

(1963) 12 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 2647 of 1962

Kannan Devon Hills Produce Company Ltd.	APPELLANT
Vs	
Sales Tax Officer, Devicolam	RESPONDENT

Date of Decision : 13-12-1963

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10(b), 10(d), 10A, 14

Citation : (1964) KLJ 70

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : K.P. Abraham, George Kurien, Thomas Vellappilly, K.P. Pathrose and E.M. Jacob, for the Appellant; V.P.G. Nambiar, Advocate-General, for the Respondent

Judgement

Madhavan Nair, J.—The petitioner is the General Manager of the Kannan Devan Hills Produce Company, Ltd., Munnar, which owns several tea estates around Munnar. Its business is "the cultivation, manufacture and sale of tea" produced in its estates, each estate having a factory or factories for the purpose. u/s 6 of the Central Sales Tax Act, 74 of 1956, hereinafter called the Act, every dealer is liable to pay a tax under the Act on all the sales effected by him in the course of inter-State trade or commerce.

Under Section 7 every dealer liable to pay tax under the Central Act must, and any dealer liable to pay tax under a State Act may, apply for registration under the Central Act; and, if the authority is satisfied that the application is in order, the applicant will be given a Certificate of Registration specifying the classes of goods in respect of which sales tax will be levied at the concessional rate of 1 per cent only; and such certificate may be amended or cancelled on sufficient reason by the issuing authority.

The effect of Sub-section (1) of Section 8, read with sub-section (3) is that, if the buyer be a registered dealer, and the goods be not of a class declared in Section 14, the concessional rate of sales tax at 1 per cent can be availed only in respect

of goods of the class or classes specified in the purchaser's Certificate of Registration as being intended "for use by him in the manufacture or processing of goods for sale.....or in the generation or distribution of electricity or any other form of power" and in respect of containers or other materials for the packing of the goods for sale or their containers as specified in the Certificate; and sub-section (2) provides that in respect of other non-declared goods, the sales tax shall be at the rate of 7 per cent of the turnover or at the rate leviable under the State Act, whichever is higher.

Section 10 enacts, inter alia, that, if any person being a registered dealer falsely represents when purchasing goods that the same are covered by his Certificate of Registration, or after purchasing goods for a purpose specified in the Certificate fails, without reasonable excuse, to make use of the goods for such purpose, he shall be liable to simple imprisonment for six months and fine; and Section 10A empowers the authority issuing the certificate to impose upon him a penalty, in lieu of prosecution, not exceeding one-and-a-half times the tax which would have been leviable under the Act, if the offence had not been committed.

2. The petitioner has been given a Certificate of Registration u/s 7 of the Act, which is Ext. P. 1 here, valid from July 1, 1957. The classes of goods specified therein for the purposes of sub-section (1) of Section 8 are :

(a) for resale

..

?

(b) for use in manufacture

..

General Stores, Manure-, Rice and Jaggery, Building materials, Engineering Stores, etc.

(c) for use in the execution of contracts

..

Building materials, Engineering Stores, etc."

It may at once be noted that, after the amendment by Act XXXI of 1958, the last category, viz., those specified for use in the execution of contracts, has become unauthorised by the deletion of the relevant provision from the Act, and must therefore be ignored for all legal purposes, as the Certificate cannot override the provisions of the concerned statute. But that does not affect the question here as the goods to which the present proceedings relate come admittedly within the category (b) in the Certificate.

3. On September 7, 1962, the respondent, the Sales Tax Officer, Devicolam, issued a notice (Ext. P. 3 here) to the petitioner apparently u/s 7(4) of the Act,

stating that the Certificate of Registration granted to the petitioner requires amendment as "Many goods which you are not eligible to purchase at concessional rate are included in the certificate", proposing to amend the specification of goods therein as

(a) For resale

..

Nil.

(b) For use in manufacture or processing of goods for sale.

Tea Rollers Tea Driers

Spare parts for Tea Rollers & Tea Driers.

(c) For use in mining

..

Nil.

(d) For use in generation or distribution of electricity or any other form of power.

Nil.

(e) For use in packing of goods for sale/resale.

Tea chest packing cases Tea chest panels

Aluminium linings and fittings for tea chest,

and calling upon the petitioner to file his objections, if any, on or before September 25, 1962. The petitioner has filed his reply thereto on October 11, 1962; and the matter is pending decision thereon.

