(1986) 09 CAL CK 0036

In the Calcutta High Court

Case No : C.R. No. 1930 (W) of 1978

Darshan Lal Rameshchand APPELLANT

Vs

Commercial Tax Officer and Others RESPONDENT

Date of Decision : 02-09-1986

Acts Referred:
Central Sales Tax Act, 1956 — Section 10A, 7, 8

Citation : (1987) 64 STC 186

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

Bench : Single Bench

Advocate : Gopal Chakravorty and Udayan Chakravorty, for the Appellant;S.N. Datta, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sengupta, J.—This application has been made by a partnership firm registered on 1st April, 1968 and a partner thereof challenging the action of the sales tax authorities in allowing the amendment of the registration certificate from a prospective date. The facts of this case are shortly stated hereafter:

2. The petitioner-firm owns 3 (three) tea gardens viz., Khanga, Shakamato in Assam and Putharjhora in Jalpaiguri. The said Putharjhora tea garden was purchased by the petitioner from M/s. Mean glass Tea Co. Ltd., a registered company in England and managed by M/s. Duncan Brothers & Co. Ltd. The deed of sale was executed on 30th March, 1971. The deed provided that sale would take place on 1st January, 1971 and all the taxes and liabilities of the said tea garden will be borne by the buyer. However, the said sale of the said garden was subject to approval of the Reserve Bank of India. It was provided by an agreement that till the approval and permission of the Reserve Bank of India were obtained the garden would be managed by M/s. Duncan Brothers & Co. Ltd. who are the agent of Mean glass Tea Co. Ltd. of India. On 22nd July, 1972, the Mean glass Tea Co. Ltd. received permission for sale of the said Putharjhora tea garden from the Reserve Bank of India. Thereafter the conveyance was executed

on 20th March, 1973 and the garden was handed over to the petitioner-firm on 31st March, 1975 by M/s. Duncan Brothers & Co. Ltd. The case of the petitioners is that the petitioner-firm had no inter-State purchases prior to the registration. The Commercial Tax Officer in charge of the assessment of Mean glass Tea Co. Ltd. excluded from the sales tax registration certificate of the Mean glass Tea Co. Ltd. Putharjhora tea garden during the period between the date of agreement for sale and the date of actual conveyance. No application for registration certificate could be made by the petitioner-firm as the sale of the garden was not complete in absence of a registered conveyance. The conveyance could not be executed and registered as the approval of the Reserve Bank of India for purchase of a sterling garden was not obtained. It was after the approval by the Reserve Bank of India was obtained, the petitioner-firm made the application for registration under the Central Sales Tax Act, 1956, on 24th September, 1973.

3. By an order dated 17th April, 1974, registration certificate under the Central Sales Tax Act was granted to the petitioner by the Commercial Tax Officer, Radhabazar Charge, respondent No. 5, along with registration certificate under the Bengal Finance (Sales Tax) Act, 1941. It is alleged that after the said registration certificates were received those were filed in the respective files and it was not brought to the notice of. the petitioner-firm or the partners thereof that the Central registration certificate did not contain any of the class or classes of goods asked for in the application for registration. The petitioner-firm in the application for registration had requested the registering authority to include and/ or cover fertiliser, plant and machinery, stores and spares, coal, furnace oil in the manufacturing column and tea chest and fittings in the column meant for packing of goods but the Commercial Tax Officer did not include any of the abovementioned items in the registration certificate and the registration certificate was issued showing no coverage of any item of goods to the petitioner-firm.

4. On 28th September, 1975 the petitioner-firm made an application for declaration form, viz., C form and on the basis of the application Commercial Tax Officer, i.e., respondent No. 5, issued one C form to the petitioner-firm. Thereafter, on 6th May, 1976 and 26th November, 1976, two applications for C form were made to the Commercial Tax Officer and only 8 C forms were issued to the petitioner-firm by the Commercial Tax Officer. Those C forms which had been issued by the petitioner-firm to the different parties, were issued by the Commercial Tax Officer after due verification as to the requirement and bonafide use of the said forms under Rule 4 of the Central Sales Tax (West Bengal) Rules read with Rule 27AA of the Bengal Sales Tax Rules, 1941.

5. Thereafter the petitioner-firm made several applications for C form under the Central Sales Tax Act but the respondent No. 5 rejected the said applications on the ground that registration certificate under the Central Sales Tax Act had no coverage for the goods purchased by the petitioner-firm. This was done on 12th January, 1977.

6. On 12th April, 1977, the petitioner-firm made an application for amendment of the registration certificate. By the order dated 9th September, 1977, the amendment was allowed from the date of the said order, i.e., 9th September, 1977 and not from the date of issue of registration certificate, i.e., 17th April, 1974 or from the date of application for registration, i.e., 24th September, 1973. It is alleged that this was done without hearing the petitioner.

