(2009) 07 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1644 of 2006

Naveen Prakashan APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:
Central Sales Tax Act, 1956 — Section 10(d), 10A, 22

Citation : (2009) 07 AHC CK 0158

Hon'ble Judges : R.K.Agrawal, J and S.K.GUPTA, J

Final Decision : Allowed

Judgement

Shashi Kant Gupta, J.—The petitioner is challenging the validity of the penalty order passed under Section 10A read with Section 10(d) of the Central Sales Tax Act (in short the Central Act) dated 3182006 passed by Assistant Commissioner, Trade Tax, Sector9 Ghaziabad, respondent No. 3 for the assessment year 200102 as well as the notice issued under Section 22 of the Act by the assessing authority with regard to the rectification of mistake in the order dated 6102006.

2. The facts enumerated in the present writ petition are as follows:

3. The petitioner is a registered firm both under U.P. Trade Tax Act (in short "U.P. Act") as well as under Central Sales Tax Act (in short CST Act) and is engaged in the publication of children education books and writing books bearing the name of authors.

4. During the assessment year 2001 02 the applicant has made purchases of paper for use in the manufacturing of books from outside the State of Uttar Pradesh for Rs. 32,01,186/ against FormC. All the requisite Forms have been duly issued in accordance with law.

5. The petitioner''s firm has been issued registration certificate wherein it is eligible for the purchase of paper required in the publication of children education books and writing books bearing the name of authors. In the assessment year 200102 the petitioner purchased paper worth of Rs. 32,01,186/ from the

registered dealers outside the State of U.P. The paper worth Rs. 11,41,232/ was purchased through transfer of documents from Delhi dealer namely Jinraj Paper Udyog during the movement of goods from Bijnor to Delhi. The aforesaid party purchased the paper from its seller situated at Bijnor, namely, M/s Mohit Paper Mills Limited. The goods were transported from Bijnor to Delhi by road and the Delhi dealer endorsed the builty of the aforesaid goods in favour of the petitioner and directed the goods to be delivered to the printers situated at Delhi itself, who conducted the job work of printing on behalf of the petitioner and thereafter sent back the same to the petitioner at Ghaziabad. Subsequent thereto the petitioner underwent process of printing to publish the children education books and writing books bearing the name of authors.

6. This apart, the petitioner has also made purchases of paper for Rs. 20,59,954 from Uttrakhand dealer, which was initially transported to Delhi on the instruction of the petitioner for the purpose of job work (printing) and thereafter it was delivered to the petitioner at Ghaziabad.

7. The respondent No. 3 issued a notice under Section 10A to the petitioner for the assessment year 200102 asking the petitioner to show cause as to why penalty may not be imposed against the petitioner on the purchases of papers against FormC worth Rs. 31,81,621/. The respondent No. 3 issued another notice on 2952006 under Section 10A read with Section 10(d) of the CST Act for the assessment year 200102 requiring the petitioner to show cause as to why penalty under Section 10A be not imposed upon it, as it made purchases of paper worth Rs. 11,41,232/ at Delhi, however instead of transporting the paper immediately to Ghaziabad, it was brought back to Ghaziabad after getting the job work of printing done at Delhi itself. Therefore, it was inferred by the respondent No. 3 that the petitioner contravened the provisions of the CST Act and Rules made thereunder.

8. In pursuance of the said notice dated 2952006 the petitioner filed a detailed reply explaining the transactions made by it and tried to clarify the legal position in this respect. The respondent No. 3 ultimately passed the penalty order under Section 10A read with Section 10(d) of the CST Act for the assessment year 200102 on 3182006, whereby respondent No. 3 imposed penalty of Rs. 2,88,107 on the petitioner. Hence the present writ petition.

9. It is submitted by learned counsel for the petitioner that the petitioner purchased papers from registered dealer through transfer of documents from Delhi dealer and further submitted that there is no contravention of subsection (3) of Section8 of the CST Act, as such no penalty can be legally imposed against the petitioner.

10. Learned Standing Counsel appearing on behalf of respondents have justified the impugned order and has submitted that the order has been passed in accordance with law and no interference is called for.

11. Heard Sri Praveen Kumar, learned counsel for the petitioner and Sri U.K.

Pandey, learned Standing Counsel appearing on behalf of the respondents.

