
(1961) 10 MP CK 0023
In the Madhya Pradesh High Court
Case No : Msc. Petition No. 42 of 1961

Indra Singh and Sons Private Ltd.

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 12-10-1961

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 13
Central Sales Tax Act, 1956 — Section 7, 7(3), 8(3)
Constitution of India, 1950 — Article 13, 226

Citation : AIR 1962 MP 128 : (1962) J LJ 349 : (1962) 7 MPLJ 176

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : S.R. Banerji, B.K. Mukherjea, A.P. Sen and A.H. Saifi, for the Appellant; H.L. Khaskalam, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This is an application under Articles 226 and 227 of the Constitution for the issue of a direction to the opponents for specification of certain goods in the certificate of registration issued to the petitioner u/s 7(3) of the Central Sales Tax Act, 1956.

The petitioner is a joint stock limited liability private company carrying on the business of mining coal and trading in coal and coke. It is the owner of the West Chirimari Colliery situated in Sarguja district. The petitioner-company applied for registration as a dealer u/s 7 of the Act. In the application for registration, which the petitioner made in 1957 in Form A prescribed by the Central Sales Tax (Registration and Turnover) Rules, 1957, the goods to be purchased by the petitioner as a dealer in the course of inter-state trade were first specified as "explosives, lubricants, fuel, timber, machinery, colliery stores etc., as per list attached." These goods were stated as for use in production of coal. The applicant clearly stated that none of the goods to be purchased was for resale. A certificate was issued to the petitioner on 27th June 1957. In that certificate the

petitioner's business was stated to be of wholesale distribution of coal and the goods specified for purpose of Section 8(1) of the Act were lubricant oil, fuel and explosives.

The petitioner then applied for amendment of the certificate so as to include in the specification more goods which, according to the petitioner, were used by it in the production of coal. This was granted. Then another application was made by the petitioner for specification of further goods in the registration certificate. This was partly granted. The applicant's prayer for the specification of iron, and steel, medicines and insecticides, welding sticks, sanitary fittings, motor trucks, spare parts of motor trucks including tyres and tubes, furniture, and stationery was rejected by the Sales Tax Officer.

The petitioner then preferred a revision petition before the Commissioner of Sales Tax contending that all the goods referred to above were required "for the purpose of manufacture and mining of coal". The learned Commissioner took the view that the applicant had not stated the precise iron and steel goods which were required in mining and that the other goods of which specification was sought were not any goods required "for use in the manufacture or mining of coal". Accordingly he rejected the revision petition.

The sole question that arises for determination in this case is whether the goods stated above are of the class of which specification can be made in the certificate of registration for the purposes of Section 8(1). The Central Sales Tax Act, as stated in the preamble, is an Act providing for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade Or commerce, and for formulating principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India. Section 3 deals with the question as to when a sale or purchase of goods is said to take place in the course of inter-State trade ,or commerce. Section 4 relates to the question as to when a sale or purchase of goods takes place outside a State. Section 5 indicates as to when a sale or purchase of goods takes place in the course of import or export.

Section 6, which is the charging section, lays down that every dealer shall be liable to pay tax under the Act on all sales effected by him in the course of inter-State trade or commerce. A "dealer" has been defined in Section 2(b) as a person who carries on the business of selling goods and includes a Government which carries on such business.

Section 7 is concerned with the registration of dealers. Every dealer liable to pay tax under the Act is required to register himself with the authorities specified in each State by the Central Government. Any dealer liable to pay tax under the Sales Tax Act of his own State, or if there is no sales tax law in the State, any dealer having a place of business in the State has the "option of applying for registration". Under Sub-section (3), on the registration of a dealer a certificate of registration in the prescribed form has to be issued and the certificate must

specify "the class or classes of goods for the purposes of Sub-section (1) of Section 8." The rates of tax payable have been fixed by Section 8. The first sub-section of this section is as follows :

"Every dealer, who in the course of inter-State trade or commerce :

(a) Sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3); shall be liable to pay tax under this Act, which shall be one per cent of his turnover."

Sub-section (3), in so far as material here, runs thus:

"(3) The goods referred to in Clause (b) of Sub-section (1) :

(a) in the case of declared goods, are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him;

(b) in the case of goods other than declared goods, are goods of the class or classes specified in the certificate of registration of the 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;....."

It will thus be seen that in the case of goods sold to a registered dealer and specified in his certificate of registration the sales tax payable is at the maximum rate of one per cent of the turnover. Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, is in the following terms:

"The goods referred to in Clause (b) of Sub-section (3) of Section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery plant, equipment, tools, stores, spare parts, accessories, fuel, or lubricants 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.""

