(2007) 03 AHC CK 0250

In the Allahabad High Court

The Commissioner, Trade Tax APPELLANT

Vs

S/S Subham Cane Crusher RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:
Central Sales Tax Act, 1956 — Section 8

Citation : (2009) 20 VST 104

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Acf") are directed against the order of Tribunal dated 24.02.2001 relating to the assessment year 2000-01.

2. Dealer/opposite party (hereinafter referred to as "Dealer") was involved in the manufacturing of khandsari, gur ruskat etc. and was registered both under the U.P. Trade Tax Act as well as Central Sales Tax Act. Dealer appears to have manufactured the gur in its factory and applied for the registration of High Speed Diesel Oil under Central Sales Tax Act for the purchase at concessional rate of tax on the ground that they were required for the production of gur. Assessing authority denied the benefit of High Speed Diesel Oil on the ground that High Speed Diesel Oil was being used in the operation of the generator for the generation of the electricity. Order of the assessing authority has been upheld in first appeals. Tribunal by the impugned order allowed the appeals and held that the dealer is entitled for the registration of High Speed Diesel Oil. It has been held by the Tribunal that generator is machinery as held by this Court in the case of Tetragaon Chemic (P) Ltd., v. State of U.P. and Anr., Ghaziabad reported in 1998 UPTC, 12 and Snow White Industries, Rishikesh v. Commissioner of Trade Tax, reported in 1999 UPTC, 130. Tribunal also relied upon the Division Bench decision of Orissa High Court in the case of Mahavir Prasad Jain and Ors. v. State of Orissa and Ors. reported in 67 STC, 376 wherein in similar circumstances

diesel used in the generator required for the generation of electricity for use in its factory held entitled for the registration of the High Speed Diesel Oil to avail the benefit o!" concessional rate of tax u/s 8(3)(b) of Central Sales Tax Act (hereinafter referred to as "Central Act"). Tribunal held that High Speed Diesel Oil is a fuel and, therefore, it is eligible for the benefit of concessional rate of tax.

3. Heard Learned Standing Counsel. Despite the service of notice, no one appears on behalf of the opposite party.

4. Learned Standing Counsel submitted that High Speed Diesel Oil is required for the operation of generator for the generation of the electricity and is not directly used in the manufacturing and thus, is not eligible for the registration for the purpose of concessional rate of tax. He further submitted that none of the authorities have recorded the finding that whether the electricity generated from the generator was used in the production of the manufactured goods. He submitted that unless the generator is used in the production, the diesel engine used for the generation of electricity is not eligible for the benefit of concessional rate of tax.

I have perused the order of Tribunal and the authorities below.

5. Generator is held as machinery by the Apex Court in the case of COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., and by this Court in the case of Snow White Industries, Rishikesh v. Commissioner of Trade Tax (Surpa).

6. It is useful to refer Sections 8(1), 8(3)(b) of Central Act and Rule 13 (hereinafter referred to as "Rule"), which read as follows:

Section 8. Rate of tax on sales in the course of inter-State trade or commerce.

(1). Every dealer, who in the course of inter-State trade or commerce.

(a) Sells to be Government any goods; or

(b) sells to a registered dealer other than the Government, ?- goods of the description referred to in sub-section (3) shall be liable to pay tax under this Act, which shall he [four percent] of his turnover [or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower.]

Section 8(3)(b) The goods referred to in clause (b) of Sub-section (1)-

(a) Omitted.

(b) are goods of the classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or [in the telecommunications network or I in mining or in the generation or distribution of electricity or any other form of power.

Rule 13: The goods referred to in clause (b) of Sub-section (3) of Section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, [machinery, plant] equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power.

7. u/s 8(3)(b) of Central Act goods required for re-sale and the goods required in the processing or production of the goods for sale or in telecommunication network or in mining or in the generator or distribution of electricity or any other form of power is eligible for the benefit of concessional rate of tax. Rule 13 of the Central Act (Registration of Turn Over) Rules, 1957 says that the goods referred to in clause (b) of sub-section (3) of section 8 which a registered dealer may purchase shall be goods intended for use by him as raw material, processing, materials, machinery, plant and equipment, tools, stores, spare parts, accessories, fuel or lubricants in the manufacturing or processing of goods for sale or in mining or in the generation of electricity or in any other form of power.

8. Perusal of section 8(3)(b) of Central Act and Rule 13 of Rule show that the benefit of concessional rate of tax is available to the goods used in the manufacturing or processing of goods or used in the generation or distribution of the electricity or in any other form of power. The word "in the generation or distribution of the electricity or in any other form of power" is not qualified by the word "for sale". Therefore, any item mentioned in the Rule used in the generation of electricity is eligible for the benefit of concessional rate of tax.

9. Generator was installed in the factory. There is nothing to suggest that the electricity generated in the generator was not for use in the production. Division Bench of this Court in the case of Vam Organic Chemicals Ltd. v. State of U.P. and Ors. reported in 2003 U.P.T.C, 467, held that High Speed Diesel Oil required for the operation of the generator is fuel. In a recent decision the Apex Court in the case of Commercial Taxation Officer v. Rajasthan Taxchem Ltd. reported in AIR 2007 SCW, 757 held that the High Speed Diesel Oil is fuel.

10. In the case of Mohavir Prasad Jain and Anr. v. State of Orissa and Ors. reported in 67 STC, 376, the dealer sought addition of generator and its accessories for the purposes of providing electricity for the manufacture of goods, generators accessories, spare parts and diesel oil for the purposes of running generator. The addition was refused on the ground that when normal conditions prevail, it will not necessitate the use of generator. The Division Bench of the Orissa High Court held that the language of Section 8(3)(b) of the Central Sales Tax Act is wide and it is not open to read it in a restricted manner, as has been done by the Sales Tax Officer. The provision applies, whether the generator is required as the exclusive source of supply of electricity or as a subsidiary one. There is nothing in the provision excluding its applicability to generator, if the same was required as a stand-by measure. The Division Bench, accordingly, directed to include all the items in the registration certificate.

11. In this view of the matter it is held that the High Speed Diesel Oil required for the operation of generator for the generation of the electricity is eligible under Rule 13 of the Rule and u/s 8(3)(b) of central Act for the benefit of concessional rate of tax. Tribunal rightly held so.

12. In the result, both the revisions fail and are accordingly, dismissed.