sales Tax Officer to specify, subject to any rules made by the Central Government, goods intended for use by the dealer 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. By Rule 13 the Central Government has prescribed the goods referred to in Section 8(3)(b); such goods must be intended for use in the manufacture or processing of goods for sale or in mining or generation or distribution of power, and the intended use of the goods must be as specified in R. 13. It is true that under Rule 13, read with Section 8(3) (b) mere intention to use the goods in the manufacture or processing of goods for sale, will not be a sufficient ground for specification; the intention must be to use the goods as raw materials as processing materials as machinery, as plant, as equipment, as tools as stores, as spare parts, as accessories, as fuel or as lubricants. A bare survey of the diverse uses to which the goods may be intended to be put in the manufacture or processing of goods, clearly shows that the restricted interpretation placed by the High court is not warranted. The expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of good would be commercially inexpedient, goods required in that process would in our judgment, fall within the expression "in the manufacture of goods". For instance, in the case of a cotton textile manufacturing concern, raw cotton undergoes various processes before cloth is finally turned out. Cotton is cleared, carded, spun into yarn, when cloth is woven, put on rolls, dyed, calendered and pressed all these processes would be regarded as integrated processes and included "in

the manufacture" of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior processes as goods used in the manufacture of cloth. To read the expression "in the manufacture" of cloth. To read the expression "in the manufacture" of cloth in that restricted sense, would raise many anomalies. Raw cotton and machinery for weaving cotton and even vehicles for transporting raws and finished goods would qualify under R. 13, but not spinning machinery, without which the business cannot be carried on. In our judgment, R. 13 does not justify the importation of restrictions which are not clearly expressed, nor imperatively intended. Goods used as equipment, as tools, as stores, as spare parts, or as accessories in the manufacture or processing of goods, in mining, and in the generation and distribution of power need not, to qualify for special treatment u/s 8(1) be ingredients or commodities used in the processes, nor must they be directly and actually needed for "turning out or the creation of goods."

9. In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient goods intended for use in the process or activity as specified in R. 13 will qualify for special treatment. This is not to say that every category of goods "in connection with" manufacture of or "in relation to" manufacture, or which facilitates the conduct the business of manufacture will be included within Rule 13. Attention in this connection may be invited to a judgment of this Court in which it was held that vehicles used by a company (which mined ore and turned out copper in carrying on activities as a miner and as a manufacture) fell within Rule 13, even if the vehicle were used merely for removing ore from the mine to the factory, and finished goods from the factory to the place of storage. (So, here in the present case, why not water treated by Water Treatment Plant to treat his waste product slurry should be taken as covered by Rule 13). Spare parts and accessories required for the effective operation of those vehicles were also held to fall within Rule 13. See *Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others*,

10. The High Court has rightly pointed out that unless designs are prepared it would be "impossible for workmen" to turn out goods for sale. If the process of designing is so intimately connected with the process of manufacture of cloth, we see no reason to regard the process of designing as not being a part of the process of manufacture within the meaning of R. 13 read with Section 8(3)(b). The process of designing may be distinct from the actual process of turning out finished goods. But there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production. Goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. Drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is

directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".

11. Building materials including lime and cement not required in the manufacture of tiles for sale cannot however be regarded within the meaning of R. 13, as raw materials in the manufacture or processing of goods or even as "plant". It is true that buildings must be constructed for housing the factory in which machinery is installed. Whether a building is a "plant" within the meaning of R. 13, is a difficult question on which no opinion need be expressed. But to qualify for specification u/s 8(3)(b) goods must be intended for use of nature mentioned in R. 13, in the manufacture of goods. Building materials used as raw materials for construction of "plant" cannot be said to be used as plant in the manufacture of goods. The Legislature has contemplated that the goods to qualify u/s 8(3)(b) must be intended for use as raw materials or as plant or as equipment in the manufacture or processing of goods, and it cannot be said that building materials fall within this description. The High Court was, therefore, right in rejecting the claim of the Company in that behalf.