The contention put forward by Shri Banerjee, learned counsel appearing for the petitioner, is that the expression "for use by him in the manufacture or processing of goods for sale or in mining" occurring in Section 8(3)(b) should be construed so as to include any category of goods Or articles which are intended for use by a dealer at any stage of the manufacturing or processing operations in the production of goods for sale or in the various processes of mining operations; and that they would include goods or articles needed by a dealer for discharging his statutory obligations in running a mine, as for example those" under the Fatal Accidents Act, the Workmen's Compensation Act, the Factories Act etc. It was said that iron and steel, medicine and insecticides, welding sticks, sanitary fittings, motor trucks, furniture, stationery and spare parts of motor vehicles

were all articles which were intended for use by the petitioner as machinery, plant, equipment, stores, spare parts, accessories in mining and were, therefore, within the class of goods specified in Section 8(3)(b) read with Rule 13. It was also urged that the effect of Sections 7 and 8 of the Act was to compel the mine operators to purchase stores, materials, machinery, plants tools etc. from various States in India at different rates of tax, and these provisions were thus discriminatory and violative of the Constitution as well as of Article 19(1)(f) and (g) and article 301, and thus ultra vires the Constitution.

In our view, this petition must be dismissed. The contention that Sections 7 and 8(3) are ultra vires the Constitution may be disposed of by saying that it is not open to the petitioner to attack the validity of those provisions in these proceedings. The reason is that the petitioner's prayer before the sales tax authority was for its registration as a dealer u/s 7 and specification of certain, goods in its certificate of registration.

Its contention has all along been that the class or classes of goods which it desires to be specified are those which fall u/s 8(3) and its prayer in this petition is that a direction be issued to the opponents for specification of the goods mentioned earlier which have been excluded from specification in the certificate of registration. That being so, the petitioner must accept the position that Sections 7(3) and 8(3) under which he is seeking the relief of specification of certain goods in the certificate of registration are valid. If he comes to the Court and attacks the validity of those provisions, then clearly he cannot get the relief he is praying for. It seems to us elementary to say that a person seeking relief under a particular statutory provision must accept its validity.

Then again at present there is no question of any assessment of sales tax having been made against the petitioner. If and when an assessment is made on the applicant and if he thinks that the provision under which it has been made is repugnant to Article 14 or Article 19(1)(f) and (g) or Article 301 of the Constitution the petitioner would be at liberty to challenge the validity of that assessment on those and other grounds. The Court does not express academic opinion when nobody is aggrieved by any action on the part of the Legislature or the executive. It is, therefore, unnecessary to consider the question of the validity of Sections 7 and 8 of the Act.

The contention that motor trucks, stationery, furniture, medicines, insecticides etc. are goods of the class mentioned in Section 8(3)(b) read with Rule 13 is unsound. Admittedly the goods which the petitioner Company purchases are not intended for resale. There is, therefore, no question of the applicability of Section 8(3)(a). As the goods purchased are not intended for re-sale, the fact that in the certificate of registration the petitioner has been described as a wholesale distributor of coal is of no consequence whatsoever.

The argument of the learned counsel for the petitioner was that these goods were ""needed in the manufacture or processing of goods", namely, coal for sale

and in coal mining. It was said that motor trucks were needed for transporting coal after excavation; that insecticides and medicines were needed for the labourers and miners working on the mine; that furniture and stationery were used in the administration of the mine and the distribution of coal; and that all these articles were machinery, or plant Or equipment or tools or stores intended for use in coal-mining. Learned counsel relied on *Hiralal Jitmal Vs. Commissioner of Sales Tax*, and other Cases where the meaning of the word "manufacture" has been explained. We are unable to accept the contention of the learned counsel for the petitioner.

The expression "intended 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" has been used both in Section 8(3)(b) and Rule 13. The various terms in that expression themselves indicate that manufacture or processing of goods is not mining, or generation or distribution of electricity, and that is also the natural meaning of the words "manufacture or processing of goods". We do not speak of manufacture or processing of coal or manufacture or processing of electricity. The use of the words "manufacture or processing" in relation to excavation of coal is altogether inept. The question, therefore, of determining the meaning, and construction of the words "manufacture or processing" does not arise here. The precise point that requires consideration is whether motor trucks, furniture etc., which the petitioner desires to be specified in its certificate of registration, are "raw materials, processing materials, machinery plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants"" intended for use in mining, which is here coal mining.

