

---

**(1974) 11 P&H CK 0002**

**In the Punjab And Haryana At Chandigarh**

**Case No :** General Sales Tax Reference No. 37 of 1973

Dalmia Dadri Cement Ltd.

APPELLANT

Vs

The State of Haryana

RESPONDENT

---

**Date of Decision :** 04-11-1974

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 8

Punjab General Sales Tax Act, 1948 — Section 21, 22, 5, 7

**Citation :** (1975) 35 STC 320

**Hon'ble Judges :** Bal Raj Tuli, J;A.S. Bains, J

**Bench :** Division Bench

**Advocate :** D.S. Nehra and Arun Nehra, for the Appellant; C.D. Dewan, Additional Advocate-General and S.P. Jain, for the Respondent

---

**Judgement**

Bal Raj Tuli, J.—This reference u/s 22 of the Punjab General Sales Tax Act, 1948 (hereinafter called the "Act"), has been made by the Sales Tax Tribunal, Haryana, by order dated 4th September, 1973. The assessment years in question are 1964-65 and 1965-66. During those years, the petitioner-company made sales of cement to the Punjab State Electricity Board of the value of Rs. 2,60,259.32 (1964-65) and Rs. 4,35,444.63 (1965-66) and claimed deductions u/s 5(2)(a) (iv) of the Act on the ground that cement was sold against the certificates issued by the Executive Engineers of the Punjab State Electricity Board to the effect that it was required for use in the generation and distribution of electrical energy. The Assessing Authority allowed the deductions while making assessment orders. The Deputy Excise and Taxation Commissioner (Appeals), Rohtak, exercising the powers of the Commissioner, started suo motu proceedings u/s 21 of the Act, and, after hearing the petitioner, disallowed the deductions to the tune of Rs. 1 lakh for the year 1964-65 and Rs. 2 lakhs for the year 1965-66 on the ground that a part of the cement was used for the construction of office building, residential bungalows and other staff quarters and no deduction in respect of that cement could obviously be allowed u/s 5(2)(a)(iv) of the Act because it was not connected directly with the generation and distribution of electrical energy.

The additional demands of Rs. 6,000 for the year 1964-65 and Rs. 12,000 for the year 1965-66 were created by orders dated 18th September, 1970. Against those orders, appeals were filed before the Sales Tax Tribunal, Haryana, which were rejected. The petitioner-company then filed an application u/s 22 of the Act for making a reference to the court on certain points of law arising out of the orders passed in appeals. The Tribunal has consequently referred the following points of law for decision to this court :

(1) Whether, on a true construction of the provisions of Section 5(2)(a)(iv) of the Act, the applicant-assessee, who made the sales to the Punjab State Electricity Board on the basis of the certificate that the cement was required for use in the generation and distribution of electrical energy, is required to further prove that the same was actually so used ?

(2) Whether, on the facts and in the circumstances of the case, disallowance of sales to the extent Rs. 1 lakh in 1964-65 and Rs. 2 lakhs in 1965-66 without any evidence and purely on guess-work is valid and justified ?

2. The provisions of Section 5(2)(a)(iv) of the Act are as under :

5. (2) In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period which remains after deducting therefrom-

(a)...

(iv) sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (9 of 1910), of goods for use by it in the generation or distribution of such energy...

3. The requirements of the clause are :

(a) that the sales must have been made to an undertaking supplying electrical energy to the public ;

(b) the undertaking must hold a licence or sanction under the Indian Electricity Act, 1910 ; and

(c) the goods must be sold to the undertaking for use by it in the generation or distribution of such energy.

4. It is the common case of the parties that the first two requirements mentioned above are fulfilled in the case, and the only dispute is whether the petitioner-company was entitled to believe the representation of the Executive Engineers of the Punjab State Electricity Board that the cement purchased was required for use by it in the generation or distribution of electrical energy or should have seen that the cement so purchased was actually used in the generation and distribution of such energy. It will be too great a burden to be placed on the seller to see to the use of the goods sold by it when certificates are issued by responsible officers of the electric supply undertaking like the Punjab State