12. For proper adjudication of the present matter, certain provisions of Central Sales Tax Act are being quoted as under:

"Section 3 of the Act provides as under:

3. When is a sale or purchase of goods said to take place in the course of interState trade or commerce.A sale or purchase of goods shall be deemed to take place in the. course of interState trade or commerce, if the sale or purchase

(a) occasions the movement of goods from one State to another, or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another:

Section 8(3)(b) of the Act provides as under:

8. Rate of Tax on sales in the course of interState trade or commerce

(1).............................

(2)............................

(3) The goods referred to in clause (b) of subsection (1)

(a)............................

(b) are goods of the classes specified in the certificate of registration of the registered dealer purchasing the goods, as being intended for resale 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 the telecommunication network or) in mining or in the generation or distribution of electricity or any other form of power;

Section 10(d) of the Act provides as under:

10. Penalties.If any person

(a) ....

(aa)............................

(b) ....

(c)............................

(d) after purchasing any goods for any of the purposes specified in clause (b) or clause (c) or clause (d) of subsection (3) (or subsection (6) of Section 8, fails without reasonable excuse, to make use of the goods for any such purpose.

Section 10A (2)(a) of the Act provides as under:

(1) ....

(2) The penalty imposed upon any dealer under subsection (1) shall be collected by the Government of India in the manner provided in subsection (2) of Section 9

(a) in the case of an offence falling under clause (b) or clause (d) of Section 10, in the State in which the person purchasing the goods obtained the form prescribed for the purposes of clause (a) of subsection (4) of Section 8 in connection with the purchase of such goods."

13. The certificate of registration issued under Central Sales Tax (Registration and Turnover) Rules, 1957 (in short "rules") has been annexed as Annexure1 to the writ petition, wherein Paper, Printing machines and its part, Ink, Printing Type, and cutting machine has been mentioned in ColumnB which specify the classes of goods for the purposes of subsection (1) and subsection (3) of Section 8 of the said Act for use in manufacture of processing of goods for sale. As such, the petitioner is eligible for purchase of paper, printing etc. as required in the publication of children education books and writing books bearing the name of authors and the said paper can be subjected for use by him in the manufacturing process of goods for sale.

14. In the present matter papers purchased by the petitioner are subjected to printing for publication of children education books and writing books. Therefore, the petitioner purchased the papers worth Rs. 11,41,232/ through transfer of documents from Delhi dealer namely Jinraj Paper Udyog. The aforesaid party purchased papers from its seller situated in Bijnor namely M/s Mohit Paper Mills Limited and the goods were transported from Bijnor to Delhi by road and the Delhi party endorsed the builty of the goods in favour of the petitioner during the movement of the goods from Bijnor to Delhi and directed the goods to be delivered to the printers at Delhi itself, who conducted the job work of printing on behalf of the petitioner, thereafter the printed paper was received by the petitioner from its printers in Delhi and was transported to Ghaziabad. The purchase of papers by the petitioner was affected by transfer of documents of title of the goods, during the movement of goods from Bijnor to Delhi, therefore the purchase of the said papers by the petitioner would be treated in the course of interState trade and commerce as provided under Section 3(b) of the C.S.T. Act.

15. Since the purchase was in the course of interState trade and commerce, the petitioner issued FormC, as prescribed under the Rules to the dealers selling the goods after obtaining it from the Prescribed Authority i.e. Assistant Commissioner, Trade Tax, Sector9, Ghaziabad. Thus the aforesaid transaction would come within the meaning of Section 3(b) of the CST Act.

16. Learned counsel for the petitioner has referred to the provisions of Rule 12(6) of the Rules which reads as follows:

"(6) FormC referred to in subrule (1) or as the case may be, FormF referred to in subrule (5) shall be the one obtained by the purchasing dealer or, as the case may be, the transferee in the State in which the goods covered by such form are delivered.

Explanation.Where by reason of the purchasing dealer not being registered under Section 7 in the State in which the goods covered by FormC referred to in subrule (1) are delivered, he is not able to obtain the said form in that State, FormC may be the one obtained by him in the State in which he is registered under the said Section."

