
(1991) 04 GUJ CK 0026
In the Gujarat High Court
Case No : Sales Tax Reference No. 7 of 1983

Vallabh Glass Works

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-04-1991

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 32, 45(6), 49, 49(2), 50

Citation : (1991) 04 GUJ CK 0026

Hon'ble Judges : S.D. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

S.D. Shah, J.—On being moved by the applicant u/s 69 of the Gujarat Sales Tax Act, 1969, the Gujarat Sales Tax Tribunal has referred the following questions of law for our decision :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in terms of the requirements of entry 53 of the Government notification issued u/s 49 of the Gujarat Sales Tax Act, 1969, "beaters" were not used as machinery, or raw materials or processing materials in the manufacture of sand and in confirming the levy of the purchase tax on that count u/s 50 of the Gujarat Sales Tax Act, 1969 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that keeping in view the requirements of entry 53 of the Government notification issued u/s 49 of the Gujarat Sales Tax Act, 1969, there was a breach of recitals of the declaration in form "Z" when the sand manufactured at Pali factory was used as a further raw material in the manufacture of glass for sale at Vallabh Vidyanagar, and in confirming the levy of purchase tax on that count u/s 50 of the Gujarat Sales Tax Act, 1969 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in concluding that, there was no bona fide belief on the part of the applicant-company, of being eligible to make purchase of "beaters" against form

"Z" and also whether the consequent, conclusion about the absence of reasonable cause within the meaning of section 45(6) of the Gujarat Sales Tax Act, 1969, as drawn by the Tribunal was unreasonable or not ?"

2. The applicant-company, i.e., M/s. Vallabh Glass Works at Pali is a registered dealer and it is a "new industry" holding eligibility certificate from the Commissioner of Industries in terms of entry 53 in. Government notification issued u/s 49 of the said Act. The said company is also registered as a dealer at Vallabh Vidyanagar, Anand. The unit at Pali was holding eligibility certificate and not the unit at Vallabh Vidyanagar.

3. For the accounting year 1974-75 the applicant-company made purchase of "beaters" of the value of Rs. 1,08,716. The said purchases were made free of tax on the strength of certificate in form "Z". Since the applicant failed to comply with the recitals contained in form "Z" the Sales Tax Officer assessed him to purchase tax u/s 50 of the said Act, and he also imposed penalty u/s 45(6) of the said Act.

4. Being aggrieved by the said judgment and order of the Sales Tax Officer, Godhra, the applicant preferred appeal to the Assistant Commissioner of Sales Tax who confirmed the order of the Sales Tax Officer.

5. The applicant carried the matter in appeal to the Gujarat Sales Tax Tribunal. The said second appeal was also dismissed and the order passed by the lower authorities came to be confirmed.

6. On being moved by the applicant to refer certain questions of law arising from its judgment, dated 10th September, 1981, the Tribunal has referred the questions aforesaid for our decision.

7. Section 49 of the said Act deals with exemption of certain class of sales or purchases from the liability of tax. Sub-section (2) of section 49 empowers the State Government to exempt any specified class of sales or of specified sales or purchases from payment of whole or any part of tax payable under the provisions of the Act, if the State Government considers it necessary to do so in the public interest by issuing notification in the official gazette. It was in exercise of this power that the State Government issued Notification dated 29th April, 1970 exempting from the payment of tax to the extent specified in column 3 of the Schedule appended to such notification the class of sales or purchases specified in column 2 of the said Schedule on the conditions, if any, specified against each of such class of sales or purchases in column 4 of the said Schedule. By further Notification, dated 11th November, 1970, entry No. 63 came to be introduced which is relevant for the purpose of this reference and the same is reproduced hereinbelow :

