
(2007) 05 RAJ CK 0090
In the Rajasthan High Court

Jai Glasskow

APPELLANT

Vs

Commercial Taxes Officer

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 10A, 8
Constitution of India, 1950 — Article 323B

Citation : (2007) 8 VST 770

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—This is a revision petition at the instance of assessee directed against the order of the Tax Board, Ajmer, dated May 19, 1998 whereby the Tax Board held that the assessee was not entitled to purchase lathe machine at concessional rate against the declaration in form C u/s 8(1) of the Central Sales Tax Act, 1956 read with Section 8(3)(b) of the said Act and, therefore, the assessee was liable to pay the penalty u/s 10A of the said Act at double the rate of concession wrongly availed by him. All the three authorities below, namely, assessing authority, Deputy Commissioner (Appeals) and Tax Board have concurrently held against the assessee and have upheld the said penalty amounting to Rs. 13,600.

2. Mr. Gogra, learned Counsel for the assessee-petitioner, submits that the Tax Board has erred in upholding the said penalty u/s 10A of the CST Act because the lathe machinery was purchased by the assessee at the concessional rate of three per cent as it helped in the production of glass chetons (small glass pieces) used for decorating glass bangles, etc. He submits that the main machinery used for manufacturing glass chetons has several parts and the parts of such main machinery get damaged or worn out time and again during the production process and to repair, mould or manufacture new parts the said lathe machine in question is used and thus it helps in the manufacturing process as secondary

machinery and it saves considerable time and extra money to get such parts repaired or purchased in the open market and, therefore, the assessee in his own wisdom and business prudence purchased the said lathe machine itself and installed the same in its factory so that such constant work of making or repairing all parts of the main machine is smoothly done within the factory premises. He submits that the registration certificate issued by the assessing authority under the CST Act clearly stipulated amongst other things "machinery and their parts" for use in the manufacturing or processing of goods for sale. He submitted that so long as these words were included in the registration certificate, the Revenue was estopped from raising a plea otherwise and, therefore, imposition of penalty for alleged misuse of declaration in form C by the assessing authority was wrong and penalty has been wrongly upheld by the appellate authorities. He, therefore, prayed for setting aside the penalty and allowing the present revision petition.

3. Mr. R.B. Mathur, learned Counsel for the Revenue, on the other hand, argued that the words "machinery and their parts" used in the registration certificate could not be said to include such machinery which may be useful for setting right or repairing the main machine itself which produces the goods in question, namely, glass chetons. He submitted that on the own admission of the assessee before the assessing authority in his reply to the impugned notice, the assessee has clearly admitted that the lathe machine is a helping machine to the main manufacturing machine. He further submitted that this could be unending process and even the machinery manufacturing the lathe machine could have been purchased by the assessee at concessional rate. He relied upon a judgment of the Madras High Court in Koodal Industries Limited v. State of Tamil Nadu [1994] 93 S.T.C. 446 (Mad), wherein the Madras High Court held that where the petitioner's certificate of registration under the Central Sales Tax Act, 1956, entitled it to purchase "machinery connected with flour milling", and it purchased a generator on the strength thereof, it could be inferred that the petitioner did have knowledge that generators were not covered by its certificate of registration since the certificate used the expression "machinery connected with flour milling" and not simply machinery. The levy of penalty was, therefore, upheld by the Madras High Court.

4. As against this learned Counsel for the assessee Mr. Gogra has relied upon a number of judgments and relevant of them are noticed below. The Allahabad High Court in Micro Abressive India Limited v. Commissioner of Sales Tax [1996] 102 S.T.C. 19 (All), held that admittedly, the diesel generating set that had been purchased by the dealer and has been mentioned in the registration certificate was intended only to produce electricity for running the other plant and machinery for the manufacture of the lapping abrasive powder. No other use of the diesel engine was in the contemplation of either the dealer or the assessing authority at the time of grant of registration. A diesel generating set has no other use except to produce electricity which is necessary for running the plant and machinery for the production of goods. It could not, therefore, be said that the

