(2012) 05 CHH CK 0017

In the Chhattisgarh High Court

Case No : Writ Petition No 1588 of 2006

Krishna Iron Strips and Tubes Private Limited APPELLANT

Vs

State of Chhattisgarh and Another RESPONDENT

Date of Decision : 19-05-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 8(1), 8(2), 8(5), 9

Citation : (2012) 05 CHH CK 0017

Hon'ble Judges : Satish K. Agnihotri, J;Manindra Mohan Shrivastava, J

Bench : Full Bench

Advocate : Neelabh Dubey, for the Appellant; A.S. Kachhawaha Dy Adv General for the State, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner assails the constitutional validity of the notification No. 10/11/2005/CT/V (20) dated 1-4-2005 (Annexure - P/4) issued by the Government of Chhattisgarh, Department of Finance and Planning (Commercial Tax Department) whereby the earlier the notification No. F 10/16/2002/CT/V (17) dated 12-2-2002 has been rescinded. The petitioner is a manufacturer of steel tubes in an integrated plant. According to the petitioner steel strips are manufactured in the integrated plant, thereafter, the same is used for manufacture of steel tubes. Other class of manufacturers of steel tubes purchased steel strips within the State of Chhattisgarh and, then, thereafter they produced steel tubes. The State Government by notification No. F-10-16/2002/ CT-V (16) dated 12-2-2002 (Annexure - P/5), in exercise of its power under sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (for short "the CST") exempted the class of goods specified in column (2) of the schedule from payment of tax under the said Act, to the extent specified in column (3) for the period 10-8-2001 to 31-3-2003.

2. On the same day, another notification No. F 10/16/2002/CT/V (17) dated 12-2-2002 was published directing that the tax payable under sub-section (1) of

section 8 of the said Act by any dealer having his place of business of Steel Tuber as specified in category (xi) of clause (iv) of section 14 of the Central Sales Tax Act, 1956 (No. 74 of 1956) in the course of inter-State trade or commerce, shall, with effect from the date of publication of this notification in Official Gazette, be calculated at the reduced rate of 2 per cent on his turnover on such sales. Ultimately, the said notification was rescinded by the impugned notification No. F 10/11/2005/CT/V (20) dated 1-4-2005 (Annexure - P/4).

3. Shri Dubey, learned counsel appearing for the petitioner, would submit that the notification No. F-10-16/2002/CT-V (16) dated 12-2-2002 (Annexure - P/5) and the notification No. F-10-16/2002/CT-V (17) dated 12-2-2002 created two separate categories based upon the process of manufacture and applied different rates of tax on the same. Notification No. F-10-16/2002/CT-V (16) dated 12-2-2002 (Annexure - P/5) was applicable to those dealers who manufacture goods out of such strips which have been manufactured by the steel rolling mill within the State of Chhattisgarh and the manufacturing registered dealer producing a declaration for the same. With regard to other producers of steel tubes, the notification that was prevalent was notification No. F-10-16/2002/CT-V (17) dated 12-2-2002 wherein the rate of tax was reduced to 2%. After rescinding the notification No. F 10/16/2002/CT/V (17) dated 12-2-2002 the rate of tax applicable became 4%. Shri Dubey would further submit that vide notification No. F-10/11/2005/CT/V (31) dated 31-5-2005 (Annexure - P/6), the figure `2'' was substituted by figure `1'', as a result of which the integrated steel plant like the petitioner was paying the tax at the rate of 4%.

4. In support of his contention, Shri Dubey placed reliance upon the decisions of the Supreme Court, rendered in Ayurveda Pharmacy and Another v. State of Tamil Nadu1 and State of Uttar Pradesh and Others v. Deepak Fertilizers & Petrochemical Corporation Ltd.2, and by the High Court of Andhra Pradesh, in Rajashree Oils & Extractions v. Deputy Commissioner (CT), Kurnool and another3.

5. On the other hand, Shri Kachhawaha, learned Dy. Adv. General appearing for the State, would submit that if the steel tubes are manufactured from captively produced strips, as being done by the petitioner firm, the rate of tax is 4%. If the pipes are manufactured from strips purchased from the market, the rate of tax was initially 2%. Thereafter, the same was reduced to 1% by notification F-10/11/2005/CT/V (31) dated 31-5-2005. Pursuant to the notification dated 1-4-2005, the rate of tax on interstate sale of tubes manufactured in the State has been imposed. The rate of tax on interstate sale of steel tubes manufactured in the State are uniform for every manufacturer, irrespective of the fact whether the strips from which steel tubes are made are captively produced or purchased from outside. Shri Kachhawaha would further submit that the effect of notification No. F 10/11/2005/CT/V (20) dated 1-4-2005 vide which the notification No. F 10/16/2002/CT/V (17) dated 12-2-2002 has been rescinded, is that the uniform rate of 4% tax has been imposed upon all steel tube manufacturers who are engaged in interstate sale. Shri Kachhawaha would also

submit that if a manufacturer purchases steel strips from the market for the purpose of manufacturing steel tubes, on the sale of steel tubes, 2% tax is payable on purchase of steel strips and then on sale of steel tubes further 2% tax is imposed, thus, the same is adjusted as set-off on the total tax i.e. 4%. The total tax is equal to 4%, but in case of captively manufactured steel strips 4% tax is payable at the time of interstate sale of steel tubes. Thus, there is no variance in the rate of tax imposed on both type of manufacturing methods.