7. On 30th September, 1977, a notice was issued by the Commercial Tax Officer initiating penalty proceedings u/s 10A of the Central Sales Tax Act, 1956, for unauthorised issue of declaration form. The petitioner by letter dated 24th January, 1978, replied to the said show cause notice and requested the Commercial Tax Officer to give retrospective effect to the registration certificate with effect from 24th September, 1973, the date of the application for registration.

8. On 13th February, 1978, the petitioner came to know that Rs. 25,000 has been imposed as penalty by the Commercial Tax Officer for unauthorised issue of declaration forms and another show cause notice was issued as to why the petitioner-firm should not furnish Rs. 10,000 as security for proper custody and use of the declaration form was also issued to the petitioner-firm.

9. These orders have been challenged in this application. This application was moved on 31st March, 1978. The ad interim order of injunction was issued by G.N. Ray, J. The said ad interim order was subsequently extended till the disposal of the rule upon the petitioner''s furnishing security of Rs. 5,000 which was furnished by the petitioner-firm.

10. The short question which calls for the determination is whether the registration certificate should be treated as amended with effect from the date of the order allowing the amendment or it will date back to the date of the issue of original registration certificate. It is not disputed that the petitioner-firm made an application for registration on 24th September, 1973, after the conveyance of the garden was made to the petitioner-firm. Rule 3 of Central Sales Tax (Registration and Turnover) Rules, 1957, prescribed that an application for registration u/s 7 of the Central Sales Tax Act shall be made by a dealer to the concerned authority in form A which has to be also verified in the manner provided in the said form A. The petitioner-firm made an application for registration in the prescribed form A on 24th September, 1973. The column 16 of the said form and the particulars furnished are as follows :

16. The following goods or classes of goods are purchased by the dealer in the course of

(a) Resale : tea

(b) Use in the manufacture or processing of goods for sale : fertiliser, plant and machinery, stores and spares, coal, furnace oil

(c) Use in mining : X

(d) Use in the generation or distribution of electricity or any other form Of power: X

(e) Use in the packing of goods for sale/resale : tea chest and fittings.

11. But the certificate which was granted to the petitioner did not contain those goods mentioned in the application for registration certificate. u/s 7(3) of the Central Sales Tax Act, 1956, the authority to whom an application is made for registration such authority must be satisfied that the application is in conformity with the provision of the Act and the Rules made thereunder, he shall register the applicant and grant him a certificate of registration in the prescribed form which shall specify the classes of goods for the purpose of Section 8(1) of the said Act.

12. The satisfaction of the Commercial Tax Officer as regards the issuance of the registration certificate must be based on objective factors. The authority must be satisfied that the specified goods are likely to be needed for the purposes of the business of the registered dealer.

13. There is no dispute that the petitioner-firm in its application for registration had specified the goods or classes of the goods to be included in the registration certificate. The registration certificate was granted on 17th April, 1974. The following note has been made in the order sheet:

17-4-74 : It appears that the dealer has effected the first inter-State sale on 14-4-73. No inter-State purchases have been made.

Issue R/C u/s 7(3) as the dealer is liable to be registered u/s 7(1) of the C.S.T. Act, 1956.

14. If it is held that by the said endorsement the Commercial Tax Officer in fact rejected the inclusion of the specified goods or classes of goods in the registration certificate as contended by the respondent, such determination has been made without giving any opportunity to the dealer. There should be an objective determination that the goods specified by the dealer in the application for registration are not likely to be needed for the purpose of the business of the registered dealer. The intention behind the inclusion of the specified goods or classes of goods in the registration certificate is that the dealer may effect inter-State purchases after the. application for registration is made and if such inclusion is rejected, it will adversely affect the dealer. It cannot be that only after the inter-State purchase has been made by the dealer he has to apply for the inclusion of the specified goods or classes of goods in the registration certificate. It is not disputed that the inter-State sale started in 1973. It is usual that along with the inter-State sale the dealer might be required to purchase materials for the business of manufacturing tea which is ultimately sold. In this connection reference may be made to a decision of the Supreme Court in the case of The State of Madras Vs. Radio and Electricals Ltd. etc., . There the Supreme Court observed :

The authority issuing the certificate under Rule 5(1), as expressly stated in the rule, has, before issuing a registration certificate, to be satisfied after making such enquiry as it thinks necessary that the particulars contained in the application are correct and complete. The enquiry would obviously be made in the light of the nature of the business and goods which are likely to be needed either for resale, or for use in the manufacture of goods for sale, or for use in the execution of contracts. Satisfaction which is contemplated by Rule 5 is objective and may be arrived at upon a quasi-judicial enquiry. This Court has in several cases had occasion to consider the legality of orders of the notified authority refusing to grant certificates of registration in form ''B'' in respect of certain classes of goods which it was claimed by the taxpayer were necessary for the purpose of his business and were therefore requested to be specified in the certificate of registration. On the plain words used in Section 7. and the Rules, it is contemplated that the certificate of registration may only be issued after an objective satisfaction by the notified authority that the specified goods are likely to be needed for the purpose of the business of the registered dealer and that satisfaction is open to challenge in an appropriate proceeding before the High Court and even before this Court.

