(2014) 06 AP CK 0023

In the Andhra Pradesh High Court

Case No : TREVC Nos. 61, 63, 64 and 65 of 2014

State of Andhra Pradesh — APPELLANT

Vs

The KCP Limited — RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 10, 7, 8(1), 8(3)(b)

Citation : (2014) 59 APSTJ 6

Hon'ble Judges : M. Satyanarayana Murthy, J;Ashutosh Mohunta, J

Bench : Division Bench

Advocate : B. Venkatadri, Special Standing Counsel, Advocate for the Appellant; Challa Gunaranjan, Advocate for the Respondent

Judgement

M. Satyanarayana Murthy, J.—All these revisions filed by revenue against the impugned common order dated 15-09-2011 in T.A. Nos. 637, 638, 639, 640 of 2002 and 45 of 2003 passed by Sales Tax Appellate Tribunal, Andhra Pradesh, Visakhapatnam Bench (for short, ''the tribunal''). The respondent is a registered dealer on the rolls of ACTO, Macherla Circle, Guntur - II Division, manufacturer of cement and reported turnover of the business to ACTO. The ACTO, Macherla Circle, levied penalty on the ground that diesel purchased against C forms was misused. Aggrieved by the order of the ACTO, the respondent-assessee herein filed appeal before Appellate Deputy Commissioner (CT), Guntur, and the same was dismissed. Aggrieved by the orders of the ADC (CT), Guntur, the appellant preferred appeal before the tribunal, whereunder the contention of the respondent was upheld and allowed the appeal holding that diesel was not misused and it was used only for manufacturing purpose. The assessee engaged in manufacture and sale of cement and purchased diesel to utilize for captive power generation in manufacturing of cement. The assessee used diesel for transportation in vehicles such as tippers for transportation of limestone to factory from mines for manufacturing cement. Diesel was also being used for maintenance of lift which was used by technical persons for checking kiln as and when required.

Factory vehicles also used diesel oil for transportation of raw material like coal, laterite from stockyards to manufacturing place. Vehicles like jeeps and other vehicles utilized diesel for taking and bringing back the staff working in mines. Thus, the assessee utilized diesel oil for the above purposes which is a manufacturing activity but having found, the revenue imposed penalty exercising power under Section 10 of Central Sales Tax Act, 1956 (for brevity, ''the Act of 1956''), on the ground of misuse of purchased diesel against ''C'' forms.

It was the contention before the tribunal that transportation of workers from mines etc., is a manufacturing process and that on interpretation of the word manufacture is to mean conversion of raw material into finished goods whatever required during that process, they could be purchased against C forms. However, the CTO did not accept the contention and concluded that diesel purchased against C forms could be used for generating electricity and other manufacturing process but not for other purposes and the same was challenged before the tribunal. It is further contended that the CTO erroneously referred G.O.Ms. No. 625 Revenue dated 31-07-1996, which was issued for concessional rate of tax on diesel, and that the assessee has no mens rea in purchasing diesel against C forms and utilizing the same in the course of manufacturing of cement. Thereby, the order of CTO is illegal and prayed to set aside the order.

2. The tribunal, upon appreciation of law laid down by Apex Court in several decisions, held that the petitioner is entitled to utilize diesel though purchased against C forms since transportation of workers from mines to factory etc., is a part of manufacturing process and set aside the order passed by CTO.

3. Aggrieved by the impugned common order, the revenue preferred the present revisions on various grounds mainly contending that the principles laid down in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, ; Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, and Chowgule & Company Private Limited and Another vs. Union of India and others 47 STC 124 SC have no application. Apart from that, the goods should be purchased by the assessee for being intended for use as machinery, plant, equipment, tools, spare parts, stones, accessories, fuel or lubricants since those parts alone closely connected with the main activity of manufacturing of cement but using diesel, purchased against C forms, for jeeps and other vehicles for taking and bringing back staff working in the mines is against the principles laid down in Coastal Andhra Power Limited, Nellore vs. State of Andhra Pradesh 52 APSTJ 23 (AP) and that the principle laid down J.K. Cotton Spinning & Weaving Mills Company Limited (supra) was distinguished by the Supreme Court in later judgment.

4. Learned Special Standing Counsel for Commercial Taxes mainly contended that the principle laid down in J.K. Cotton Spinning & Weaving Mills Company Limited (supra) has no application to the present facts of the case. Even the principle laid down in Indian Copper Corporation Limited (supra) is not applicable to the present facts of the case and he placed reliance on the judgment rendered

in Indra Singh & Sons Private Limited vs. Sales Tax Officer, Raigarh Circle, Raigarh and Others 17 STC 1966 SC 510.

5. Learned counsel appearing for the assessee contended that the word manufacture means every work for conversion of raw-material into finished goods including transportation of workers from mines to factory etc., and placed reliance on Commercial Taxes Officer, Circle D, Jaipur Vs. Rajasthan Electricity Board, Jaipur, .