17. A bare perusal of the aforesaid rule goes to show that petitioner was entitled to issue FormC to the Delhi dealer where the goods was delivered to him although he was not registered under Section 7 in the State of Delhi and FormC issued to him by respondent No. 3 at Ghaziabad can very well be issued to the Delhi party while taking delivery in Delhi itself.

18. The penalty has been imposed under Section 10A read with Section 10(b) of CST Act only on the ground that the petitioner took delivery of papers at Delhi, but after getting it printed at Delhi have brought the same to Ghaziabad. According to the respondent No. 3 the goods i.e. "papers" purchased by the petitioner has not been brought in the same form but have been brought as printed paper, therefore it was inferred that FormC which was issued by the respondent No. 3 was misused and the petitioner is liable to be imposed penalty.

19. The ground taken by respondent No. 3 in imposing penalty is totally misconceived, and illegal. A bare perusal of Section 10(d) goes to show that penalty can be imposed if any person after purchasing any goods for any of the purpose specified in clause (b) or clause (c) or (d) of subsection (3) and subsection (6) of Section 8, fails without reasonable cause for use of the same, for any purpose.

20. As we have already noticed herein earlier that the petitioner is eligible for purchase of papers required for publication of children education books and writing books bearing the name of authors. Therefore, for publication of books, paper has to undergo processing and without printing the education books it cannot be published. The petitioner is registered for purchase of papers to be used in manufacturing of children education books and writing books and thus the transaction that is being done is in accordance with the CST Act and Rules made thereunder.

21. The law does not impose liability on the manufacturer to conduct complete manufacturing process by itself. A manufacturer is entitled to have certain process done by any other entity on its behalf. Therefore it cannot be said that the petitioner has committed any contravention of subsection (3) or subsection (6) of Section 8 of the CST Act by getting the paper printed at Delhi after purchasing the same in Delhi. Thus no penalty under Section 10A (2) (a) read with Section10 of the CST Act can be legally imposed on the petitioner.

22. The Apex Court in the case of A & G Projects and Technologies Limited v. State of Karnataka, (2009) 2 SCC 326 while dealing with the provision of

Section3 of the CST Act has observed as under:

"13. In the present case, it has been held that all the three sales fell under Section 3(a) of the CST Act, 1956. In fact, the appellant''s case for exemption under Section 6(2) stood rejected by the AO specifically on the ground that all the three sales stood covered under Section 3(a). Within Section 3(b) are sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto, whereas Section 3(a) covers sales, other than those included in clause (b), in which the movement of goods from one State to another is under the contract of sale and property in the goods passes in either States (see T/SCO v. S.R. Sarkar at page 667). The dividing line between sales or purchases under Section 3(a) and those falling under Section 3(b) is that in the former case the movement is under the contract whereas in the latter case the contract comes into existence only after the commencement and before termination of the interState movement of the goods. Therefore, it follows that an interState sale can either be governed under Section 3(a)if it occasions movement of goods from one State to anotheror under Section 3(b)if it is effected by transfer of documents of title after such movement has started and before the goods are actually delivered. In other words, a sale which takes place under Section 3(a) shall stand excluded from the purview of Section 3(b) and wee versa.

14. By Section 3, it was intended to define the class of sales which shall be deemed to be sales in the course of interState trade or commerce. Under the CST Act, 1956, tax is leviable on the sale of goods and not because of the movement of the goods. The movement of the goods is only material for the purpose of deciding whether the sale took place in the course of interState trade or commerce or whether such sale was purely an intraState transaction. The name given to a transaction by the parties concerned does not decide the nature of the transaction. In order to make a transaction taxable under the CST Act, 1956, the transaction must be a "sale" as defined in Section 2(g) taking place in the course of interState trade or commerce in any of the manner provided for in clause (a) or clause (b) of Section3."

The aforesaid decision of the Supreme Court fully supports the contention of the petitioner.

23. The impugned order is based on complete misreading of the case and misconception of legal position relevant to the matter. Therefore, the impugned order dated 3182006 cannot be sustained.

24. In view of the aforesaid discussions, the impugned order dated 3182006 passed by respondent No. 3 under Section 10A read with Section 10(d) of the CST Act and the impugned notice issued under Section 22 of the Act dated 6102006 issued by respondent No. 3 for the assessment year 200102 are hereby quashed and the writ petition is accordingly allowed.

There shall be however, no order as to costs.