
(1975) 07 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5847 of 1974

Shyam Cold Storage

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 15-07-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 7

Citation : (1976) 38 STC 386

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : Prakash Gupta, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The petitioner is carrying on the business of purchase and sale of potatoes. It applied for registration under the U. P. Sales Tax Act, 1948, on 8th April, 1974. On the same day, an application for registration was also moved u/s 7(2) of the Central Sales Tax Act, 1956. This application was made in form A. While giving other particulars required in the form, the petitioner mentioned compressor and parts, ammonia receiver, full machinery of ice-candy and ice-plant, ammonia pipe and ammonia cylinder for the manufacture and sale of ice and ice-cream.

2. As respect goods for use in the generation or distribution of electricity, it mentioned generating set and its parts. A copy of the application moved by the petitioner is (annexure C-AI to the petition). Registration was granted to the petitioner under the U. P. Sales Tax Act vide order dated 11th April, 1974, and this registration was made operative from 8th April, 1974. Subsequently, the petitioner purchased a generating set from M/s. Eskay Engineering Company, Delhi, and also other electrical goods for the manufacture of ice and ice-cream. Although registration had been granted to the petitioner under the U. P. Sales Tax Act, no order for registration had been issued to the petitioner at the time

when the aforesaid purchases were made. On 14th May, 1974, the petitioner applied for provisional registration u/s 8-B of the U. P. Sales Tax Act. This was granted on 18th June, 1974, and the registration certificate was made operative with effect from 14th May, 1974, i. e., the date of making of the application. Subsequently, on 21st June, 1974, the petitioner received registration certificate u/s 7(2) of the Central Sales Tax Act, which was made operative from 14th May, 1974. The reasons for the grant of the registration certificate effective from 14th May, 1974, are incorporated in the order of the Sales Tax Officer dated 13th June, 1974 (annexure II to the petition). The petitioner has impugned this order on the ground that the registration certificate should have been made effective from the date of the application.

3. Counsel for the petitioner has urged that the application moved by the petitioner was not defective and all the necessary details required therein were complied. This being so, there was no reason for making the registration effective from 14th May, 1974. Section 7 enjoins on every dealer liable to pay tax under the Act to apply for registration. Section 7(2) makes it incumbent on every dealer liable to pay tax under the sales tax law of the appropriate State to apply for registration notwithstanding that he is not liable to pay tax under the Central Act. Section 7(3) enjoins on the sales tax authority to grant the certificate of registration in case it is satisfied that the application is in conformity with the provisions of the Act and the Rules made thereunder. Rules have been made u/s 7 known as the Central Sales Tax (Registration and Turnover) Rules, 1957. Rule 4(1) deals with the procedure for the grant of the registration. Rule 5(2) empowers the appropriate authority to reject the application in case the particulars contained in the application are incorrect or incomplete. There is a proviso added to this rule, which prescribes an opportunity to be given to the applicant of being heard in the matter and for correcting or completing the particulars or complying with the requirements of Rule 4(3). The Sales Tax Officer in the impugned order has found that inasmuch as the ammonia compressor and the generating set were not required for the production of potatoes, as such registration could not be granted to the petitioner. In the concluding portion of the order, however, registration was granted to the petitioner with effect from 14th May, 1974. The latter part of the order of the Sales Tax Officer is inconsistent with the earlier part. If the Sales Tax Officer was of the view that the machineries were not required for the production of potatoes, no question at all arose of granting any registration to the petitioner. It is also not clear as to why the Sales

4. Tax Officer chose to grant the certificate from 14th May, 1974. The only reason for choosing this date appears to be that the petitioner had applied for a provisional registration u/s 8-B of the U. P. Sales Tax Act on 14th May, 1974. This was wholly an irrelevant date for the purpose of granting registration under the Central Sales Tax Act. The application for registration, as has been noticed earlier, is annexure C-AI to the counter-affidavit. In item 16 of that application, the petitioner has mentioned the compressor and its parts, etc., as being

required for the manufacture of goods, and the goods to be manufactured are shown as ice-candy and ice-cream. It also appears that on 11th April, 1974, the Sales Tax Officer took the statement of the petitioner. That statement is annexure C-AII to the counter-affidavit. In that statement it was clearly mentioned that the equipment, which the dealer proposed to purchase, was for the ice-plant. It was nowhere stated that the machinery would be required for the purpose of potatoes. The view of the Sales Tax Officer that the plant, etc., would be required for producing potatoes is based on no material on record, and on a complete misreading and mis-appreciation of the application for registration and the statement of the petitioner.

5. The standing counsel has urged that no registration could have been granted to the petitioner inasmuch as the business for which the plant was sought to be purchased was not in existence, and form A indicated that the registration could only be granted in respect of a running business which required new machinery. Form A is not very happily worded, but it has got to be read in the context of Section 7, rules 4 and 5 of the Registration Rules. All that is required by Section 7 is that the person applying for registration should be liable to pay sales tax under the law of the appropriate State. There is no dispute that the petitioner had already been registered under the U.P. Sales Tax Act and was doing business. Thus he was under a liability to pay tax under the U. P. sales tax law. As such, the requirements of Section 7(2) were satisfied. The word "dealer" has been defined in Section 2(b) of the Central Act as meaning "any person who carries on the business of buying or selling goods". The petitioner was undoubtedly carrying on the business of buying or selling potatoes. Thus, all the requirements of Section 7(2) were complied, and the petitioner could appropriately make an application for registration. It was not necessary that the application for registration should have been moved only after the petitioner had set up the new business of ice and ice-cream.

6. The other question that now remains is as to the date from which the registration certificate should have been made effective. The Central Sales Tax Act does not mention the date from which the certificate takes effect. It is, however, well-settled that a person cannot be made to suffer on account of laches or delay on the part of public authorities. The petitioner had made the application for registration on 8th April, 1974. That application was complete in all respects and no defect had been found or pointed out to us in that application. The mere fact that the Sales Tax Officer did not pass the order immediately cannot possibly be a ground for making the registration effective from the date of the order. Any other view would inflict unnecessary hardship on a dealer for no fault of his, in case orders are not passed expeditiously on his application by the appropriate authority. The Orissa High Court in the case of Subhash Chandra Ghosh v. State of Orissa [1970] 26 S.T.C. 211All has taken the same view. The Punjab High Court in the case of Chandra Industries v. Punjab State [1972] 29 S.T.C. 558All in respect of the Punjab General Sales Tax Act, 1948, is of similar opinion. There is hardly any dispute that this principle applies

to registration under the U. P. Sales Tax Act.

7. The writ petition is accordingly allowed with costs. The order of the Sales Tax Officer in so far as it grants registration effective from 14th May, 1974, is set aside. The registration certificate shall be deemed to take effect from 8th April, 1974.