(2000) 12 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 9379 of 2000

Numech Emballage Ltd. APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 27-12-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 9(2)
Gujarat Sales Tax Act, 1969 — Section 41B, 48A

Citation : (2002) 125 STC 340

Hon'ble Judges : D.M. Dharmadhikari, C.J;M.S. Shah, J

Bench : Division Bench

Advocate : N.V. Anjaria, for the Appellant; Kodekar, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Dharmadhikari, C.J.—The petitioner is engaged in the manufacture and sale of HDPE woven sacks, HDPE woven sacks laminated with paper and HDPE woven sacks with loose paper liner inside. It is selling its manufactured products in the State of Gujarat as well as outside Gujarat in the course of inter-State trade and commerce. It has its registered administrative office at Mumbai in the State of Maharashtra. Its factory is at Bhilad, District Valsad. In the course of its trade, it is also required to transfer its manufactured products from Bhilad, where it has its factory to its main office at Mumbai.

2. By this petition Under Article 226 of the Constitution of India, the petitioner-company seeks quashing the impugned orders dated April 26, 2000 (annexure E) and May 17/19, 2000 (annexure I) passed by the Sales Tax Officer, Valsad, respondent No. 1 in purported exercise of powers under Sections 48A and 41B of the Gujarat Sales Tax Act (hereinafter referred to as "the local Act") read with Section 9(2) of the Central Sales Tax Act, 1956. The Sales Tax Officer, Valsad, respondent No. 1 has invoked his jurisdiction u/s 41B and u/s 48A for making provisional assessment and for that purpose has made a provisional attachment

of the properties of the petitioner. Section 41B, which empowers the Commissioner or his delegates to make provisional assessment, in its relevant parts, reads as under :

"41B. Provisional assessment.--(1) Where the Commissioner has reason to believe that the dealer has evaded the tax, he may, after taking into account all relevant materials gathered by him and after giving the dealer a reasonable opportunity of being heard, provisionally assess to the best of his judgment the amount of tax payable by the dealer.

(2) The provisions of this Act shall mutatis mutandis apply to the provisional assessment as if provisional assessment were an assessment made under this Act."

3. Section 48A introduced by amendment with effect from August 1, 1998 empowers the Commissioner or his delegate to effect attachment provisionally of the property of the dealer where it is necessary in his opinion for the purpose of protecting the interest of the Revenue. Section 48A(1) and (2) of the Act reads as under :

"48A. Provisional attachment to protect revenue.--(1) Where during the pendency of any proceeding of provisional assessment or assessment of tax or reassessment of turnover escaping assessment the Commissioner is of the opinion that for the purpose of protecting the interests of the revenue, it is necessary so to do, he may by order in writing attach provisionally any property belonging to the dealer in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under Sub-section (1) :

Provided that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such period or periods as he thinks fit so however that the total period shall not in any case exceed one year."

4. Learned counsel Shri N.V. Anjaria appearing for the petitioner-company, assails the impugned action of the Sales Tax Officer, Valsad, of initiating the proceedings of provisional assessment u/s 41B and the attachment of the properties u/s 48A of the Act. It is contended contending that only because the petitioner-company is sending its manufactured goods from its factory to its main office at Mumbai, there is no reasonable ground to believe that the petitioner as dealer has evaded the tax. The branch transfers according to the petitioner-company, are not exigible to tax but according to the Sales Tax Department they are inter-State sales. It is argued that provisional assessment for the block period could not be resorted to merely because the branch transfers are being viewed by the department as inter-State sales.

5. Learned counsel contends that for initiating action u/s 41B, formation of reasonable belief by the sales tax authority of evasion of tax by the dealer, is necessary which is not present in this case. The whole action of initiating

proceedings for provisional assessment and for that purpose making an order of protective attachment are liable to be quashed. Very strong reliance has been placed on a division Bench decision of this Court to which one of us, i.e., D.M. Dharmadhikari, Chief Justice, was a party in Batliboi & Co. Ltd. v. Sales Tax Officer, Surat in S.C.A. No. 2952 of 1999 decided on April 10, 2000 reported in [2000] 119 STC 583.

6. Learned Counsel also relied on the decisions in the case of Natraj Rubbers v. Sales Tax Officer, Division-3, Bhavnagar, reported in [1999] 113 STC 575 (Guj), in Dwijendra Kumar Bhattacharjee v. Superintendent of Taxes, Government of Tripura, Agartala reported in [1990] 78 STC 393 (Gauhati) and in Commissioner of Sales Tax, Maharashtra State, Bombay v. Kalpana Waterproof Products Mfg. Co. reported in [1986] 62 STC 181 (Bom).

