
(2001) 03 KL CK 0049
In the High Court Of Kerala
Case No : O.P. No. 35007 of 2000

J.J. Confectionery (P) Ltd.

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 02-03-2001

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12
Central Sales Tax Act, 1956 — Section 7(3A), 7(3BB), 8, 8(1), 8(3)
Central Sales Tax Rules, 1957 — Rule 11

Citation : (2001) 03 KL CK 0049

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Latha K, for the Appellant;

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—Petitioner is a registered dealer, engaged in manufacture of confectioneries.as job work, they attend to production on behalf of another unit, M/s.Parrys Confectionery Ltd., who is a registered dealer at Palakkad.Raw materials and consumable are supplied by the principles, and as a consequence, the petitioner had submitted `nil" returns for past few years.

2. The petitioner was in need of C-Forms and highlighting the request, application had been filed, in prescribed form.This was not issued. But on 2nd November, 2000 Ext. P3 communication has been issued by the first respondent demanding the petitioner to furnish additional security of Rs. five lakhs, under S. 7(3a) of the Central Sales Tax Act.It is stated that till 1993-94, they had collaboration with M/s.Parrys, that the sales tax exemption enjoyed had got exhausted during 1993-94 and the C Forms already in possession by them had been misused for interstate purchase.Penalty proceedings also were initiated and these circumstances justified demand for additional security amount. objections of the petitioner were overruled and it is submitted that Ext.P5 proceedings were issued.

3. As there was 'nil' return, the petitioner submitted that the yardstick employed for calling of security was without any statutory backing. The petitioner had submitted that for the period from 1994-95 to 1999-2000, using C Forms the petitioner had purchased goods worth Rs. 62,75,637.14. When such interstate purchase is there, and there was 'nil' returns, according to the Department, evasion was prima facie to be inferred, and this is the reason for insisting on security, and there is no question of any harassment as alleged.

4. The petitioner before this Court had relied on Ss. 8(1)(b), 8(3) and 8(4)(a) of the Central Sales Tax Act, which according to them authorise them to issue C Forms for purchase of goods in the manufacture or processing of goods for sale. Advocate Smt. Latha, heavily relied on the decision in Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, . The goods manufactured on job work basis after receiving raw materials and packing materials are returned to M/s. Parrys who included them in their sales and sales tax is remitted to the State of Kerala. The goods purchased on the C Forms are used by them in the manufacture of goods intended for sale. Reference to Ext.P6 is made to show that the penalty order issued has been set aside, and on the self same premises, now Ext.P5 is issued, thereby undermining the sanctity of the orders passed by the superior officer. The unworkability of application of S. 7(3BB) was also highlighted as the security was to be in proportion to the tax payable or leviable under the Act and the petitioner was submitting nil returns from 1994 onwards, and assessments were accepted.

5. The counter affidavit filed by the Assistant Commissioner, refuted the contentions of the petitioner. From 1994-95 onwards, the petitioner was not having business activities as defined under the K.G.S.T. Act and C.S.T. Act. Therefore, the use of Forms can only be treated as misuse of the facility, since at the time of supply of Forms, column 7 of the application showed that business as manufacturing of sweets. In the light of change in the activities, the assessee was obliged to return the unused forms. Therefore, it is submitted that security is essential, in the interests of the Revenue.

6. In the reply affidavit, reference is made to the diversification proposed and also the requirement of machinery for expansion and spare parts consumed. These are authorised by the Memorandum of Association and there can be no objectionable feature in giving of C Forms or using of the same. By an additional affidavit, copies of application earlier made for C.S.T. registration has been made available and it is shown that plant and machinery are items included in the list.

7. On the materials that have fortcome, I may examine the validity and justification of the demand put up by Exts.P3 and P5. I am also necessarily invited to into certain other issues that have come up in the course of hearing.

8. Liability for interstate sales tax arises on all sales in the course of interstate trade or commerce. S. 8 of the Central Sales Tax Act and Central Sales Tax (Registration and Turnover) Rules, by R.12 prescribes the Forms C and D. R.11 of

the Central Sales Tax (Kerala) Rules, which is relevant, may be extracted herein below:

"11. A registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Act to sales of goods by one registered dealer to another, for the purpose specified in the purchasing dealers certificate of registration shall obtain from the registering authority blank declaration forms prescribed under R.12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, on payment of a fee at the rate of rupees twelve per book of twenty five forms and rupees forty per book of one hundred forms for furnishing it to the selling dealer. Before furnishing the declaration to the selling dealer the purchasing dealer, or any responsible person authorised by him in his behalf, shall fill in all required particulars in the form and shall also affix his signature in the space provided in the Form for this purpose. Thereafter, the counterfoil of the Forms shall be retained by the purchasing dealer and the other two portions marked "Original" and "Duplicate" shall be made over by him to the selling dealer".