6. We have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

7. The petitioner has not filed any document or decision taken by the assessing authority on the basis of notification No. F 10/11/2005/CT/V (20) dated 1-4-2005 whereby the earlier notification No. F 10/16/2002/CT/V (17) dated 12-2-2002 has been rescinded. Thus, for want of assessment under the abovestated notification, which was not clear, on bare reading of the same, no adjudication is possible, at this stage.

8. It is useful to quote the following notifications :

No. F-10-16/2002/CT-V(16), dated 12th Feb.,2002 - Whereas, the State Government is satisfied that it is necessary so to do in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (No. 74 of 1956), the State Government hereby exempts the class of goods specified in column (2) of the Schedule below from payment of tax under the said Act, to the extent specified in column (3) for the period 10-08-2001 to 31-03-2003 subject to the restrictions and conditions specified in column (4) of the said Schedule:-

SCHEDULE

S. Class of Extent of Restrictions and No. goods exemption conditions subject to which exemption is granted (1) (2) (3) (4)

1. Steel Whole of When sold by a Tubes as tax under dealer specifie section 8 registered under d in (2) that Adhiniyam category who proves to (xi) of the satisfaction clause of the assessing (iv) of authority at the section time of the 14 of assessment that:- the CST the goods were Act, manufactured by 1956 him out of such (No. 74 strips, which of 1956) has been manufactured by a steel rolling mill within the State of Chhattisgarh and the manufacturing registered dealer produces a declaration form A-2 obtained from the steel rolling mill.

2. Steel Whole of (1) When sold by Tubes as tax under a dealer specifie section 9 registered under d in and 10 the Adhiniyam category and such dealer (xi) of in support of clause his claim for (iv) of exemption in section respect of the 14 of sale of the said the CST goods furnishes, Act, at the time of 1956 his assessment, (No. 74 to the assessing of 1956) authority a declaration in the Form A-3 appended to Notification No. E-10-16/2002/CT- V(15), dated

12-02-2002 issued to him by the dealer manufacturing the said goods or a subsequent selling register dealer selling such goods in the manner specified in paragraph (2) below.

(2) The registered dealer manufacturing the goods specified in column (2) or a registered dealer subsequently selling such goods shall prepare four carbon copies of the said declaration. The original shall be issued to the purchasing registered dealer, the second and third copy of the declaration shall be sent by him to the appropriate Commercial Tax Officer of the selling/purchasi ng registered dealer and the fourth copy shall be retained by the registered dealer issuing such Declaration. The appropriate Commercial Tax Officer shall file the copy of the declarations in the assessment case record for the relevant period of the selling/purchasing registered dealer.

No. F-10-16/2002/CT-V(17), dated 12th Feb., 2002- Whereas, the State Government is satisfied that it is necessary so to do in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (No. 74 of 1956), the State Government hereby directs that the tax payable under sub- section (1) of section 8 of the said Act by any dealer having his place of business of Steel Tuber as specified in category (xi) of clause (iv) of section 14 of the Central Sales Tax Act, 1956 (No. 74 of 1956) in the course of inter-State trade or commerce, shall, with effect from the date of publication of this notification in Official Gazette, be calculated at the reduced rate of 2 per cent on his turnover on such sales.

Government of Chhattisgarh Finance and Planning Department (Commercial Tax Department) Mantralaya Dau Kalyan Singh Bhawan, Raipur

NOTIFICATION

Raipur, Dated 01.04.2005

No. F 10/11/2005/CT/V(20) - In exercise of the powers conferred by section 8(5) of the Central Sales Tax Act, 1956 (No. 74 of 1956) the State Government hereby rescinds this department notification No. F-10/16/2002/CT/V(17) dated 12.02.2002 with effect from 01.04.2005.

By order and in the name of the Governor of Chhattisgarh

Sd/-

(K.R. Mishra)

Deputy Secretary

9. The classification as allegedly introduced by notification No. F 10/16/2002/CT/ V (17) dated 12-2-2002 has been rescinded by the impugned notification No. F 10/11/2005/CT/V (20) dated 1-4-2005, thus, the grievance of the petitioner does not survive. So far as subsequent notification No. F-10/11/2005/CT/V (31) dated 31-5-2005, is concerned i.e. only reduction of rate of tax in the notification

No. F-10 16/2002/CT-V (16) dated 12-2-2002.

10. The decisions relied on by the learned are not relevant to the facts of the present case, as the impugned notification only rescinds the earlier discrimination, which according to the petitioner was created pursuant to notification No. F 10/16/2002/CT/V (17) dated 12-2-2002, which has been rescinded subsequently and also on the view that the manufacturers of steel tubes are liable to pay 4% inter-state sales tax, subject to certain set off depending on the facts of the case.

11. Notification No. F 10/16/2002/CT/V (17) dated 12-2-2002 deals with tax payable under sub section (1) of section 8, if the same is rescinded by the impugned notification, the steel tubes may come u/s 8(2) of the CST and the rate has been reduced from `2'' to `1'' by notification No. F-10/11/2005/CT/V (31) dated 31-5-2005. Thus, the facts which are necessary for adjudication is that whether the petitioner is liable to be taxed u/s 8(2) or section 8(1) that cannot be ascertained without proper assessment by the Assessing Authority on the basis of return submitted by the dealer.

12. In view of the above, this petition cannot be entertained at this stage on the ground that the entire facts are not available, as the petitioner ought to have filed the return before the Assessing Authority, and thereafter the decision taken thereon would be appellable before the appellate authority. If any grievance still survives, the jurisdiction of the High Court may be invoked by the petitioner, in accordance with law, if so advised. As an upshot, the writ petition sans merit is liable to be and is hereby dismissed, leaving the parties to bear their own costs.

