(1987) 01 DEL CK 0038

In the Delhi High Court

Case No : C.W.P. No. 1628 of 1973

Electronics Ltd. APPELLANT

Vs

The Sales Tax officer, Delhi RESPONDENT

Date of Decision : 21-01-1987

Acts Referred:

Citation : (1987) 67 STC 61

Hon'ble Judges : Sunanda Bhandare, J

Bench : Single Bench

Judgement

Sunanda Bhandare, J.—The petitioner carries on the business of manufacture and sale of air-conditioners, room coolers, etc. The head office of the petitioner is at New Delhi and manufacturing unit is at Faridabad which is in the State of Haryana. The petitioner was registered as a dealer under the relevant provisions of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi (hereinafter referred to as "the Act"). Similarly, the petitioner was also registered as a dealer under the relevant provisions of the Central Sales Tax Act. The petitioner was, Therefore, entitled to manufacture air-conditioners, room coolers, etc., for the purposes of which it was also entitled to purchase raw materials for the said manufacture on the strength of the registration certificate. Prior to 28th May, 1972, the petitioner could purchase raw material on the basis of the registration certificate and utilise the said raw material for manufacture of finished products even outside the Union Territory of Delhi. Until the assessment year 1968-69, the second proviso of section 5(2)(a)(ii) of the Act was not made applicable to the petitioner and the petitioner was not subjected to tax for the purchase of raw materials. However, on 26th April, 1973 the Financial Commissioner, Delhi, issued an order of suo motu revision in the case of Fitwell Engineers, inter alia, holding that the goods purchased by them on the strength of the registration certificate for the purpose of resale and transferred by them to their head office outside Delhi and sold thereafter would attract the provisions of second proviso to section 5(2)(a)(ii) of the Act and tax would be payable on the purchases so made. Thereafter, instructions were issued by the Departmental

Head to all the Sales Tax Officers that in every such case tax should be levied on the purchases made by the dealer on the strength of the registration certificate when the material was utilised by them for manufacture outside Delhi. Therefore, for the assessment years 1969-70, 1970-71, 1971-72 and partly 1972-73 the petitioner was asked to furnish details and particulars about the raw materials purchased by them for manufacture on the strength of the registration certificate but had been transferred to the petitioner''s own factory at Faridabad for use of the said manufacture. The petitioner objected and contended before the authorities concerned that the case of Fitwell Engineers was not applicable to the petitioner. However, the respondent insisted on the figures being bifurcated and proceeded to make the assessment. Before a formal order of assessment was passed, the petitioner moved the present petition under article 226 of the Constitution of India.

2. During the pendency of the writ petition, this Court permitted the respondent to complete the assessment but stayed the recovery pursuant to the assessment.

3. The question of law raised by the petitioner is covered by the judgment of the Supreme Court in Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax [1978] 41 STC 409 wherein it has been held that even if the raw materials purchased pursuant to a registration certificate are used for the manufacture of goods outside Delhi and sold outside Delhi such goods would be for the purpose stated in the declaration and the assessed could not be saddled with liability to tax under the second proviso to section 5(2)(a)(ii) of the Act.

4. In view of the judgment of the Supreme Court in the case of Polestar Electronic (Pvt.) Ltd. [1978] 41 STC 409 the petition has to be allowed.

5. In the result the petition is allowed. The assessment made by the respondent in respect of the petitioner for the assessment years 1969-70, 1970-71, 1971-72 and 1972-73 is set aside. The respondent is directed to make fresh assessment in accordance with the judgment of the Supreme Court in the case of Polestar Electronic (Pvt.) Ltd. [1978] 41 STC 409. No costs.

