
(2008) 02 OHC CK 0057
In the Orissa High Court

South Eastern Coal Fields Limited

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8

Citation : (2008) 105 CLT 396 : (2008) 1 OLR 407 : (2008) 14 VST 298

Hon'ble Judges : A.K. Ganguly, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—In this writ petition the petitioner challenges the revisional order dated 13.3.1992 passed by the Addl. Commissioner of Sales Tax, Orissa (hereinafter called as the "revisional authority") in Revision Case No. SA.517/91-92, confirming the order dated 30.10.1989 passed by the Sales Tax Officer (hereinafter called as "the S.T.O."), Sambalpur-III Circle, Jharsuguda, imposing penalty of Rs. 37,00,000/-under Section 10A of the Central Sales Tax Act, 1956 (hereinafter referred to as the "C.S.T. Act").

2. In nutshell, the background facts which are relevant for the purpose of dealing with this writ petition are as follows:

The petitioner is a Company incorporated under the Companies Act, 1956 having its registered office at Seepat Road, Bilaspur in the State of Madhya Pradesh and is a subsidiary of Coal India Ltd. It has an unit in Brajarajnagar in the district of Sambalpur (Orissa) and it is a Government of India undertaking. The business of the petitioner is to extract coal from the Mines both underground and open cast and to effect sale thereof. To carry on its business the petitioner registered itself both under the Orissa Sales Tax Act, 1947 (hereinafter referred to as "the O.S.T. Act") and C.S.T. Act bearing Registration No. SA-III-848 and SA-IIIC 561 respectively.

The petitioner by its petition dated 30.9.1982 sought for an amendment of

Registration Certificate for incorporating, Trucks, Dumpers, Tippers, Front and Leaders, Jeeps, Fork Lift Trucks, Tyres, Tubes and their spares of various description required for its mining operation. In this regard, the petitioner filed a petition dated 8.3.1982 vide Annexure-2 explaining to the registering authority the purpose for which those goods were required to be included in the Registration Certificate. Thereafter, the learned S.T.O. allowed the prayer for amendment of the Registration Certificate for inclusion of the aforementioned goods in the Registration Certificates.

Subsequently a notice u/s 10A of the C.S.T. Act bearing No. 8662 dated 21.10.1989 vide Annexure-3, was issued to the petitioner asking it to show cause why penalty u/s 10A of the C.S.T. Act shall not be imposed on it as it had purchased several articles worth Rs. 2,60,32,996.14 during the period from 1986-87 to 1988-89 on the strength of Central Declaration forms, which were not specified in the Registration Certificate. Pursuant to the said notice the petitioner appeared before the S.T.O. on 30.10.1989 and produced the relevant records, documents and papers and books of accounts. Before the learned S.T.O. it was contended that the goods purchased were duly specified in the Registration Certificate and that the petitioner had not contravened any provisions of the C.S.T. Act. The petitioner also filed written submission bearing Letter No. LOCIP/STR/54/597 dated 30.10.1989 vide Annexure-4 explaining therein that all the articles amounting to Rs. 2,60,32,996.14 as stated in the show cause notice were completely covered under the C.S.T. Act. In the said letter the petitioner also stated the nature of use of the goods purchased under the strength of "C form.

The S.T.O. on 30.10.1989 passed the impugned order of penalty u/s 10A of the C.S.T. Act levying the penalty of Rs. 37,00,000/- on the ground that the dealer after purchasing the goods for any of the purposes specified in Clause (b) or Clause (c) or Clause (d) of Sub-section (3) of Section 8 failed without reasonable excuse to make use of the goods for any such purpose and thereby committed the offence coming within the scope of Sub-section (d) of Section 10 of the C.S.T. Act.

3. Being aggrieved by the order dated 30.10.1989 passed by the S.T.O. u/s 10A of the C.S.T. Act, the petitioner preferred a revision u/s 23(4) of the O.S.T. Act read with Rule 22 of the C.S.T.(Orissa) Rules, before the Commissioner of Sales Tax. In the said revision, the revisional authority by order dated 13.3.1992 confirmed the order of imposition of penalty of Rs. 37,00,000/- passed by the S.T.O. holding that the petitioner was guilty of the offence under Clause (4) of Section 10 of the C.S.T. Act.