Sub-rr.(6) and (11) provide that unused declaration forms in stock need be returned only on cancellation of his registration, or when they are notified as obsolete. A cursory reading therefore would show that a dealer who is registered, is entitled to demand for C Forms, so long as his status as a registered dealer is undisturbed. As the petitioner has used C Forms for purchases from outside Kerala, as seen from Ext. P10 series, section 8(1)(b) has no application to the facts. Also the issue is not the tax payable or the rate thereof, but only if there has been any misuse necessity is pointed out for security. Though S. 8(1)(b) refers to sale, nevertheless it is clear that it covers purchases as well, as seen from sub-r.3(b).

9. The reason pointed out by the respondent for insisting on security is that there appears to be misuse of C forms already supplied. Ext. P12 is but relied on by the petitioner to show that items of machineries and spare parts were included in the application for registration. Reference is also made to ext. P6 issued by the Deputy Commissioner, setting aside the penalty order under S. 8(3)(b), goods of the class specified in the certificate of registration as being intended for resale by him or for use by him in the manufacture or processing of goods for sale is entitled to the concessional rate of tax. R.13 of the Central Sales Tax (Registration and Turnover) Rules, explain the meaning of the goods referred to in the section. It 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 sales. Taking cue from S. 8(3)(b) if purchases is for generation or distribution of electricity, or any other form of power, there also such benefit becomes admissible.

10. The essential distinction from the former, as from the latter is that such goods are purchased, for manufacture or processing of goods for sale. This

stipulation is not obviously there in the matter of generation or for distribution of power. Therefore, the petitioner could have claimed the benefit of user of C Forms only if it was simultaneously possible for them to establish that the goods purchased were for processing of goods for sale. At this context, the decision of the Supreme Court comes to their aid. Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, . The expression is for sale and not for sale by the manufacture. I may quote to except from the said decision at pages 246 and 247:

"On a plain grammatical construction these words govern and qualify only "use" and cannot be projected into the words "for sale". The goods purchased by the registered dealer must be used by him in the manufacture of goods which are intended for sale but such sale need not be by the registered dealer himself; it may be by anyone

We are therefore of the view that the Division Bench of the High Court was right in holding that even if the assessee carried out the work of sizing, bleaching and dyeing of textiles for a third party on job-contract basis, this case would be covered by the terms of the second sub-clause of S. 8(3)(b), provided that the textiles so sized, bleached and dyed by the assessee were intended for sale by such third party."

Hence it could not be stated that there has been a misuse, and attempt for imposition of penalty may not be authorised.

11. The next question is whether insistence for security is authorised nevertheless. The argument put forward is that under S. 7(3BB) the security has to be correlated to the tax payable. Admittedly no tax was being levied as seen from the assessment orders produced. But one cannot forget the prescription made by S. 7(3A). Though Ext. P5 does not specifically refer to this aspect, the submission made by the petitioner necessarily leads me to the above regions as well, since the decision will be incomplete without a discussion and decision on this point. Where "it appears necessary for an authority granting a certificate of registration for the proper realisation of tax payable or for proper custody and use of forms, he may at anytime by an order in writing and for reasons recorded require the dealer to furnish security; for all or any of the aforesaid purpose." (Section quoted deleting irrelevant portions)

12. I find that sub-s. (3BB) deals only with some of the situations alone, and it may not be possible to read into the said clause that only in cases tax is payable, security can be insisted, and never otherwise. If this interpretation is accepted, it will be wholly ignoring the multiple contingencies spoken by sub-s.(2A) under which the application is filed and also sub-s.(3A). Not only for payment of tax under the Act, but also for proper custody and use of the forms demand of security is contemplated. Viewed from this position, the demand is not objectionable. As the conduct for insistence of security is questioned, and not the quantum, I am not looking into that aspect and security could be insisted.

Nevertheless, if an application is submitted to them in this regard, for reviewing the amount of security, since the statute does not prescribe a guidance to be adopted in such cases, a rethinking may be permissible.

13. In the aforesaid view, I hold that Ext. P5 is valid and proper, and is issued with jurisdiction. The Original Petition is therefore dismissed.