4. On October 17, 1962, the respondent has issued to the petitioner another notice (Ext. P. 5 here), with "enclosures Parts I to XXII" being sorted lists of goods purchased by the petitioner in the year 1960-'61, finding the goods mentioned in Parts I, II and III alone as "included in the Certificate of Registration" and the goods detailed "in Parts IV to XXII amounting to Rs. 21,43,009.72" as having been purchased under false representation that the goods are covered by the Certificate, proposing to impose a penalty of Rs. 2,25,016/- u/s 10A read with Section 10(b) of the Act, and calling upon him to show cause on or before 2-11-1962 against the proposed imposition of penalty. The petitioner has submitted his reply thereto on October 30, 1962, and it also is pending disposal.

5. Challenging the vires of the notices aforementioned, viz., Exts. P. 3 and P. 5, the petitioner has moved this O. P. with a prayer to quash them; and a Rule nisi has been issued thereon by Vaidialingam J. on November 9, 1962.

6. Section 7(4) of the Central Sales Tax Act, LXXIV of 1956 as amended in 1958, reads:

A certificate of registration granted under this section may either on the application of the dealer to whom it has been granted, or, where no such application has been made, after due notice to the dealer, be amended by the authority granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended.

According to the respondent, the classes of goods specified in the Certificate of Registration, Ext. P. 1, are beyond those contemplated by the Act, and therefore, the specification of the goods therein requires amendment. Counsel for the petitioner contended that such a ground is not available to the respondent u/s 7(4) of the Act, and that as the particular ground indicated in the provision related to changes brought about by the dealer in the name, place or nature of his business or the class or classes of goods in which he carries on business, the general expression "for any other reason" must be construed ejusdem generis to relate to some change in the business of the dealer brought about by him.

The doctrine of ejusdem generis is not one of universal application. Its applicability depends upon the context.

"It is a recognised rule of interpretation of statutes" observes the Supreme Court "that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature..... In interpreting a statute the court cannot ignore its aim and object." (New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, .)

Here the context makes it obvious that the expression "for any other reason" has been used by the Legislature as words of extension to cover all possible cases of error in a certificate of registration requiring amendment to bring it into strict conformity with the concerned statutory provisions.

Nor is the contention, that the eligibility of the goods having once been decided by the Sales Tax Officer at the time of grant of the Certificate, as required by Section 7 (3) of the Act and Rule 5 of the Central Sales Tax (Registration and Turnover) Rules, 1957, is final, acceptable to me. A power to amend the Certificate having been expressly conferred on the authority, logic and reason require that it must be available for exercise whenever a patent error requiring amendment is noticed by him, as is implicit in the use of the expression "for any other reason" in Section 7 (4) of the Act. Amendment always implies reconsideration of the correctness of the instrument concerned.

7. It is next contended that the classes of goods specified as category (b) in the Certificate of Registration are within the allowable limits of the provisions of

Section 8 (3) of the Act. That sub-section, so far as is relevant for this case, reads:

(3) The goods referred to in clause (b) of sub-section (1)-

(a)...

(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...use by him in the manufacture or processing of goods for sale or... in the generation or distribution of electricity or any other form of power;...

The question here is of the scope of the expression "in the manufacture or processing of goods for sale...or in the generation or distribution of electricity." Counsel contends that the business of the petitioner having been shown in the Certificate of Registration as "cultivation, manufacture and sale of tea," the entirety thereof must be taken as the object to be served by the grant of the Certificate and therefore the expression "in the manufacture or processing of goods for sale" has to be taken in a wider sense to mean "in connection with the manufacture or the processing of goods for sale." My attention was called to an observation of Vaidialingam J. in the judgment in O. P. No. 1211 of 1960, quashing a prior order of the respondent imposing a penalty upon the petitioner u/s 10A read with Section 10 (d) of the Act,

The idea underlying in Ext. P. 1 (the identical Certificate of Registration) is that all those goods mentioned therein are to be utilised by the petitioner in the manufacture of tea and that expression will take in all and every process connected with the manufacture of tea."

In this extended sense his Lordship has held rice required to feed the workers and manure to grow the tea plants were "for use in connection with the manufacture of tea.

That was a case concerning a charge u/s 10 (d) of the Act. The case here concerns Sections 7 (4) and 10 (b) of the Act and is therefore distinguishable on facts.

