

(1993) 04 KAR CK 0033
In the Karnataka High Court
Case No : S.T.R.P. No. 15 of 1990

Sipani Fibres

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-04-1993

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5 A, 5 A (2) (iii)

Citation : (1993) 91 STC 261

Hon'ble Judges : R.V. Raveendran, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : R.V. Prasad for M/s Vasan Associates, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The question to be considered pertains to the period April 1, 1984 to March 31, 1985, under the provisions of the Karnataka Sales Tax Act, 1957 ("the Act" for short). The petitioner purchased HDPE granules during the aforesaid year, by furnishing declaration under "form 37" read with section 5A of the Act, to the effect that the HDPE granules are for use by the petitioner as inputs in the manufacture of other taxable goods inside the State for sale. The petitioners, ultimately manufactured HDPE fabrics from which, a part was utilised to further manufacture "HDPE woven sacks".

2. Initially, out of the HDPE granules, "HDPE tapes" are manufactured; these tapes are used to manufacture HDPE fabrics, out of which, a portion was used to manufacture HDPE sacks. HDPE fabrics and the sacks were sold by the petitioner.

3. The Revenue contends that, the ultimate products - HDPE fabrics and HDPE sacks - manufactured by the petitioner are goods exempted from tax under the Act and therefore, petitioner made use of the inputs purchased by it (i.e., the HDPE granules) against the declaration under form No. 37, in the manufacture of goods which are exempted from tax; this attracted the penalty u/s 5-A(2)(iii).

4. The learned counsel for the petitioner advanced two contentions :

(i) HDPE tape was the immediate product manufactured out of the inputs, purchased by the petitioner which was a taxable goods and hence the penal provision is not attracted; and

(ii) "HDPE sacks" are not exempted from any tax under the Act and therefore to the extent of the turnover relating to "HDPE sacks", levy of penalty was illegal.

5. To appreciate the rival contentions, it is necessary to refer to the following provisions of the Act, as it then stood during the relevant period.

6. Section 5A to the extent it is relevant, reads thus :

"Taxation of industrial inputs. - (1) Notwithstanding anything contained in section 5 the tax payable by a registered dealer in respect of the sale of any industrial input liable to tax under the Act to another registered dealer for use by the latter as a component part or raw material of any other goods taxable under this Act, which he intends to manufacture inside the State for sale, shall be at the rate of four per cent or the rate specified in section 5 whichever is lower, on the turnover relating to such sale :

Provided that where the rate of tax in respect of such industrial input as specified in section 5 is higher than four per cent, the provisions of this sub-section shall not apply, unless the dealer selling the industrial inputs furnishes to his assessing authority in the prescribed manner a declaration by the buying dealer in the prescribed form obtained from the prescribed authority :

Provided further that if any dealer, after purchasing any inputs, in respect of which he was furnished a declaration under the first proviso to this sub-section fails to make use of the whole or part of such inputs in the manufacture of other taxable goods specified in the declaration before the expiry of the accounting year immediately succeeding the one in which such inputs are purchased, either due to cessation of his manufacturing activity or for any other reason, but has not sold away such inputs, he shall be liable to pay the difference between the tax payable at the rate specified under sections 5, 6C and 6D and the tax computed at the of 4.4 per cent on the turnover relating to the sale of such quantity of these inputs to him as have remained unutilised with him for the declared purpose at the end of the period specified above.

(2) If any person, -

(iii) being liable to pay the tax under this Act, makes use of the inputs purchased by him against a declaration under the first proviso to sub-section (1) in the manufacture of any goods which are exempted from tax; or

.....

the assessing authority, after giving such person a reasonable opportunity of being heard, shall, by order in writing, impose upon him by way of penalty a sum, which shall not be less than the amount of tax leviable under sections 5 and 6C on the sale of the inputs so purchased, but which shall not exceed double

the amount of such tax."