Learned counsel referred us to some decisions to show that a motor truck was machinery and the other articles were equipment or stores. This is obvious enough- But the important question is whether they are intended for use in mining. The articles intended for use must be "in mining" and not "ON mines". The words "in mining" connote "in the process of mining. Now coalmining consists in extracting coal from the ground, usually by means of underground excavations. The coalmining operations include, not only the actual excavation of coal from the seam, but also the removal of it from the pit to the surface and placing it upon the surface in a disposable form. All these operations are included in coal-mining operations and are a part of coal mining.

The answer to the question as to what operations are included in "mining operations" depends on the nature of the product mined. Thus whereas coal-mining operations consist of those stated above, gold-mining operations include the extraction of goldbearing material from the soil and the treatment of that material so as to produce gold, as for example, the treatment of crushing, the use of tables or the cyanide, or any other process. Thus in gold-mining, the operations which begin in the ground with the extraction of material from the ground end with the conversion of it into gold. In coal-mining, there is no question of the coal that is excavated from the seam and brought from pit to the

surface being subjected to any further treatment in order to put it into a saleable and usable product. The coal-mining operations thus end when coal is brought upon the surface in a disposable form. It is not the contention of the applicant that motor-trucks, stationery, furniture, sanitary fittings, spare parts, medicines etc. aroused as raw materials in coal mining or as machinery, plant, equipment, stores, accessories, or spare parts in excavation of the coal from the seam or in its removal from the pit to the surface. The motor trucks are intended to be used for transporting coal from the surface to other places for distribution and sale; the furniture and stationery are needed for office establishment; and medicines are to be used for maintaining the good health of the miners. The transport of coal from the surface to other places is an activity distinct and independent from the operation which constitutes coalmining. They are not a continuation of the mining operations.

Likewise the purposes for which furniture, stationery, sanitary fittings, medicines and insecticides are needed have no connection with the mining operations. No doubt stationery and furniture are needed for running the office establishment from where matters relating to distribution or transport of coal are settled, and it is essential to keep the miners in goods health. There may be some statutory obligations on the petitioner to provide certain facilities and safeguards on the mines. But all these activities and enterprises are not parts of the coalmining operations.

That being so, the petitioner's claim that motor trucks, furniture, stationery, spare parts of motor vehicles, sanitary fittings, medicines and insecticides are goods intended for use in mining within the meaning of Rule 13 is altogether untenable. (Welding sticks are no doubt needed in mining operations. But before the Commissioner of Sales Tax the claim for specification of welding sticks in the certificate of registration was not pressed.) In regard to "iron and steel" the Commissioner rightly directed the petitioner to apply by stating the particular goods of iron and steel which are needed for use in mining.

Reference was made to *Bhartia Electric Steel Co. Ltd. Vs. Commercial Tax Officer and Others*, , and *Indian Iron and Steel Co., Ltd. v. Commercial Tax Officer* 1957-8 STC 517 (Cal). These cases are not in point. In the first case the question that was considered was of the meaning of "manufacture of goods" for sale. The observations made by the Calcutta High Court while considering the meaning of "manufacture of goods" far from supporting the petitioner's contention only go to show that it is untenable. It was observed in that case by Sinha, J. that:

"I cannot persuade myself to hold that bricks used for the construction of the factory building or for quarters for staff etc. constitute a part of the manufacturing process of iron ingots or steel bars. It is true that a process is by no means a simple, operation. It may and does involve a variety of operations, some direct and some indirect. But if we are to include bricks required for the building of the factory as goods required in the manufacturing process, then there is no limit at which we should stop. In that case, a car required for the

transport of the manager from his residence to the factory may equally be said to be required for the use in the manufacturing process. It may be argued that without such a car, the manager could not arrive in time at his office and therefore the manufacturing process could not be carried on properly. In that event, the words "in the manufacture of goods" would not be used, but the words would be in connection with, or in relation to, the manufacture of goods.'"

These observations are equally pertinent in the construction of the words "in mining" and they only show that the goods of which the petitioner. Company is now seeking specification cannot be regarded as goods required for use in coal mining. The other case dealing with the validity of Section 7(4) of the Bengal Finance (Sales Tax) Act, 1941, need not be considered as the petitioner cannot question in these proceedings the validity of Sections 7 and 8 of the Act.

For these reasons, this petition is dismissed with costs. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of security deposit after deduction of costs shall be refunded to the petitioner.