

(1970) 09 P&H CK 0038
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2223 of 1967

East India Cotton Manufacturing Co. Pvt. Ltd.	APPELLANT
Vs	
The Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and Another	RESPONDENT

Date of Decision : 11-09-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 7, 8(1), 8(3)

Citation : AIR 1971 P&H 195

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhagirath Das, B.K. Jhingan and S.K. Hirajee, for the Appellant; R.N. Mital, for A.G., for the Respondent

Judgement

1. The petitioner-Company is registered under the Companies Act, 1956, with its registered Office at Calcutta. It has a factory at Faridabad for the manufacture and processing of textiles of all varieties, in which factory about 500 workmen are employed. This factory was established in 1955 and since then it has been continuing its activities of manufacturing, processing and sale of textiles.

2. The petitioner-Company is a dealer registered under the Punjab General Sales Tax Act, 1948 and also under the Central Sales Tax Act, 1956 (hereinafter called the Act). On July 1, 1957, a certificate u/s 7 of the Act was granted to the petitioner-Company and according to sub-sec (3) of S. 7 of the Act, the said certificate is to contain the classes of goods for the purposes of sub-section (1) of S. 8. The relevant provisions of Section 8, which require interpretation in this petition, are thus contained in Clause (b) of sub-section (1) and sub-section (3) thereof which reads as under :-

"8. (1) : Every dealer who in the course of inter-state trade or commerce-

(a) x x x x

(b) sells to a registered dealer other than the Government goods of the

description referred to in sub-sec (3); shall be liable to pay tax under this Act, which shall be three per cent of his turnover.

(2) x x x x

(3) The goods referred to in Clause (b) of sub-section (1) are goods of the class or classes specified in the certificate of registration of registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him 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;

x x x x

3. In the certificate issued to the petitioner-Company goods for re-sale and goods for use in manufacture are separately mentioned. The petitioner-Company purchases these goods on the basis of the certificate and issues "C" Forms to the selling dealers who claim the deductions and pay tax at the reduced rate in the State from which the movement of goods is originated. On September 17, 1966, the Excise and Taxation Officer, Gurgaon issued a notice to the petitioner-Company stating -

"It has come to the notice that you have been misusing the registration certificate under the Central Sales Tax Act, 1956. You are therefore directed to appear before me on 22-9-1966 at 10.00 a. m. at Canal Rest House, Faridabad, and show cause why action u/s 10 of the Central Sales Tax Act should not be taken against you for this gross negligence.

You should produce your account books from the date when you started doing sizing, bleaching, and dyeing for the third party on job basis."

4. A similar notice was issued to the petitioner-Company by the Excise and Taxation Officer, Gurgaon on July 13, 1967 relating to the years 1962-63 to 1966-67 and in reply to that notice the petitioner-Company sent a letter dated July 21, 1967 asking the Excise and Taxation Officer, Gurgaon to furnish the necessary details and circumstances in which the alleged misuse by the petitioner-Company had occurred so as to enable it to satisfy the Excise and Taxation Officer that no such misuse in fact had taken place. On September 14, 1967 the petitioner-Company gave a detailed reply to the notice wherein the plea of the respondent regarding misuse of the goods purchased on the basis of the certificate of registration was summed as under :-

" The Company purchased goods from outside the State of Punjab (now Haryana) on submission of "C" forms for the purposes of use in manufacture of goods for sale. But instead of doing so the company used those purchases partly in manufacturing its own goods for sale and partly for doing job work for other parties. The company could not use the material concessionally purchased for the job work as that does not constitute sale."

To this plea, the reply of the petitioner-Company was-

"The language of Section 8(3)(b) as reproduced above, clearly shows that in case of resale it is essential that the concessional purchases should be resold by him i.e; by the purchaser, but no such restriction is specifically mentioned in case the goods are purchased for purposes of manufacture or processing of goods. The sale might well be effected by the third party. In such circumstances we have to take the meaning of the words used in the statute itself and cannot strain the language of the statute to make good the deficiency, if any. If the legislature had intended such restriction, it would have provided so, as was done in case of resale."

5. After the receipt of this letter on September 15, 1967, the Assessing Authority, Gurgaon issued a notice to the petitioner-Company stating -

"It is proposed to impose upon you penalty u/s 10A of the Central Sales Tax Act, 1956, as you have contravened the provisions of Section 10 of the Act ibid by purchasing goods for the purposes specified in Clause (b) of sub-section (3) of S. 8 but have failed, without reasonable excuse, to make use of the goods for any such purpose."