dealer was using the generating set for any other purpose. The imposition of penalty was, therefore, held to be not justified by the Allahabad High Court. The West Bengal Taxation Tribunal constituted under Article 323B of the Constitution of India which substituted the jurisdiction of the High Court, in *Hindusthan Rope Works v. Assistant Commissioner of Commercial Taxes, Special Cell* [1994] 92 S.T.C. 466 (W.B.T.T.) held in almost similar facts and circumstances as are obtaining in the present case that the welding and drilling machines, which were used to keep the stander and rope-twisting machines in running condition without undue stoppage of work, could be said to be for maintenance. Under the definition in Explanation (iv) of Section 10F(8) the expression "plant and machinery" is contemplated as a term wider than the term "productive equipment". Even if the welding and drilling machines were not directly used in manufacture in the sense that they did not directly manufacture ropes, they were nevertheless plant and machinery, and therefore had to be considered for estimating the gross value of fixed assets for the purpose of the benefit u/s 10F. Therefore, the grinder, main switches, welding and drilling machines came under plant and machinery in Section 10F and had to be included for computing the capital investment. The honourable Supreme Court in the recent judgment in *Commercial Taxation Officer, Udaipur v. Rajasthan Taxchem Ltd.* [2007] 5 V.S.T. 529 : [2007] 7 V.A.T. R 27 (S.C.) while holding that diesel was a raw material which could be purchased by an assessee on concessional rate could be purchased as a raw material since it was used directly or indirectly in the process of manufacture.

5. Learned Counsel for the assessee therefore submitted that even if the lathe machine was used indirectly in the production of glass chetons and not directly, still it could not be said that it was not machinery that did not fall within definition of "machinery and their parts" used in registration certificate issued to the assessee. On the estoppel, learned Counsel relied upon judgment of this Court in *Commercial Taxes Officer v. Hindustan Radiator* [1986] 62 S.T.C. 374 and *C.T.O. v. Alcobex Metal Corporation* [1986] R.T.C. 150 to the effect that if the goods in question purchased were included in the registration certificate, no penalty could be imposed on the assessee for paying the concessional rate of tax. The SLP against the said judgment of M/s. Alcobex Metal Corporation was dismissed by the honourable Supreme Court on April 4, 1990 vide [1990] 77 S.T.C. F.R.S.C. 9, item No. 30.

6. Having considered the rival submissions and case law cited at bar, this Court is of the opinion that the present revision petition deserves to be allowed. It is undisputed that the registration certificate granted in favour of the assessee includes the terms "machinery and their parts" in the registration certificate. The word "machinery" is a word of wide import and not only the machinery used directly for manufacturing the goods sold by the assessee are sought to be covered but even ancillary or supportive machines which aid or help in the manufacturing of main product can also be included in these terms. There is no legal requirement to construe the said term "machinery and their parts" in a

narrow sense. Lathe machine in question admittedly is used as a supportive machinery for constantly carrying out the repair and moulding work for keeping the main machinery producing the glass chetons in a working condition and can definitely be included within the ambit and scope of the term "machinery and their parts" used in the registration certificate. The arguments of learned Counsel for the Revenue that it could be stretched to include even machinery manufacturing the lathe machine itself, is too remote and unsustainable to find any approval from this court. The Madras High Court judgment relied upon by learned Counsel for the Revenue is distinguishable inasmuch as in the case before the honourable Madras High Court the goods mentioned in registration certificate were "machinery connected with flour milling". No such respective words are available in the present case and since the term "machinery and their parts" has been used in general sense and these words taken by themselves are of wide import there is no reason why this assessee cannot be allowed to purchased lathe machine at the concessional rate against C form and the assessee could be saddled with the penalty for alleged misuse of declaration form in the said case. On the other hand, case law relied upon by learned Counsel for the assessee are clearly supportive of his case and while the Allahabad High Court set aside the penalty u/s 10A of the CST Act on the purchase of diesel generating set against C forms the West Bengal Tribunal allowed the benefit of purchase of welding and drilling machines to be included in capital investment for computing benefit u/s 10F of the Bengal Finance (Sales Tax) Act, 1941.

7. Therefore, this Court finds that the authorities below have erred in imposing penalty u/s 10A of the CST Act for purchase of lathe machine at concessional rate of three per cent against declaration in form C.

8. Accordingly, this revision petition is allowed. The impugned orders of all the three authorities below are set aside and the penalty imposed on the assessee u/s 10A of the CST Act is also set aside.