

(1986) 05 CAL CK 0012
In the Calcutta High Court
Case No : Civil Order No. 6440 (W) of 1986

Dwarkesh Engineering Works and Another	APPELLANT
Vs	
Assistant Commissioner, Commercial Taxes and Others	RESPONDENT

Date of Decision : 23-05-1986

Acts Referred:

Bengal Finance (Sales Tax) Rules, 1941 — Rule 3(66a)

Citation : (1987) 65 STC 37

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Renendra Nath Dutt and Prosanto Kr. Mallick, for the Appellant; Samarendra Nath Bose, for the Respondent

Final Decision : Allowed

Judgement

Suhas Chandra Sen, J.—The petitioner No. 1, Dwarkesh Engineering Works, is a partnership firm and its business is manufacture and sale of steel castings. The petitioner No. 2 is one of its partners. The workshop of the petitioner is situated at Madhyamgram, 24-Parganas, West Bengal.

2. The petitioner No. 1 is a registered dealer under the Bengal Finance (Sales Tax) Act, 1941, as well as the Central Sales Tax Act, 1986. The petitioner claims that its manufacturing unit is "a newly set up small-scale industry" and as such, the sale of goods produced by this unit is entitled to be deducted from its gross turnover by virtue of Rule 3(66a) of the Bengal Sales Tax Rules, 1941. Rule 3(66a) provides :

3. In calculating his taxable turnover a dealer liable to pay tax u/s 4 or 8(3) of the Act may deduct from his gross turnover, his turnover on the following, namely :-...

(66a) (i) Sales by a newly set up small-scale industry of goods or class of goods, other than those included in Schedule X appended to this clause, manufactured by it during the period of three years, if the said industry is situated within the

area of the Calcutta Metropolitan District as described in the Schedule to the Calcutta Metropolitan Planning Area (Use and Development of Land) Control Act, 1965, or five years, if it is situated elsewhere in West Bengal, since the date of its first sale of such manufactured goods :

Provided that the dealer claiming the benefit of this clause will be so eligible only if he keeps separate accounts in respect of such newly set up small-scale industry, issues serially numbered cash/credit memos for sales of goods manufactured in such industry, keeps vouchers and other documents for purchases of plant and machinery for establishment of such industry and maintains other records to prove that sales claimed exempt under this clause were of goods manufactured in such industry set up by him and that no amount by way of tax under the Act has been realised by him in respect of such sales :

Provided further that the dealer claiming the benefit of this clause will be so eligible, if he possesses a valid certificate of eligibility in form No. XXXVIA granted by the appropriate Assistant Commissioner in this behalf, for such period as mentioned in the said certificate...

(ii) The certificate of eligibility referred to in the second proviso to Sub-clause (i) shall be granted on application and shall be valid for a period not exceeding twelve months from such date as may be specified in the certificate, but may, at the discretion of the authority granting the certificate, be renewed from time to time for a period not exceeding twelve months at a time.

3. The petitioner claims that it has complied with all the requirements of Rule 3(66a). It keeps separate accounts of the newly set up small-scale industrial unit, issues serially numbered cash/credit memos for sale of goods manufactured in this unit, keeps vouchers and other documents for purchase of plant and machinery for establishment of such industry and also maintains other records to prove that sales claimed exempt under Rule 3(66a)(i) are all goods manufactured in such industry set up by the petitioner.

4. The petitioner in order to get benefit of tax exemption provided by Rule 3(66a) made an application on 19th December, 1984, for a certificate of eligibility for the period beginning from July, 1984. The petitioner produced all its books of accounts and other documents for the purpose of obtaining eligibility certificate. While the application was pending, the petitioner by mistake collected sales tax on the sale of goods manufactured by it in its small-scale unit and deposited the said tax along with the monthly returns. The case of the petitioner is that this was done under mistake of law.