4. Learned counsel appearing on behalf of the petitioner vehemently argued that both the S.T.O. and the revisional authority have committed serious error of law by not issuing notice to the petitioner to show cause in respect of commission of offence alleged u/s 10(d) of the C.S.T. Act before imposing penalty u/s 10A of the C.S.T. and holding that the petitioner was guilty of an offence coming under

the scope of Sub-section (d) of Section 10 of the C.S.T. Act. He further submitted that the penalty proceeding was initiated on the allegation of commission of offence under Clause (b) of Section 10 of the C.S.T. Act, but penalty was imposed for commission of offence under Clause (d) of Section 10 of the C.S.T. Act. Accordingly to the petitioner non-issue of a show cause notice in respect of an offence u/s 10(d) of the C.S.T. Act had caused serious prejudice to the petitioner which vitiated the entire (sic). The revisional authority has committed error of law by holding that the petitioner had been issued with show cause notice u/s 10(d) of the C.S.T. Act. The further challenge of the petitioner is that both the S.T.O. and the revisional authority have committed error of law while coming to the conclusion that the disputed goods purchased under the strength of "C Declaration Forms were not utilized for the purpose for which those were purchased. In support of his contention, learned counsel for the petitioner has relied on judgments of the Hon'ble Supreme Court in the case of Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar and Ors. reported in (1965) 16 STC 259 and in the case of Chowgule and Co. Pvt. Ltd. and Anr. v. Union of India and Ors. reported in (1981) 47 STC 124. He also contended that mens rea being an essential ingredient of the offence u/s 10 of the C.S.T. Act burden lay on the S.T.O. to establish that the petitioner had deliberately and consciously misutilised the goods. In support of his contention he relied on a decision of the Hon'ble Apex Court in the case of Hindustan Steel Ltd. v. The State of Orissa reported in (1970) 25 STC 211. According to him in the present case neither the S.T.O. nor the revisional authority had recorded any such finding, in the absence of such finding the entire proceeding has been vitiated. He further submitted that the opposite parties having accepted the statements of the petitioner furnished in Form V about use of "C Forms in terms of Rule 6 of the C.S.T. (Orissa) Rules, 1947 and having issued blank "C Forms, the same assessing officer was to be estopped from taking a different stand in the penal proceeding.

5. Per contra, the learned counsel appearing on behalf of the Revenue strenuously argued that the show cause notice issued to the petitioner did not contemplate an allegation that the petitioner being a registered dealer had falsely represented when purchasing any class of goods that goods of such class were covered by it's certificate of registration. He emphasized that show cause notice was in fact issued by the S.T.O. to the petitioner for committing an offence under Clause (d) of Section 10 of the C.S.T. Act. He further argued that that in response to the show cause notice the petitioner appeared before the S.T.O. and submitted written explanation. In the said explanation, the petitioner explained how those purchased goods were used by it. The S.T.O. after verifying the books of accounts and connected records passed a reasoned order on 30.10.1989 holding that the petitioner after purchasing the goods for the purpose specified in Clause (b) of Section 8(3) failed without reasonable excuse to make use of the goods for such purpose and thereby was guilty of offence under Clause (d) of Section 10 of the C.S.T. Act. He further argued that the S.T.O. has rightly applied

the ratio of the judgment of the Hon'ble High Court of Madhya Pradesh in the case of Indra Singh and Sons Private Ltd. v. Sales Tax Officer, Raigarh Circle, Raigarh reported in (1962) 13 S.T.C. 270, which has been subsequently confirmed by the Hon'ble Supreme Court in (1966) 17 STC 510. However, in concluding his argument the learned counsel for the Revenue submitted that since the impugned show cause notice was issued by the S.T.O. alleging that the dealer-petitioner was guilty of offence under Clause (d) of Section 10 of the C.S.T. Act, the imposition of penalty u/s 10A holding that the petitioner committed offence under Clause (d) of Section 10 of the C.S.T. Act was valid.