15. There was an inadvertent mistake on the part of the respondents in not including the goods or classes of goods specified by the dealer for inclusion in the registration certificate. The court cannot allow any party to take advantage of its own wrong whether it is a private person or State. The respondents by not including the goods or classes of goods specified by the dealer in its application for registration, have seriously prejudiced the petitioner-firm. The subsequent proceedings for imposition of penalty and direction for furnishing security for issuance of declaration forms were consequential to the omission on the part of the registering authority to include those goods. In the case of Textile England Agencies v. Commercial Tax Officer, Lyons Range Ltd. [C.R. No. 355(W) of 1964- Calcutta High Court] D. Basu, J., held that the sales tax authority cannot exclude the item claimed by the dealer for inclusion in the registration certificate. If that was done the original registration certificate should be amended with effect from the date of the registration certificate and not from the date of amendment. The learned Judge also directed that no penalty action should be taken against the dealer. In a similar case Satish Chandra, C.J., made rule absolute on 3rd May, 1983, in the case of Jaydaual Gupta v. State of West Bengal. In that case item "cycle" was not included although applied for in original application. A second application was made on 9th November, 1961, to include cycle. A third reminder was made on 2nd April, 1962. The declaration forms were issued covering cycle to various dealers by the petitioner in that rule. The dealer again reminded for the amendment of the registration. The amendment was allowed ultimately from 4th December, 1971. The revisions before the Assistant Commissioner and the Commissioner for amendment of the registration certificate with retrospective effect were rejected. Accordingly penal action and the certificate proceedings were initiated. The learned Chief Justice quashed the proceedings and directed the inclusion of the item "cycle" from the date of issuance of the original

registration certificate.

16. Mr, Chatterjee has also relied on certain decisions of the Board of Revenue whereon similar view was taken.

17. In my view the point at controversy is concluded by the decision rendered by this Court in the case of National Alloy & Metal Works Pvt. Ltd. v. Commercial Tax Officer, 24 Parganas reported in [1985] 58 STC 107. In that case it was held that if there was an omission to include the goods in the registration certificate by inadvertence without any fault of the dealer, the proper course would be to amend the registration certificate and thereafter to issue declaration forms. It was held also that such amendment should date back to the date of the registration certificate so that the dealer or'' the purchasing dealer might not suffer any prejudice.

18. If the dealer omits to include any item in the application for registration and subsequently an application for amendment is made, in such circumstances the amendment might date back from the date of application for amendment and not from the date of the order effecting the amendment. But where in the application form the goods or classes of goods have been specified and the Commercial Tax Officer fails to include the same without assigning any reason and if the dealer on being informed of such exclusion makes an application for amendment, such amendment cannot be effective either from the date of the application for amendment or from the date of the order effecting the amendment. It must relate back to the date of the original registration certificate. The omission in case is inadvertent. If it is a deliberate omission it would amount to this rejection of the application of the dealer but before such application is rejected the dealer must be given an opportunity of being heard which was not given in this case.

19. It appears from the facts of this case that this omission was inadvertent as subsequently declaration forms (form C) were also issued to the petitioner-firm and the petitioner-firm utilised those declaration forms in the usual course of its business. Before any declaration form is issued, the Commercial Tax Officer has to be satisfied about the bona fide requirement and use of such declaration form. It was therefore evident that at the material time the petitioner-firm had inter-State purchases for which it was necessary to include in the registration certificate the goods or classes of goods specified by the petitioner in the application for registration. That was not done.

20. For the reasons aforesaid this application succeeds. The penalty imposed and the order directing the furnishing of security are set aside and quashed. The respondents are directed to amend the registration certificate. The registration certificate shall be treated as amended with effect from 17th April, 1974. The respondent shall issue the declaration forms forthwith to the petitioner-firm in accordance with law. The rule is made absolute to the extent indicated above. Let appropriate writs do issue accordingly.

21. Security furnished to the extent of Rs. 5,000 (five thousand) with the

Registrar Appellate Side is released. Registrar is directed to refund the said amount with accrued interest thereon after deducting the costs charges and expenses. Such refund shall be made within four weeks from the date of communication of this order.

22. There will be no order as to costs.

23. Let a plain copy of the operative part of this judgment be handed over to the learned Advocate appearing for the petitioner.