5. By an order dated 30th March, 1985, the Assistant Commissioner of Commercial Taxes, respondent No. 1, rejected the application of the petitioner on the ground that the petitioner had realised sales tax on the sales of the new small-scale unit and had deposited the same in the sales tax office. This was in clear violation of the conditions laid down in the first proviso to Rule 3(66a).

6. On or about 14th June, 1985, the petitioner once again made an application for issue of eligibility certificate under Rule 3(66a) with the requisite supporting papers for the period beginning from 1st July, 1985. The petitioner gave an undertaking that ""we will not charge any sales tax in our bills from July, 1985, onwards".

7. The petitioner's case was examined. The inspection of the petitioner's factory and its place of business was made by the respondents in connection with that application. By an order dated 28th February, 1986 the petitioner's application for the eligibility certificate was dismissed by the Assistant Commissioner.

8. The petitioner has annexed a copy of the order sheet of the case from which it appears that the petitioner's application was rejected on this ground.

The dealer is a manufacturer of steel castings. Rule 3(66a) of the B. S.T. Rules, 1941, expressly provides that the certificate of eligibility shall not be granted or renewed if the dealer violates any conditions referred to in Sub-clause (i). In the instant case the dealer violated an important condition during July, 1984-85, by charging sales tax in sale bills for which the original application of the dealer for E. C. had been rejected. Since the rule expressly provides not to grant or renew an E. C. for violation of condition referred to in Sub-clause (i) of Rule 3(66a) of the B.S.T. Rules, 1941, I have no other alternative but to reject the dealer's application of eligibility certificate for the period from 1.7.85.

9. The petitioner has come up against this order on this writ petition.

10. Since the case involves a pure question of law, no affidavit is required to be filed. On behalf of the respondents, two points of law were urged. It was argued in the first instance that although there was no appeal provided, the petitioner could have made a revision application to the Commissioner. Secondly, it has been urged that the petitioners having once violated one of the conditions set out in the proviso to Rule 3(66a), the petitioner could not be considered for the eligibility certificate once again.

11. I am unable to uphold any of these two conditions. There is no right of appeal as such against the order passed by the Assistant Commissioner on 28th February, 1986.

12. I am also of the view that the reason given for refusal of grant of eligibility certificate is also erroneous. The law confers upon a person of newly set up industrial unit to enjoy tax holiday for a certain period. That period is to be calculated from the date of the first sale and cannot be extended. The manufacturer in order to gain advantage of the tax holiday has to apply every year for the eligibility certificate. It is clearly stated in Rule 3(66a)(ii) that the certificate shall be valid for a period not exceeding 12 months from such date as may be specified in the certificate. Therefore, the rules envisage that the certificate must be granted for not more than one year at a time.

13. If that be the position, I fail to see how the petitioner, if he fulfils all the

requirements of the rule, can be refused to be given a certificate of eligibility on the ground that such certificate was not issued to him on an earlier year for infraction of the rules. If a dealer fails to keep separate accounts in respect of sales of newly set up industries in the first year, can such a dealer be refused eligibility certificate on that ground in the second year when he rectifies the error and keeps separate accounts in respect of such sales. In my opinion, the question whether a dealer is entitled to eligibility certificate has to be considered afresh every year Whether the dealer fulfils all the conditions has to be examined at the time of: original grant of the certificate and also at the time of renewal of the certificate In the instant case, the petitioner was refused a certificate in the first year on the ground that he had realised sales tax in respect of sales of the newly set up industrial unit. That cannot make the dealer ineligible for a certificate for all time to come. The petitioner claimed that in the second year he has rectified this mistake and he has fulfilled all the conditions.

14. The order passed by the Assistant Commissioner, Commercial Taxes, on 28th February, 1986, is quashed. The Assistant Commissioner is directed to pass a fresh order in accordance with law as expeditiously as possible. If the petitioner fulfils all the conditions contained in Rule 3(66a), then the petitioner will be entitled to get an eligibility certificate. Respondent No. 1 is directed to pass a fresh order in accordance with law within a period of six weeks from the date of communication of this order.

15. There will be no order as to costs.