6. It is not disputed that the S.T.O. has imposed penalty to the tune of Rs. 37,00,000/- under Section 10-A of the C.S.T. Act on the ground that the petitioner is guilty of an offence under Clause (d) of Section 10 of the C.S.T. Act. That is why in the concluding paragraph of his order, the S.T.O. has held as follows:

...I consider it reasonable and judicious to impose a lump sum penalty of Rs. 37,00,000.00 (Rs. 37/-laks) u/s 10A of the C.S.T. Act their having contravened the provision laid down u/s 10(d) reads with the provisions u/s 8(3)(b) of the C.S.T. Act....

This order of the S.T.O. has been upheld by the revisional authority.

7. On the above backdrop, the questions which fall for consideration in this case are as follows:

(i) whether the show cause notice dated 21.10.1989 issued u/s 10A of the C.S.T. Act vide Annexure-3 alleges offence contemplated under Sub-clause (b) or Sub-clause (d) of Section 10 of the C.S.T. Act.

(ii) Whether the order of penalty dated 30.10.1989 passed by the S.T.O. u/s 10A of the C.S.T. Act and the order of the revisional authority dated 13.3.1992 confirming the said order of the S.T.O. holding that the dealer-petitioner was guilty of an offence under Clause (d) of the C.S.T. Act are legally sustainable in absence of a show cause notice giving reasonable opportunity to the dealer-petitioner to explain the alleged offence under Clause (d) of Section 10 of the C.S.T. Act.

8. To deal with these issues, it is necessary to quote the relevant provisions of Section 10, 10A of the CST Act and also the impugned show cause notice dated 21.10.1989 issued u/s 10A of the C.S.T. Act, which are reproduced below:

10. Penalties-

If any person

(a) xx xx xx(aa) xx xx xx (b) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration;

(c) xx xx xx (d) after purchasing any goods for any of the purposes specified in Clause (b) or Clause (c) or Clause (d) of Sub-section (3) of Section 8 fails, without reasonable excuse, to make use of the goods for any such purpose;

(e) xx xx xx (f) xx xx xx he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

10A. Imposition of penalty in lieu of prosecution -

(1) If any person purchasing goods is guilty of an offence under Clause (b), or Clause (c), or Clause (d) of Section 10, the authority who granted to him or, as the case may be, is competent to grant to him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and a half times the tax which would have been levied under Sub-section (2) of Section 8 in respect of the sale to him of the goods, if the sale had been a sale falling within that sub-section;

Provided that no prosecution for an offence u/s 10 shall be instituted in respect of the same fact on which a penalty has been imposed under this section.

NOTICE u/s 10A OF THE C.S.T. ACT. No. 8662/CT. Dated 21.X.89

To M/s. South Eastern Coal Fields At/P.O. Brajarajnagar, Dist. Sambalpur SAIIC-561. Whereas it appears to me that you have purchased several articles worth Rs. 2,60,32,996.14 as detailed in the statement during the period from 1986-87 to 1988-89 on the strength of Central Declaration forms, but the goods purchased are not specified in your registration Certificate issued in favour of you and have contravened the provisions under the C.S.T. Act.

You are hereby required to appear in person to show cause as to why penalty will not be imposed u/s 10A of the C.S.T. Act and produce relevant books of accounts in support of your contention before the undersigned in this office at Jharsuguda on 30.10.89 at 11 A.M. the event of your failure, penalty will be imposed without any further reference to you.

Sd/- . Sales Tax Officer, Sambalpur III Circle, Jharsuguda 20.10.89

9. The crux of the issue in this case is the above show cause notice dated 21.10.1989. There is no reference to either clause (b) or Clause (d) of Section 10 of the C.S.T. Act in the show cause notice. From the language used in the said show cause notice it is to be ascertained whether the allegations are in relation to infringement covered by Clause, (b) or Clause (d) of Section 10 of the C.S.T. Act.