Electricity Board. Everyone knows that the said Board was and is engaged in the generation and distribution of electrical energy and it also required cement for various constructions in connection with the generation and distribution of electrical energy. Unless collusion between the officers of the Punjab State Electricity Board and the officers of the petitioner-company was proved, no burden could be cast on the petitioner-company to see that the cement purchased from it was actually used in the generation and distribution of electrical energy. I am supported in this view by certain observations of the Supreme Court in *The State of Madras Vs. Radio and Electricals Ltd. etc.*, . That case related to inter-State sales under the Central Sales Tax Act, 1956, and the Rules framed thereunder. It was pointed out by the Supreme Court that the scheme of the Central Sales Tax (Registration and Turnover) Rules, 1957, read with the Central Sales Tax Act, 1956, showed that the purchasing dealer as well as the selling dealer must register themselves under the Central Sales Tax Act. If declared goods are specified in the certificate of registration of the purchasing dealer and if it be certified that the goods are intended for resale by him, the sale is subject to concessional rate of tax u/s 8(1). The Act and the Rules do not impose an obligation upon the purchasing dealer to declare that the goods purchased by him are intended to be used for one purpose only, even though under his certificate of registration he is entitled to purchase goods of the classes mentioned in Section 8(3)(b) for more purposes than one. When the purchasing dealer furnishes a certificate in form C without striking out any of the four alternatives, it is a representation that the goods purchased are intended to be used for all or any of the purposes, and the certificate complies with the requirements of the Act and the Rules. The sales tax authority is competent to scrutinise the certificate to find out whether the certificate is genuine. He may also, in appropriate cases, when he has reasonable grounds to believe that the goods purchased are not covered by the registration certificate of the purchasing dealer, make an enquiry about the contents of the certificate of registration of the purchasing dealer. But it is not for the Tax Officer to hold an enquiry whether the goods specified in the certificate of registration of the purchaser can be used by him for any of the purposes mentioned by him in form C, or that the goods purchased have in fact not been used for the purpose declared in the certificate. It was further pointed out that the seller can have, in the transactions of sale and purchase in the course of inter-State trade and commerce, no control over the purchaser. He has only to rely upon the representation made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate ; but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in form C, the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. Whether the goods specified in the registration certificate in form B can be used for the purpose is not for the selling dealer to determine. These observations can be applied mutatis mutandis to the case before us. Once the

responsible officers of the Punjab State Electricity Board issued the necessary certificates, the petitioner-company, as seller of cement, was under no obligation to see that the cement purchased from it was actually used in the generation and distribution of electrical energy. The learned Additional Advocate-General on behalf of the respondent has relied on Modi Spinning and Weaving Mills Co. Ltd. Vs. Commissioner of Income Tax, Punjab and Another, , the facts of which were, however, quite different. In that case, the appellant-company raised a contention that according to the certificate of registration granted to it, there was no condition that cotton purchased under the certificate should be subjected to manufacture in Punjab and thus on this basis claimed that the purchases of cotton were free of tax u/s 5(2)(a)(ii) of the Act when it was sent to another State for manufacture of cloth in the company's mills and alternatively claimed that if the section required that the manufacture should be in Punjab, then as the raw cotton was ginned in Punjab, that condition was also satisfied. Repelling the contention of the company, it was held that the company was wrong in reading the certificate of registration by itself. Sections 5 and 7 have to be read with Rule 26 and form S. T. XXII. So read the old registration certificate, even though it did not contain the words "in the State of Punjab", would stand impliedly modified by the sections, the rule and form S. T. XXII operating together. The company had to comply with the Act and the Rules and could not take shelter behind the unamended certificate.

5. It was further pointed out that there were three conditions involved before exemption could be claimed : the first was that the goods must be for the use of the dealer, the second was that they must be for manufacture in the State of Punjab and the third was that the manufacture must result in goods for sale. The exemption could only be claimed if the company satisfied all the three conditions. The last condition did not appear to be fulfilled in that case. The same cannot be said of the case of the petitioner-company. All that the petitioner-company was required to see was that the Punjab State Electricity Board purchased cement for use in the generation and distribution of electrical energy and on the certificates being issued by the Board's responsible officers, no further obligation could be imposed on the petitioner-company to see that the cement was actually used for that purpose. Consequently, the answer to question No. (1) is in the negative.

6. In view of the answer to question No. (1), no answer is required to be given to question No. (2) and it is left unanswered. The petitioner-company is entitled to its costs. Counsel's fee Rs. 200.