12. The expression "electricals" is somewhat vague. But in a factory manufacturing cotton and other textile, certain electrical equipment in the present stage of development would be commercially necessary. For instance, without electric lighting it would be very difficult to carry on the business. Again electrical humidifiers, exhaust fans and similar electrical equipment would in the modern conditions of technological development normally be regarded as equipment necessary to effectually carry on the manufacturing process. We are not prepared to agree with the High Court that in order that "electrical equipment" should fall within the terms of Rs. 13, it must be an ingredient of the finished goods to be prepared, or "it must be a commodity which is used in the creation of goods." If, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment would be regarded as intended for use in the manufacture of goods for sale and such a test, in our judgment, is satisfied by the expression "electricals." This would of course not include electrical equipment not directly connected with the process of manufacture. Office equipment such as fans, coolers, air-conditioning units, would not be admissible to special rates u/s 8(1).

17. In the aforesaid judgment of Hon'ble the Supreme Court, it was held that process of designing being so integrally connected with manufacturing of cloth and even though it may be indirectly connected with the actual process of turning out finished goods; but there was no warrant of limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. The expression "in the manufacture of goods" takes within its compass, all processes which are directly related to the actual production or integrally connected with the manufacturing process. Goods intended as

equipment for use in manufacture of goods for sale are expressly made admissible for specification in the Registration Certificate. In these circumstance, the Apex Court upheld that contention of the Assessee and quashed the order of CTO, who had deleted the words, "drawing and photographic materials, building materials and electricals" from the registration certificate of the Assessee. The Hon'ble Supreme Court in para 11 of the said judgment clearly held that goods to qualify u/s 8(3)(b) must be intended for use of raw materials or as plant or as equipment in manufacture or processing of goods. Thus any plant or machinery which helps or aids the manufacturing process, is covered within the definition of "plant and machinery".

18. The Hon'ble Supreme Court in the case of *Chowgule & Co. Pvt. Ltd. and Anr. v. Union of India and Ors.* reported in (1981) 43 STC 124, has also held that machinery, vehicle, barges and other items of goods purchased by the Assessee for use in carrying the mined ore from the mining site to the river side and from the riverside to the harbour fell within the description of goods intended for use in the processing of ore for sale within the meaning of Section 8(3)(b) and Rule 13 and would qualify for inclusion in the certificate of registration. The relevant extract from the head-note of the report is reproduced hereunder for ready reference:

(ii) that where a dealer is engaged both in mining operations as also in processing the mined ore for sale, the two processes being interdependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operations comes to an end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in the processing of ore for sale. In the present case, the mining of ore was done by the Assessee with a view to processing the mined ore through the mechanical ore handling plant at the harbour and the entire operation of mining ore and processing the mined ore was one integrated process of which transportation of the mined ore from the mining site to the harbour was an essential part and, in the circumstances, the machinery, vehicles, barges and other items of goods used for transporting the mined ore from the mining site to the harbour could not be excluded from consideration on the ground that they were not goods used in processing of ore for sale. Therefore the machinery, vehicles, barges and other items of goods purchased by the Assessee for use in carrying the mined ore from the mining site to the riverside and from the riverside to the harbour fell within the description of goods intended for use in the processing of ore for sale within the meaning of Section 8(23)(b) and Rule 13 and would qualify for inclusion in the certificate of registered.

Nilgiri Ceylon Tea Supplying Co. v. State of Bombay (1959) 10 STC 500 does not lay down the correct law.

Indian Copper Corporation Limited v. Commissioner of Commercial Taxes (1965)
16 STC 259(1965) 16 STC 259.

19. In these circumstances, the aforesaid decisions of the Apex Court considerably help the case of the Respondent-Assessee before this Court rather than the case of revenue. In the present case, the appellate authorities concurrently held in favour of Respondent-Assessee that the Assessee was entitled to purchase MS plates at the concessional rate on the strength of declaration of C Form under the provisions of Section 8(1) read with Section 8(3) (b) of the Act and, therefore, in the opinion of this Court, the contention of the learned Counsel for the revenue that water Treatment plant purchased for in-house use by the Assessee does not satisfy the conditions of Section 8(3)(b) of the Act and the penalty u/s 10-A deserves to be rejected. This Court, therefore, finds no force in this revision petition filed by the revenue and while upholding the orders passed by the appellate authorities below holds in favour of Respondent-Assessee that no penalty u/s 10-A read with Section 10(d) could be attracted in the present case.

20. Accordingly, the present revision petition is dismissed. No order as to costs.