7. The declaration to be furnished is in form No. 37. This requires the dealer who purchases the inputs to give the details of the selling dealer, and then the purchaser has to certify that, "the goods (inputs), details of which are given in the table below, have been purchased from you by me/us"; thereafter the particulars of "purchase order", details of selling dealers" cash memos/invoices, etc., are to be stated. A further certification under clause 2 is to be given as follows :

"2. Certified further that -

(i) I/We am/are manufacturers in Karnataka, of the goods detailed below, which are taxable under the provisions of the Karnataka Sales Tax Act, 1957 :

.....

(ii) I/We am/are liable to pay the tax in respect of the above goods and have not been exempted by any authority from the payment of tax; and

(iii) The goods described in the table above are for use by me/us as inputs in the manufacture of other taxable goods inside the State for sale."

8. Thus the declaration, inter alia, requires the purchaser to certify that the purchaser is a manufacturer in Karnataka of the taxable goods, details of which are given in the said declaration; it is also necessary to certify that the inputs purchased are for use by the purchaser as inputs in the manufacture of other taxable goods inside the State for sale.

9. Exempted goods are enumerated in the Fifth Schedule. Petitioner relies on entry 8-A of the said Schedule, which reads :

"All varieties of textiles, namely, cotton, woollen or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths."

10. The Second Schedule contains the goods on the sale of which a single point tax is levied on the first or earliest of successive dealers in the State u/s 5(3)(a). Entry 110, during the relevant period stated :

"Plastic sheets and all articles made of plastic, polythene or poly-vinyl chloride material."

11. Mr. Prasad, the learned counsel for the petitioner, relied on this entry to contend that HDPE tapes are articles made of plastic and therefore, are taxable goods. The plastic granules purchased by the petitioner were used in the manufacture of plastic tapes, which are taxable goods; if so, section 5-A(2)(iii) cannot be applied to penalise the petitioner. In this connection, a circular issued by the Commissioner was also referred in support of the contention that HDPE tapes were taxable goods under entry 110 of the Second Schedule.

12. Mr. Prasad invoked the principle that section 5-A(2) is a penal provision found in a fiscal legislation and the court has to consider the language employed therein without reference to any probable intention of the Legislation in enacting it; what is necessary is to adhere to the words of the statute. The learned counsel emphasised the proposition that, "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used".

13. It was contended that when admittedly the petitioner manufactured HDPE tapes (though the said manufacture was in the process of manufacturing the fabrics), it cannot be said that the petitioner made use of the inputs purchased by the petitioner in the manufacture of any exempted goods; HDPE tapes were not goods exempted from tax under the Act.

14. While considering this contention, it is also necessary to bear in mind another principle, stated by the Supreme Court in C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, the Supreme Court observed :

"..... In interpreting a fiscal statute, the court cannot proceed to make good deficiencies if there be any; the court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax-payer. But where as in the present case, by the use of words capable of comprehensive import, provision is made for imposing liability for penalty upon tax-payers guilty of fraud, gross negligence or contumacious conduct, and assumption that the words were used in a restricted sense so as to defeat the avowed object of the Legislature qua a certain class will not be lightly made."

15. Section 5-A(2) is a provision made for imposing a liability for penalty upon the dealer guilty of misusing the beneficial provisions of section 5-A(1) the object is to impose penalty on the person who purchases an industrial input by furnishing a declaration in form No. 37, certifying that, the input is for use by him as a component part of raw material of any other goods taxable under the Act which he intends to manufacture inside the State for sale. The idea is to give the benefit of section 5-A(1) to the industrial input meant to be used in the manufacture of goods in the State; the manufacture is to be inside the State; but said goods are to be manufactured for sale. If the manufacture is not for sale then section 5-A(1) cannot be availed of, at all by the purchaser of the inputs. If taxable goods are manufactured inside the State, though the said goods need not be sold inside the State, but meant for sale anywhere, benefit of section 5-A(1) can be availed of, by the dealers. "Intention to manufacture inside the State for sale" are the crucial words, which cannot be ignored while construing section 5-A(1). If the purchaser of the industrial input had no intention at all to manufacture taxable goods "for sale", furnishing of a declaration in form No. 37 by him would be circumventing the provisions of section 5-A(2). Purpose of section 5-A(1) is to deter the dealers from taking advantage of the provisions of section 5-A(1) and then fail to adhere to the purpose behind it. Language of

section 5A-(2) has to be understood in the background of section 5-A(1).