The petitioner-Company was allowed another opportunity to produce books of account on October 6, 1967, with regard to all the years for which notice has been issued on July 13, 1967. The petitioner-Company then filed the present petition for the quashing of the said notices and for restraining the Assessing Authority from taking further proceedings in pursuance of the said notices. The written statement has been filed by the Assessing Authority, Gurgaon, on behalf of the respondents.

6. The respective contentions of the petitioner-Company and the respondents are the same as have been referred to above. On behalf of the petitioner-Company it is submitted that the job work for sizing, bleaching and dyeing of textiles for third parties amounts to manufacture or processing of textile goods, which are meant for sale albeit not by the petitioner but by the dealers to whom those goods belong and, therefore, the petitioner-Company is entitled to use the material purchased on the basis of its certificate of registration for that purpose. It is vehemently argued that the goods purchased on the basis of the registration certificate have to be used in manufacturing or processing goods meant for sale not necessarily by the certificate-holder but by other dealers and that the use of the goods purchased on the basis of the registration certificate is not confined to the manufacturing or processing of goods which are sold by the certificate-holder himself. There can be dealers whose business is to do job work for others but that job work involves manufacturing or processing of goods. It is further submitted that if the legislature desired that the goods should be used in the manufacturing or processing of goods to be sold by the dealer himself, the intention could be made clear by inserting the words "by him" after the words "goods for sale" in the second part of Clause (b) of sub-section (3) of S. 8 just

as in the first part of that clause the words "by him" are mentioned after the words "intended for re-sale". It is also submitted that in case of any ambiguity the interpretation of a taxing provision should be in favour of the subject. On the other hand, the submission on behalf of the respondents is that the goods purchased on the basis of the registration certificate can be used only in the manufacturing or processing of goods which are to be sold by the dealer himself. After carefully considering the respective submissions made by the learned counsel on both sides, I am of the view that the interpretation put on Clause (b) of sub-section (3) of S. 8 of the Act by the respondents is the correct interpretation as it conforms to the language and the object of the Act. The dealer who holds a certificate can either re-sell the goods purchased on the basis thereof in the same form in which they are purchased or he can consume them in the manufacture and processing of his own goods, which are meant for sale in the market. The purpose of the Act is to enable the registered dealer, to whom a certificate u/s 7 of the Act has been issued, to compete in the open market in inter-State trade or commerce, and therefore he is enabled to purchase certain goods which he requires for the manufacture and processing of his own goods at a concessional rate. He cannot purchase those goods for the benefit of other dealers whose goods he may manufacture or process. Such a course will defeat not only the object but the provisions of the Act. If the interpretation put forward by the learned counsel for the petitioner is accepted, the petitioner-Company will have to prove to the satisfaction of the Assessing Authority that the goods in the manufacture or processing of which the goods, purchased on the basis of its certificate were used, were actually sold by the dealers for whom they are manufactured or processed. Evidently, it is very difficult to keep a track of the goods in the hands of third parties and the object of realising sales tax from the dealer on this sale of turnover of his manufactured goods will be frustrated and the State Revenue will suffer a loss. A taxing statute has to be administered in a manner to avoid harassment to parties other than the assessee. Of course, harassment to the assessee has also to be avoided but in some cases it may be unavoidable.. To ask the dealers, for whom the petitioner-company manufactured or processed textiles with the aid of the goods purchased on the basis of its registration certificate under the Act, to render an account of the sale of those goods to the satisfaction of the Assessing Authority to look into their accounts for which those dealers may not be prepared and they might as well non-co-operate. Their non-co-operation is more probable is they belong to other States and the Assessing Authority of a particular region has no jurisdiction over them. It may equally be impossible for the petitioner-Company to bring them before the Assessing Authority and to persuade them to subject their accounts to the scrutiny of the Assessing Authority. The petitioner will then find itself in a dilemma, that is, if it is not able to prove that the goods it manufactured or processed for third parties were not sold by them, it will be indictable for the charge of misusing those goods and liable to pay penalty for the misuse. Such an interpretation cannot be accepted in view of the difficulties enumerated above. I, therefore, hold that the petitioner-Company could not used the goods purchased

by it on the basis of its registration certificate in the manufacture or processing of goods other than its own.

7. I have not given weight to the preliminary objection of the respondents that the petitioner-Company has come to this Court without exhausting its remedies under the Act. In fact, the present petition was filed not against an assessment order but against the notices issued to them by the Assessing Authority. The departmental remedies under the Act are provided only against the order of assessment and not against the issue of notices. Moreover, the interpretation of Section 8 of the Act was involved which required authoritative decision for the guidance of the assesses as well as the departmental authorities. The petition is not liable to dismissal on the preliminary objection raised by the respondent.

8. For the reasons given above, this petition fails and is dismissed but without any order as to costs as the interpretation of Section 8 of the Act was not an easy one.

9. Petition dismissed.