7. Learned Assistant Government Pleader Shri Kodekar appearing for the Sales Tax Department supports the action of the sales tax authority. Attention of the court is invited to the contents of the reply affidavit filed on behalf of the concerned Sales Tax Officer, Valsad. On behalf of the department, it is stated that search was conducted of the office of the petitioner-company at Bhilad and search was also conducted at its head office at Mumbai by Maharashtra sales tax authority. In the course of search conducted at Bhilad, it was found that certain transactions described as branch transfers were not such but they were pre-determined sales. In the garb of branch transfers consignments of manufactured goods were directly diverted to a customer of Ratnagiri district of Maharashtra. Such branch transfers were effected without "C" forms. Investigations made in such transactions reveal that certain pre-determined sales were effected in the garb of branch transfers without "C" forms and tax on transaction in the tune of Rs. 2,95,00,309 was evaded for the period between 1992-93 to 1996-97. Proceedings for block assessment on provisional basis were therefore initiated for the period 1992-93 to 1994-95 giving rise to an aggregate demand of Rs. 2,44,04,606 which has not yet been satisfied. The petitioner has paid tax only in the sum of Rs. 1,28,22,278. In the reply affidavit, on the above facts, it is stated that there were sufficient reasons for the authority to believe that the petitioner has evaded tax necessitating initiation of proceedings for provisional assessment for the block period and for attachment of the property of the petitioner for protecting revenue.

8. After hearing the learned counsel appearing for the dealer and the department and on going through the records and the contents of the reply affidavit, we have come to the conclusion that in the instant case, it cannot be justifiably be complained that the Sales Tax Officer casually or without application of mind has initiated proceedings for provisional assessment for block period u/s 41B and illegally effected attachment of the property of the petitioner u/s 48A of the Act. The decision of the division Bench of this Court in the case of Batliboi & Co. Ltd. [2000] 119 STC 583, on which heavy reliance is placed, is distinguishable on facts. In that case, the sales tax authority which had taken the action had failed

to produce material to justify its action of provisional assessment and attachment of properties of the dealer. The division bench took note of the fact that in the reply affidavit, in that case the Sales Tax Officer had merely stated thus :

"As a very large amount of tax was involved and regular assessment of the petitioner was likely to take time, he had decided to make provisional assessment."

This was hardly a sufficient ground as to infer formation of reasonable opinion for making a provisional assessment and attachment of the property of the dealer. In Batliboi''s case [2000] 119 STC 583 (Guj), there were transactions disclosing prima facie inter-State works contracts which could not be brought to tax under Central Sales Tax Act.

9. The decision of Batliboi & Co. [2000] 119 STC 583 of this Court is therefore distinguishable on facts and is of no assistance to the petitioner. The other decisions cited on behalf of the petitioner support his submission that the pre-requisite for taking action under Sections 48A and 41B is formation of a reasonable opinion on objective basis that the dealer has evaded tax and attachment of his property is necessary for protecting the interest of the revenue. In the instant case, search was conducted simultaneously at the place of manufacture of the petitioner in Bhilad by Gujarat sales tax authorities and at their main office at Mumbai by Maharashtra sales tax authority. Certain incriminating transactions were detected showing that in the garb of branch transfers, goods were directly diverted to buying parties in the State of Maharashtra. Thus a large-scale evasion of Central sales tax was prima facie found to have taken place in the garb of branch transfers. Whether those branch transfers are in fact such or they are exigible to intra-State or inter-State sales is a matter which can be decided only in the course of assessment. As per the statement made on affidavit provisional assessment has been completed and demand has been raised. In such circumstances, the petitioner can approach the higher authorities for challenging the action of the Sales Tax Officer on permissible grounds. This is not a case where it can be held that the sales tax authority has no material or information with it to form a reasonable belief of evasion of tax. The action of provisional assessment and attachment of the property of the petitioner cannot be held to be an action without justification in law.

10. We, therefore, do not find any legal infirmity in the impugned action of provisional assessment and attachment of the property of the petitioner.

11. At the time of considering prayer for interim relief, we did not find any justification to keep under attachment the movable property of the petitioner like finished and semi-finished goods including raw material as that would have caused incalculable losses to the manufacturing and trading activities of the petitioner. We therefore granted an interim relief by order dated October 17, 2000 and directed the sales tax authorities to lift the attachment of movable

properties, i.e., finished and semi-finished goods including raw material on the condition of the petitioner furnishing security on its immovable properties to the satisfaction of the recovering officer. We, consider it proper to make the interim order passed on October 17, 2000 as final while disposing of this petition.

12. Consequently, the petition fails and is hereby dismissed and in the circumstances, we make no orders as to costs. Rule discharged.