16. Section 5-A(2) cannot be read and understood in isolation. It has to be read in the context of section 5-A(1). Both clauses of section 5-AA are to be read together, so that, the beneficial provisions of section 5-A(1) are not misused at the cost of the Revenue.

17. In fact, form No. 37, requires the purchasing dealer of the input, to furnish the details of the goods, manufactured by him. It is not the case of the petitioner that it had mentioned HDPE tapes as the goods manufactured by it under clause 2(i) of form No. 37.

18. "HDPE tapes" at the most is an intermediate product, captively consumed in the manufacture of the "fabric". The process of manufacture did not stop with the production of tapes out of the granules. Section 5-A(2)(iii) is attracted if the granules are used in the manufacture of any goods which are exempted from tax. The words "makes use of" are quite comprehensive and wide. The words would cover the user of the granules in the manufacture of HDPE fabrics. If HDPE granules are shown to the manufacturer of HDPE fabrics, the latter would certainly admit that those granules are necessary for the manufacture of the fabrics. If a question arises as to whether cotton is used in the manufacture of cotton fabrics, there can be no other answer, than answering it in the affirmative. None would say, only yarn is used in the manufacture of the fabric and not the cotton. No doubt, the process of manufacturing the fabric requires, at an intermediate stage the manufacture of the yarn or the tape; the transformation of the granules into tape is an inevitable stage in the evolution of the fabric.

19. If section 5-A(1) and 5-A(2) are read together, it will be clear that manufactured goods, referred to in section 5-A(2)(iii) would mean the "manufactured goods" referred to in section 5-A(1). The intention of the buyer of the industrial input at the time of the purchase of the input, in the instant case, was to use the industrial input in the manufacture of fabrics for sale; petitioner had no intention to manufacture the tapes for sale. Actually the petitioner never sold any "HDPE tapes" and manufacture of "tapes" by the petitioner was not meant for sale by anyone.

20. A technical and literal reading of section 5-A(2)(iii) would enable the dealer to take advantage of section 5-A(1) in a situation for which the said beneficial provision was not enacted.

21. Machinery of section 5-A(2) cannot be and should not be worked in a manner, to destroy or mutilate the substantive provisions of section 5-A(1).

22. It was said in *Motibhai Fulabhai Patel and Co. v. R. Prasad*, Collector of Central Excise AIR 1970 SC 829 at page 832 :

"No rule of law should be so interpreted as to permit or encourage its circumvention".

23. The Joint Commercial Tax Officer, Harbour Division, II-Madras Vs. The Young Men's Indian Association (Regd.), Madras and Others, , it was observed :

"In a criminal trial or a quasi-criminal proceeding, the court is entitled to consider the substance of the transaction and determine the liability of the offender. But in a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability."

24. Here, we are not concerned with the taxability, but a liability towards penalty for not adhering to the declared object of purchasing an industrial input. This apart, rules of interpretation are said to be aids to construe the statute and not to control the interpretation; appropriate principle governing a fact situation has to be applied, without being unduly dictated by the broad language used in a proposition.

