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(2014) 01 AHC CK 0154

In the Allahabad High Court

Case No : Sales/Trade Tax Revision Nos. 1488, 1494 and 1496 of 2004

Triveni Engineering and Industries Ltd. APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 15-01-2014

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

Citation : (2014) 69 VST 353

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, Senior Advocate assisted by Piyush Agarwal, Advocate for the Appellant

Judgement

Sudhir Agarwal, J.—Heard Sri Bharat Ji Agrawal, senior advocate, assisted by Sri Piyush Agarwal, learned counsel for the revisionist and learned standing counsel for the respondents. The revisionist-assessee, M/s. Triveni Engineering & Industries Ltd. (hereinafter referred to as "the assessee") is engaged in manufacturing and sale of sugar, which is produced from crushing and processing of sugar-cane. Besides sugar, bye-products, which also get produced are molasses, bagasse, etc. All the three revisions relate to assessment years 1998-99, 1999-00 and 2000-01.

2. The assessee purchased diesel against form C u/s 8(3)(b) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act, 1956") and during the period of assessment, had shown use of said diesel in various activities like in generator as fuel, plant and machinery repair and maintenance, sugar bags press mud and bagasse handling, farm equipments'' maintenance and repair, and cane procurement. While assessing authority accepted his claim with regard to consumption of former three items, in respect to farms equipments'' repair and maintenance and cane procurement, it held that two activities do not constitute part of manufacture for which diesel was authorised to be purchased against form C and, therefore, consumption of diesel in the said two activities was

unauthorised hence the assessee is liable to pay penalty u/s 10A for consumption of diesel against these two activities.

3. Vide order dated August 18, 2001, the Assistant Commissioner imposed penalty of Rs. 35,741 in respect to assessment year 1998-99, Rs. 43,32,461 in respect to assessment year 1999-2000 and Rs. 83,452 for assessment year 2000-01.

4. The assessee filed three appeals. All the appeals were dismissed by the first appellate authority, i.e., the Deputy Commissioner (Appeal) II, Trade Tax, Saharanpur vide order dated February 6, 2002 and there against three separate appeals were filed, though decided by common order dated March 19, 2004. The assessee has succeeded partially before the Tribunal who had reduced penalty to Rs. 7,524.43 for assessment year 1998-99, Rs. 11,40,121.35 for assessment year 1999-2000 and Rs. 41,725.92 for assessment year 2000-01. Hence these revisions, wherein the following questions of law have been raised by the assessee:

(i) Whether user of diesel purchased by the assessee against form C for cane procurement, i.e., from sugarcane purchasing centre to factory would amount to violation of purpose for which the said diesel was purchased so as to amount violation of section 10(d), attracting penalty u/s 10A of the Act, 1956?

(ii) Whether user of diesel purchased by the assessee against form C for farm equipments'' maintenance and repair would amount to violation of purpose for which the said diesel was purchased so as to amount violation of section 10(d), attracting penalty u/s 10A of the Act, 1956?

5. The term used in section 8(3)(b) of the Act, 1956 is "for use by him in manufacture or processing of goods for sale", which are relevant for the purpose of present case since other items mentioned therein are not admittedly attracted. The question would be whether the two activities, in respect whereto the Revenue has found the assessee guilty of violation, the purpose, for use of which, diesel was allowed to be purchased against form C, is one authorised or not.

6. In order to understand, it would be appropriate first to examine as to what is the actual way in which the assessee claim aforesaid two activities to constitute part of manufacture and processing of goods.

7. The assessee deals in manufacture and sale of sugar for which sugarcane is the basic raw material. The sugarcane is produced by individual farmers. Sugarcane constitutes basic raw material for the assessee for manufacturing sugar. However, the supply and purchase of sugarcane from farmers is not free, inasmuch as, it is controlled by statute and in Uttar Pradesh, it is regulated by the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "Sugarcane Supply and Purchase Act, 1953").

