
(2014) 03 KL CK 0027
In the High Court Of Kerala
Case No : W.P. (C) No. 3843 of 2007

Siemens Limited

APPELLANT

Vs

Asst. Commissioner

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 11(3), 13, 13(3), 5, 6

Citation : (2014) 2 KHC 743 : (2014) 3 KLJ 161 : (2014) 2 KLT 341 : (2014) 72 VST 154

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Jose Joseph, Advocate for the Appellant; P. Fazil, Spl. Government Pleader, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—The petitioner, a limited company registered under the Indian Companies Act, 1956 with registered office at 130, P.B. Marg, Worli, Mumbai and having regional offices at Chennai, Calcutta, New Delhi and Mumbai, has come up before this Court challenging the constitutional validity of Rule 11B(2)(c) of the Central Sales Tax (Kerala) Rules, ("Rules" for short) and Exs. P8 to P10 orders of assessment and for other incidental reliefs. The learned Single Judge admitted the Writ Petition on prayer No. 1 alone by which a declaration that Rule 11B(2)(c) of the Central Sales Tax (Kerala) Rules, 1957 as invalid and ultra vires was sought. The petitioner was relegated against the statutory remedies of the appeal against Exts. P8 to P10 orders which was later confirmed in intra court appeal.

2. The only prayer in this Writ Petition is to declare Rule 11B(2)(c) of the Central Sales Tax (Kerala) Rules, 1957 as invalid and ultra vires being inconsistent with the Central Sales Tax (R&T) Rules framed by the Central Government and beyond the power conferred on the State Government under sub-sections (3) and (4) of S. 13 of the Central Sales Tax Act, 1956.

3. In the counter filed by the respondent State, they would contend that R.

11B(2)(c) was introduced to avoid the misuse of statutory forms, without actual movement of goods. According to the respondents, the Central Sales Tax Rules are drafted by virtue of delegated authority under S. 13(3) of the Central Sales Tax Act. According to the respondents, as per sub-section (c), the State is entitled to make rules related to sale or delivery of goods. Since bogus claims are possible in relation to sale in transit, the Government enacted Rules to ensure that goods are actually carried and negotiated before delivery. This, according to the respondent, is only a provision, that is incidental and ancillary to the main object of taxation and it is not in conflict with the Central Rules. Therefore, the respondent prayed for dismissal of the petition.

4. I have heard the learned counsel for the petitioner and the learned Special Government Pleader in the matter.

5. The main argument advanced by the learned counsel for the petitioner was that the power conferred on the State Government under S. 13(3) of the Central Sales Tax Act is only to make rules not inconsistent with the provisions of the Act and Rules made under sub-section (1) to carry out the purposes of the Act.

6. According to the learned counsel for the petitioner, S. 6(2) read with the first proviso of the C.S.T. is a complete code by itself providing exemption from payment of tax on any subsequent sale effected during the movement of goods from one State to another subject to production of certificate and declaration prescribed therein.

7. Section 6 of the Central Sales Tax Act, 1956 (as it stood before the amendment which came into effect on 1.4.2007 i.e., when this Writ Petition was filed) reads as follows:

6. Liability to tax on inter-State sales.- (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified.

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.

(1A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State if that sale had taken place inside that State.

(2) Notwithstanding anything contained in sub-section (1) or sub section (1A), where a sale of any goods in the course of inter-State trade or commerce has

either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,-

(a) to the Government, or

(b) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made-

(i) to a registered dealer, a declaration referred to in clause (a) of sub-section (4) of section 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in clause (b) of section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration or the certificate referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,-

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than four per cent. (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in clause (a) or clause (b) of this sub section.

(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of interstate trade or commerce, to any official, personnel, consular or diplomatic agent of-

(i) any foreign diplomatic mission or consulate in India; or

(ii) The United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or

diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-state trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be. However, Section 6(2) was amended with effect from 1.4.2007 as under:

6(2). Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods, if,-

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub section.

8. What can be discerned from the contents of Section 6 is that the condition for availing the exemption provided under that section is specified in the provision itself and what is left to the rule making authority is to frame rules concerning the procedural aspects, viz. the authority before whom a declaration has to be

furnished in the manner and time frame within which it has to be submitted etc. Therefore, according to the learned counsel for the petitioner, the rule making authority cannot legislate a law which has the effect of amending the provisions of the statute.

9. Section 13 of the Act deals with the power to make rules. Sub-section 3 of Section 13 makes it clear that the State Government may make rules not inconsistent with the provisions of the Act and the Rules made under sub-s. 1 to carry out the purpose of the Act.

10. Sub Section 4 of Section 13 deals with the purposes for which the State Government may make rules. The power of the State government to make rules under a Central Excise Act has been considered by the Apex Court in V.V.S. Rama Sharma and Others Vs. State of U.P. and Others, . It was observed by the Apex Court that the State's power to make rules under the Central Act, extends only to the extent provided for under the Central Act. Therefore, it was submitted that the State Government has no authority u/s 13(3) to frame R. 11B(2)(c) requiring production of additional documents than the documents prescribed u/s 6(2) to treat the subsequent sale as exempt.

11. The learned Special Government Pleader would submit that the production was intended to protect an innocent dealer and the details asked for are basically necessary even in the Central Sales Tax Act. Therefore, according to the learned Special Government Pleader, there is no inconsistency at all.

12. In this context, the learned Special Government Pleader also referred to Section 6A of the C.S.T. Act which deals with the burden of proof.

13. In response to the said argument, the learned counsel for the petitioner, inviting my attention to the decision of this Court in C.P.K. Trading Company Vs. Additional Sales Tax Officer and Another, , argued that the only requirement of Section 6A(2) of the Act is to find whether the particulars contained in the declaration furnished by the dealer are true. Once the prescribed documents are furnished, production of further documents cannot be insisted upon; it was argued by the learned counsel for the petitioner. I see force in the said submission.

14. The Parliament in its wisdom declared u/s 6(2) that where a sale of any goods in the course of interstate trade or commerce has either occasioned the movement of the goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale effected by a transfer of documents of title to such goods to the Government or to the registered dealer shall be exempt from tax under this Act. The only condition to attract the statutory mandate contained in Section 6(2) is submission of the documents prescribed in the 1st proviso to Section. Therefore, once the documents prescribed under the 1st proviso is submitted in respect of the subsequent sale, the provision will operate and the exemption provided under the provision will come into effect with its full

scope and amplitude and the State has no authority to whittle down the effect of the exemption provided under the statute by framing any rules or otherwise. Therefore R. 11B(2)(c) framed by the State Government, which has the effect of amending the provisions of Section 6(2) of the C.S.T. Act, is invalid and ultra vires being beyond the scope of power u/s 11(3). Therefore, this Writ Petition is disposed of declaring R. 11B(2)(c) of the Central Sales Tax (Kerala) Rules, 1957 as invalid and ultra vires being inconsistent with the Central Sales Tax (R & T) Rules framed by the Central Government and beyond the power conferred on the State Government under Sub-sections (3) & (4) of Section 13 of the Central Sales Tax Act, 1956.