6. Considering rival contentions and perusing material available on record including grounds of revision, the question of law to be decided is as follows:

"Whether diesel purchased against C forms can be used in vehicles for transporting workmen to mines and back?"

7. The only endeavour of the revenue is that diesel purchased against C forms shall be used only for manufacturing of cement but admittedly used for vehicles like jeeps and others as fuel for taking and bringing back staff working in the mines. This part of transportation of workmen cannot be construed as part of manufacturing process and thereby violated the terms of C forms as the diesel used or utilized for transportation of workmen. In support of his contention, he relied on Indra Singh & Sons Private Limited (supra), wherein a Full Bench of Apex Court held that

"The expression "in mining" in Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, did not mean in the business of mining. Goods which could be included in the list had to be goods intended for use only in the actual activity of mining, which activity would include raising the coal and storing it in heaps or in warehouses. The expression could not be extended to include delivering the coal to a siding at the railway station. Spare parts of motor vehicles, including tyres and tubes, and motor trucks could not be included in the certificate of registration.

Furniture and sanitary fittings were not intended to be used in mining, though they were likely to facilitate the business of mining. They could not therefore be included in the certificate of registration."

In the facts of the above decision, the assessee applied for registration as a dealer under Section 7 of the Act of 1956. In that application, the business was described as "wholly mining and wholesale distribution of coal mainly". But, after consideration, the authorities under the Act passed orders and ultimately, it reached Supreme Court, wherein it was held that spare parts of motor vehicles including tyres and tubes and motor trucks could not be included in the certificate of registration since mining is having restricted meaning under Rule 13 of the Act of 1956. The Apex Court distinguished the principle laid down in Indian Copper Corporation Limited (supra) relied on by learned counsel for the appellant before the tribunal and finally concluded at page No. 514 that

"Transportation of coal is not a part of mining in view of Rule 13 of Central Rules and to construe the same as mining activity, the goods must be intended for use only in the actual activity of mining which would include raising the coal and storing it in heaps or in warehouses and the expression cannot be extended to include delivering the coal to a siding at the railway station."

If this principle is applied to the present facts of the case, transportation of workers from mining to factory etc., using diesel in jeeps and trucks cannot be construed as part of manufacturing process of cement.

8. Refuting the contentions of learned Special Standing Counsel for Commercial Taxes, learned counsel appearing for the assessee placed reliance on Commercial Taxes Officer, Circle D, Jaipur (supra) and in para Nos. 2 and 4, the Apex Court discussed the principle laid down in Travancore Tea Estates Co. Ltd. Vs. State of Kerala, . In the facts of the above judgment, it is held that trucks, trolleys, trailers and the like, but not passenger vehicles, as also their accessories and spare parts, tyres and tubes could be purchased by the respondent Board at the concessional rate of tax prescribed under Section 8(1) of the Act of 1956 and that to make things clear, the respondent Board was entitled to have its registration certificate altered to include "tools and plants, including vehicles and other transportable goods, including their spare parts, tubes and tyres. In the facts of the above judgment, the assessee was engaged in the business of generation and distribution of electricity and what is used in the distribution of electricity or intended for such use falls within the scope of Section 8(3)(b) read with Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957. Finally, the Apex Court held as follows:

"If a process or activity was so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in Rule 13 would qualify for special treatment. The motor vehicles aforementioned and soap/paints, raincoats and battery cells, to the extent aforementioned, are integrally related to the distribution of electricity and their non-use would make distribution commercially inexpedient."

If the principle laid down in the above judgment is applied to the present facts of the case, the assessee may seek certificate of registration altered to include tools and plants etc., except passenger vehicles. So, vehicles, if any, used in manufacturing process like shifting of coal and raw material from mines to factory is a part of manufacturing process. If it is for transportation of workmen in jeeps and other vehicles, though it is connected with process, it cannot be included in the certificate of registration in view of the settled principles of law referred above. Therefore, any diesel utilized for workmen transport vehicles, though from mines to factory etc., it cannot be said to be a manufacturing process though indirectly connected with it.

9. The tribunal believed that transportation of workers from mines to factory etc., is an integral part of manufacturing process. In view of the principles laid down

in the decisions referred supra, passenger vehicles cannot be included in the certificate of registration. In such a case, diesel used for passenger vehicles cannot be said to be for manufacturing process for the reason that diesel purchased under C forms was used for transportation of workers in passenger vehicles. Hence, the diesel used in jeeps and other passenger vehicles is liable for taxation as per the provisions of the Act of 1956 but not entitled to claim any concessional rate. The Government of India (Ministry & Finance Department of Economic Affairs), in their letter No. 9(88) ST/57 dated 12-11-1958, have clearly specified the goods to be purchased by each industry under Section 8(3)(b) of the Act of 1956. Under the head "CEMENT" (Form No. 12), the following goods are specified:

1. Fuels

1) Charcoal

2) Firewood

3) Fuel oils

4) Coal gas and

5) Other fuels (eg) coal, coke etc.,