8. A sugar factory cannot purchase sugarcane from any fanner at its own volition

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but it is bound to purchase sugarcane only from such farmers, who are within a reserved area declared by Cane Commissioner for the purpose of a particular sugar factory, or assigned to it. For the purpose of sale and purchase of sugarcane in reserved or assigned area, the State Government is empowered to regulate it vide section 16 of the Sugarcane Supply and Purchase Act, 1953. In this regard, it has framed rules, namely, the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (hereinafter referred to as "Sugarcane Supply and Purchase Rules, 1954"). The factory owner is required to specify cane purchase centres throughout reserved area/assigned area so that farmers may not be required to transport sugar-cane for long distance and factory owner himself would purchase sugar-cane at those purchase centres and thereafter transport to its factory for its use. At purchase centres, factory owner is also obliged to provide weighment facilities and adequate labour for loading and unloading cane at such purchase centres. This is evident from rules 38, 38A and 39 of the Sugar-cane Supply and Purchase Rules, 1954. The sugarcane purchased by factory owner at purchase centres, therefore, becomes property of factory owner at such purchase centres and therefrom, it has to be transported by him up to the pithead in the factory for the purpose of its crushing.

9. It is not disputed by learned standing counsel that if the sugarcane stored in factory premises itself, at some place, since a very large quantity thereof would be required continuously, and, if it is transported from that storage point to the pithead for crushing purpose, such transportation would form part of manufacture. In that view, I do not find why transportation of sugarcane from purchase centres to factory premises should be excluded from the term "manufacture of sugar". Nothing has been shown to this court so as to pursue to take a different view in the matter.

10. The term "manufacture" has varied meanings and has got various sheds. It has to be considered in the context of item, which is up for consideration. General understanding of term "manufacture" is that it means bringing into existence a new substance. The word "manufacture" implies a change but every change in the raw material is not manufacture.

11. In Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., , the court said that definition of the word "manufacture" makes it clear that every activity in relation to goods not only alter the same but also processing the same has also been included.

12. The term "manufacture" includes any process or part of process for making, altering, ornamenting, finishing, taking, labelling or otherwise drawing or tapping with a view to sell or distribute in the context of a drug. The "manufacture" involves series of processes and includes any process incidental or ancillary to the completion of a manufactured product as held in Union of India (UOI) Vs. Ahmedabad Electricity Co. Ltd. and Others, .

13. In the context of mining of ore, the court in Chowgule and Co. Pvt. Ltd. and

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Another Vs. Union of India (UOI) and Others, , said:

Where a dealer is engaged both in mining operation as also in processing the mined ore for sale, the two processes being interdependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation comes to end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing and if any machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in processing of ore for sale. It is obvious that, in the present case, the mining of ore is done by the assessee with a view to processing the mined ore through the mechanical ore handling plant at the Marmagoa harbour and the entire operation of mining ore and processing the mined ore is one integrated process of which transportation of the mined ore from the mining site to the Marmagoa harbour is an essential part and, in the circumstances, it is difficult to see how the machinery, vehicles, barges and other items of goods used for transporting the mined ore from the mining site to the Marmagoa harbour can be excluded from consideration on the ground that they are not goods used in processing of ore for sale. The decision of this court in Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, , is directly in point and completely supports this conclusion which we are inclined to reach on principle. The assessee in that case was a company which mined copper and iron ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale. . .

(emphasis [Here italicised] added)

14. In J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, , the court said that if a process or activity was so integrally related to the manufactured 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 would qualify.

15. In the present case, sugarcane in its entirety cannot be purchased by sugar factory at its factory premises and under law, it is bound to purchase from the farmers at cane purchase centres. For manufacturing of sugar, crushing of sugar-cane is an integral part and for that purpose, sugarcane has to be transported from its place of storage or where it has been purchased to the point of crushing pit where it has to be off-loaded for crushing. To my mind, this is integrally connected part of process of manufacturing of sugar and therefore diesel purchased against form C if used for cane procurement from centres to factory, it would not amount to violation of purpose for which the said diesel was purchased. The question No. 1, therefore, is answered accordingly.

16. Coming to the question No. 2, farm equipments'' maintenance and repair are also part of activities with respect to research and development so as to maintain a good quality of sugar and also to find out maximum quantity of sugar from per

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quintal sugarcane. Research, development, etc., is also integral part of manufacture and question No. 2 therefore, in my view, deserves to be answered in favour of the assessee.

17. In the result, the revisions are allowed. The impugned order of the Tribunal, taking otherwise view to the extent as above is hereby set aside. A copy of this order shall be transmitted to the Tribunal for passing appropriate order in accordance with law.

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