10. The petitioner's case is that a plain reading of the show cause notice reveals that the same has been issued alleging commission of offence under Clause (b) of Section 10 of the C.S.T. Act. Both in the writ petition and in the rejoinder the

petitioner has emphasized the above point.

11. According to the learned counsel for the revenue, the show cause notice has been issued alleging that the petitioner was guilty of offence under Clause (d) of Section 10 of the C.S.T. Act. In paragraph-8 of the counter affidavit filed by the Revenue, it is stated that the word "specified" used by the Sales Tax Officer in the show cause notice is to be understood in the context of the registration certificate issued under the C.S.T. Act. It should be meant as "specified" for the purpose of Sub-sections (1), (3) and (4) of Section 8 of the C.S.T. Act and should not be misunderstood as word "mentioned". Learned counsel for the Revenue tried a lot to impress upon this Court that the impugned show cause notice was issued by the S.T.O. requiring the petitioner to show cause as to why penalty should not be imposed on the petitioner as it was guilty of an offence under the provisions of Section 10(d) of the C.S.T. Act.

12. We are unable to accept this contention of the learned counsel appearing on behalf of the Revenue. In the entire show cause notice, there is no mention of Sub-sections (1), (3) and (4) of Section 8 of the C.S.T. Act. It goes without saying that a show cause notice which is issued seeking a reply from the dealer before imposing penalty on him for breach of any statutory provision must be in unambiguous and clear language. It should not be worded in such a manner that one shall be required to derive a clear idea of the case which he has to answer. If there is anything in the mind of any authority issuing show cause notice the same should be translated in clear words and must find place in the notice so as to enable an affected person/ dealer to know the exact allegations raised against him on the basis of which he will give his reply. A plain reading of show cause notice as quoted above, clearly shows that the show cause notice was issued alleging that the petitioner had purchased several articles worth Rs. 2,60,32,996.14 during the period from 1986-87 to 1988-89 on the strength of Central Declaration Forms which were not specified in the Registration Certificate of the petitioner and by that the petitioner contravened the provisions of the C.S.T. Act. The contents of the show cause notice clearly show that the allegations are only in relation to the infraction covered by Clause (b) of Section 10 of the C.S.T. Act. Thus no show cause notice was issued by the S.T.O. affording reasonable opportunity to the petitioner to show cause why it should not be held guilty of offence under Clause (d) of Section 10 of the C.S.T. Act, before imposing penalty of Rs. 37,00,000/- u/s 10A of the C.S.T. Act holding that the petitioner was guilty of an offence under Clause (d) of Section 10 of the C.S.T. Act. This amounts to violation of basic principles of natural justice as well as statutory requirement provided u/s 10A of the C.S.T. Act. There was no occasion for the petitioner to meet the allegation of committing offence under Clause (d) of Section 10 of the C.S.T. Act. Such a course is not permissible.

13. In that view of the matter, we are of the opinion that without calling upon the dealer-petitioner to explain its stand on the question of commission of offence under Clause (d) of Section 10 of the C.S.T. Act, imposition of penalty u/s 10A,

holding the dealer-petitioner guilty of an offence under Clause (d) of Section 10 is not sustainable.

14. This Court finds that the S.T.O. and the revisional authority in their order have laboured hard to establish that the petitioner was guilty of an offence under Clause (d) of Section 10 of the C.S.T. Act. Since the show cause notice itself suffers from the basic infirmity as pointed out above, the orders of the S.T.O. and revisional authority cannot cure the same. If the Revenue authorities are so advised, they may initiate fresh proceeding by issuing proper show cause notice indicating the allegation of offence under Clause (d) of Section 10 of the C.S.T. Act to the petitioner, if any, in accordance with law. It is made clear that if such a proceeding shall be initiated, the Revenue authorities shall afford reasonable opportunity of being heard to the petitioner as contemplated in Section 10A of the C.S.T. Act.

In the result, the writ petition is allowed and the order passed by the S.T.O. and the revisional authority under Annexures-5 and 6 respectively are quashed. There shall be no order as to costs.

A.K. Ganguly, C.J.

15. I agree.