25. It is necessary to clarify that we do not mean to say that the purchaser is bound to manufacture the very taxable goods stated in his declaration in form No. 37. At the time of his purchase of the inputs, purchaser may have the intention to manufacture goods called "X" for sale which is a taxable goods and accordingly, his certificate in the declaration may mention the taxable goods a "X". Subsequently, he may manufacture some other taxable goods called "Y" for sale, using the very input; in such a situation, the purchaser is entitled to rely on the language of section 5-A(2)(iii) and contend that, he is not required to manufacture the very goods mentioned in the declaration and that, so long as he makes use of the inputs in the manufacture of any goods which are not exempted from tax, he cannot be penalised. The object of sub-section (2)(iii) is quite simple and clear; the resultant manufactured goods by making use of the inputs purchased against a declaration ought to be any goods which are not exempted from tax; so that in all probability the said manufactured goods may earn some tax revenue to the State under the Act. However, it is not open to the purchaser to contend that the inputs purchased were used in the manufacture of an intermediate product, which by itself falls within the general category of taxable goods. Mr. Prasad urged that so long as the inputs are "used" in the manufacture of any taxable goods, though, in fact no tax is attracted because, the said goods are again used by the manufacturer in the manufacture of another product, section 5-A(2)(iii) cannot be attracted. State of Haryana Vs. Dalmia Dadri Cement Ltd., was relied. The relevant section of the Punjab Sales Tax Act stated that "taxable turnover" would not include the sales of goods, to any undertaking supplying electrical energy to the public, for use by it in the generation or distribution of electrical energy. The crucial words were "goods for use in the generation or distribution" of electrical energy. The State contended that the goods to get the benefit of this provision are those which are directly used to generate or distribute the energy. Question was, whether cement sold to the Electricity Board, was actually used in the generation or distribution of electrical energy. The Supreme Court observed :

"..... It must be noted that the important words used in the relevant provisions

are "goods for use by it in the generation or distribution of such energy". On a plain reading of the relevant clause it is clear that the expression "for use" must mean "intended for use". If the intention of the Legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually used" or "goods used".

26. Again, it was held :

"We are, therefore, of the view that the real question which we are called upon to determine is whether, in the present case, the cement supplied was intended for use directly in the generation or distribution of electrical energy. If it was so intended, the exemption was attracted but not otherwise. The certificates which we have referred to earlier issued by the Board clearly show that the intention of the Board was that the cement should be used for a purpose directly connected with the generation or distribution of electrical energy. There is no material to show that the certificates were false certificates given by the Board, having another use in mind, or that they were fraudulently obtained by the assessee in collusion with the Board. The mere fact that some of the cement supplied was, in fact, used by the Board for activities not directly connected with the generation or distribution of electrical energy cannot make any difference regarding the availability of the exemption."

27. We do not think this decision helps the contention of the petitioner. Intention of the purchaser in the said case was quite manifest and the assessee sold the cement acting on the basis of the said apparent intention; there was no intention to evade the tax at all. In fact, the observations of the Supreme Court, if strictly applied, would run counter to the petitioner's claim in the instant case, if the test of intention is to be applied.

28. There can be no doubt that HDPE fabric is a "textile" and therefore falls within the category of exempted goods. "All varieties of textiles" are exempted as per entry 8-A of the Fifth Schedule The State of Tamil Nadu Vs. Polyweb Private Ltd., Therefore, to the extent the plastic granules are used in the manufacture of HDPE fabrics, section 5-A(2)(iii) would be attracted. However, the manufacturing activity of the petitioner did not stop with the manufacture of the fabrics. A part of the fabrics produced were again utilised to manufacture "HDPE sacks". They are held to be taxable under entry 118 of the Second Schedule [vide National Fibres v. State of Karnataka [1990] 79 STC 383 (Kar). To the extent the plastic granules were made use of in the process of manufacturing this ultimate product called "HDPE sacks", the petitioner cannot be penalised by invoking section 5-A(2)(iii), because to that extent HDPE fabrics are manufactured in the process of manufacturing the sacks, which are manufactured in the State for sale.

29. Penalty imposed on the petitioner ignoring the turnover relating to HDPE

sacks, therefore, has to be modified.

30. From the order of the Deputy Commissioner of Commercial Taxes it is clear that the turnover relating to the sale of sacks is Rs. 18,90,180.45. The turnover relating to the sale of fabrics, which are exempted goods, is Rs. 42,63,351.12. While imposing penalty he has held that the penalty should be only one time of the tax leviable and consequently he directed the assessing authority to issue revised demand notice. In view of our finding that HDPE sacks are taxable goods and therefore penalty u/s 5-A is not attracted to that extent, the assessing authority is directed to further reduce the penalty proportionately.

31. Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, is a decision of the Supreme Court which was also relied upon by Mr. Prasad. The expression used by the Legislature, which was considered by the Supreme Court, was "for use in the manufacture of goods for sale". The Supreme Court pointed out that the sale need not be within State or to any particular individual and that the Legislature had designedly abstained from using any words of limitation indicating that the sale should be by the registered dealer manufacturing the goods.

32. There can be no doubt that the same observation could be applied to the construction of the similar words in section 5-A(1). The present case does not involve the application of the said construction at all. Already we have observed that, so long as the purchasing dealer purchases the inputs for use by him as a component part or raw material of any other goods which he intends to manufacture inside the State, irrespective of the fact whether the manufactured goods would be thereafter sold by him or others, sub-section (1) of section 5A would be attracted.

33. Before concluding, it is necessary to refer to another decision of this Court in *Kishindas Agencies v. State of Mysore* [1974] 33 STC 65. In the said case the court was concerned with section 5(3A) of the Act. The assessee was manufacturing "felt washers" which were used as components in the manufacture of "micro filters" and claimed that only concessional rate of tax ought to be levied. Micro filters formed an identifiable constituent of motor vehicles. The assessee claimed that felt washers also should be considered as a component part of the motor vehicles. This contention was rejected by the Bench. At page 67 it was observed :

"The expression "component part", according to the explanation means, an article which forms an identifiable constituent of the finished product and which along with others goes to make up the finished product. In the instant case, the Motor Industries Company who purchased "felt washers" manufactured by the assessee are the manufacturers of "micro filters". It is common ground that "micro filters" form an identifiable constituent of motor vehicles and, therefore, come under serial No. 72 of the Second Schedule which reads : "Component parts of motor vehicles". "Micro filters" manufactured by the Motor Industries

Company, therefore, fall within serial No. 72 of the Second Schedule. "Felt washers" manufactured by the assessee are not component parts of motor vehicle. Component parts of the articles falling under serial No. 72 of the Second Schedule do not come either under serial No. 72 or under any other item in the Second Schedule. They cannot be brought under serial No. 72 because they cannot be identified as parts of a motor vehicle at that stage of manufacture. Sri Sarangan, learned counsel for the assessee, contended that "felt washers" come under serial No. 73 of the Second Schedule. This Court in *A. K. Swamy and Brothers v. State of Mysore* [1970] 25 STC 227 Mys has held that "from the language of serial No. 73 of the Second Schedule, it appears to us that the Legislature had in mind the case of articles which are ordinarily used for one purpose, but by alteration made or used for a different purpose, viz., as parts and accessories of motor vehicles, and it is to such articles that serial No. 73 of the Second Schedule applies". In view of the said decision, the said contention of the learned counsel has to be rejected.

From the scheme of the Act it appears to us that the Act does not contemplate the grant of the benefit of section 5(3A) to a dealer who manufactures and sells a component part of a component part of a finished product."

34. Above observation was relied upon by the learned Government Advocate to contend that plastic granules in the instant case cannot be considered as a component part or a raw material of the ultimate product, whether it is a fabric or the sacks since plastic granules could not be considered as the raw material of the tapes only.

35. The decision in *Kishindas Agencies case* [1974] 33 STC 65 (Mys) is based on the language used in the relevant provisions involved in the said decision. In the instant case before us the purchaser of the plastic granules has to necessarily use them in the process of manufacturing HDPE fabrics or HDPE sacks. Here, we are not concerned with the fact whether the input purchased has to be an identifiable component part. Here we are concerned with the nature of the input purchased and its user as a raw material while manufacturing the ultimate product inside the State, the manufacture being done by making use of the plastic granules, purchased; without such a user, the salable product cannot be manufactured at all.

36. For the reasons stated above, we allow this revision petition partly. The orders of the Deputy Commissioner of Commercial Taxes and of the Appellate Tribunal are modified with a direction to reduce the penalty to the extent of the turnover relatable to HDPE sacks.

37. Petition partly allowed.