8. Section 8 (1) of the Act, being of the nature of an exception to normal taxation, has to be construed strictly. See *The Union of India (UOI) Vs. The Commercial Tax Officer, West Bengal and Others*, . The production or storage of raw materials for manufacture is not manufacture itself, it may be an essential prelude to manufacture, but not a part of the process of manufacture as such. Manufacture starts only after the raw materials have been collected at the factory. The cultivation of tea plants and the collection of tea leaves are only processes preliminary to the manufacture of tea but not part of the manufacture or processing of tea for sale. In my view, "the manufacture or processing of tea for sale" starts only from the time when the green tea leaves have been brought to the factory premises; and lasts only till the finished products are packed in

containers ready for despatch to the market. Any process either before the former, or after the latter, has to be found outside the limits of the expression "in the manufacture or proceeding of goods for sale". Manure, Rice, Jaggery and most items of General Stores now covered by Ext. P. 1 cannot strictly be goods for use in the manufacture or processing of tea for sale. The respondent's move to amend the Certificate of Registration is therefore well justified. But he shall not remove from the Certificate any class of goods within the scope of sub-section (3) of section 8 of the Act.

9. As regards imposition of penalty, the question is different. The Certificate of Registration specifies, as mentioned above, "General Stores, Manure, Rice and Jaggery, Building materials, Engineering Stores, etc.," as permitted to be purchased by the petitioner under the concessional rate of tax as goods "for use in the manufacture" of tea. The goods purchased by the petitioner in the year 1960-61 detailed in Parts I to XXII of the enclosure to Ext. P. 5 cannot be found to be beyond the above description of goods in the Certificate. Purchases of similar goods appear to have been allowed without objection in prior years. It cannot then be said that in purchasing those goods, the petitioner has "falsely" represented that they are covered by his Certificate of Registration. The question is not whether such goods can legitimately be included in a proper Certificate of Registration. The question is whether they are covered by his Certificate of Registration. There can be no doubt that Ext. P. 1 as it is originally given, does cover the goods. Admittedly, no attempt has been made to amend the Certificate of Registration granted to the petitioner at any time before the issue of Ext. P. 3 notice in September 1962. Probably in a proper Certificate of Registration issued under the Act, many of the goods of the classes mentioned in Parts VII, X, XIII, XIV, XVII, XVIII, XIX, and XXI, of the enclosure in Ext. P. 5 may not be included. But, I am afraid the respondent's observation that all goods detailed in Parts IV to XXII cannot be included in a Certificate of Registration may not be correct. Goods mentioned in

Part IV (Containers and packing materials and spare parts),

" VIII (Tea roller),

" XI (Scales and weights),

" XII (Tea machinery),

" XV (Firewood-which is mostly used for generating hot gas for purposes of drying the tea) and

" XVI (Tea machinery and parts)

appear to come within the category of goods necessary "for use in the manufacture or processing of tea for sale" and are therefore competent to be included in a Certificate of Registration. Those specified in

Part V (Electrical goods),

" VI (Trolley),

" IX (Batteries),

" XX (Motor parts) and

" XXII (Miscellaneous items)

may or may not be necessary for use in the manufacture or processing of tea for sale or in the generation or distribution of electric power for the petitioner's business, and therefore may require a factual investigation before they are entered in the Certificate. But, that is not the material consideration here.

10. The charge in the notice, Ext. P. 5, is that the petitioner has committed an offence u/s 10(b) of the Act, viz., that being a registered dealer, he has falsely represented, when purchasing the goods detailed in the enclosure thereto, that they are covered by his Certificate of Registration. If the goods purchased by the petitioner are in fact covered by his Certificate of Registration, whether rightly or wrongly, there cannot be any question of his making a false representation in that regard. The specification of General Stores, Manure, Rice and Jaggery and Building materials in Ext. P. 1 indicates that the cultivation of tea plants and even the welfare of the workmen are assumed in the Certificate to be matters intimately related to the manufacture of tea. As the terms of the Certificate stood unchallenged at the relevant lime, the petitioner could not have made the "false" representation that is now charged against him in the notice, Ext. P. 5. The liability to pay sales tax under the Act is on the seller. The petitioner is a purchaser only. The punishments provided in Sections 10(b) and 10A of the Act arc only for a false representation of the contents of the Certificate of Registration of which the petitioner cannot be guilty. I hold Ext. P. 5 not warranted by the provisions of the Central Sales Tax Act, 1956. In the result, the Rule is made absolute as regards Ext. P. 5; and is discharged as regards Ext. P. 3 subject to a direction to the respondent that only such classes of goods as do not come within the categories mentioned in subsection (3) of section 8 of the Act shall be deleted from the Certificate of Registration granted to the petitioner.

There will be no order as to costs here.