Class of sales or purchases	Exempt- tion	Conditions	whether of whole or part
(1) (2) (3) (4) 53. (1)	Whole of (1)	If the certified manufacturer (2)	
Sales of raw tax has actually used the goods materials,		within the State as raw	

processing materials, processing materi- materials, als, or as machinery in the machinery or manufacture of any goods for packing materi- sale, or as packing materials als by a registered in the packing of goods so dealer to a certi- manufactured. fied manufacturer, who - (2) If the certified manufacturer (a) establishes a has obtained an eligibility new industry, certificate from the Industries Commissioner, Gujarat State, (b) is a regis containing, inter alia, tered dealer that the new industry has not holding a been commissioned on or after recognition 1st April, 1970, in areas u/s beyond 24 kms. from the 32 of the Act municipal limits of cities of or if holding Ahmedabad and Baroda and the recognition 16 kms. from the municipal on surrendering limits of Surat, Bhanagar, it for Rajkot and Jamnagar. cancellation within (3) If the certified manufacturer sixty days furnishes to the selling from the date dealer a certificate in form of the coming "Z" appended hereto into force of declaring, inter alia, that the notification, the goods are required for and use by him within the State as raw materials, (c) is certified by processing materials, or as the Commissioner machinery in the manufacture of of any goods for sale, or as Sales Tax for packing materials in the the purpose. packing of goods so manufactured.

From the relevant portion of the said entry 53 as reproduced hereinabove it becomes clear that in order to be eligible to earn exemption under the said notification, it is necessary, firstly, that it should be a "new industry", secondly, it must be a registered dealer holding recognition u/s 32 of the Act, thirdly, it must be certified by the Commissioner of Sales Tax as a certified manufacturer. When such a certified manufacturer purchases raw materials, processing materials, machinery or packing materials from a registered dealer against form "Z" appended to the said entry 53 such transaction is exempted from liability of whole of tax. However, in order to earn such exemption, the conditions specified in column 4 of the said Schedule are required to be satisfied. From column 4 of the Schedule with respect to entry 53 it becomes clear that in order that the transactions are exempted from payment of tax, following conditions should be satisfied :

- (i) the dealer who claims exemption must be a certified manufacturer;
- (ii) such a certified manufacturer must have purchased goods against form "Z" declaring, inter alia, that the goods purchased by him are required for use by him within the State;
- (iii) such goods are thereafter used by the certified manufacturer actually as raw materials, or processing materials or as machinery;
- (iv) such goods are used by the certified manufacturer as raw materials, processing materials or as machinery in the manufacture of any goods for sale or as packing materials in the packing of goods so manufactured.

8. Since rest of the conditions are not relevant for the purpose of the present reference, we have not referred to condition Nos. 4, 5 and 6 stated in column 4

of the Schedule.

9. At this stage, it would be necessary to refer to form "Z", i.e., prescribed form of certificate to be issued by the certified manufacturer purchasing goods for use in manufacture of goods :

"I of M/s. address do certify that I/the said am/is a registered dealer holding certificate of registration No. dated and also holding a certificate No. dated granted by the Commissioner under Government Notification No. (GHN-687) GST-1070/(S. 49)-(40)-TH dated 11th November, 1970 and that the goods being raw materials, processing materials, machinery or packing materials mentioned in bill/cash memo/invoice No. dated of M/s. will be used by me/the said within the State in the manufacture of any goods or in the packing of the goods so manufactured, namely for sale.

I further certify that the aforesaid certificate was in force on the date of the aforesaid purchase of goods.

Place : Signature : Date :
Status :

A certified manufacturer is required to certify in form "Z" that he is a registered dealer holding certificate of registration and also holding certificate granted by the Commissioner under Government Notification, dated 11th November, 1970 and further that the goods being raw materials, processing materials, machinery or packing materials mentioned in the bill will be used by him within the State in the manufacture of goods or in the packing of any goods so manufactured for sale.

10. At this stage, it will be necessary to make reference to section 50 of the said Act which, inter alia, a, provides that if any specified class of sales or specified sales or purchases is exempted u/s 49 wholly or part of any tax payable under this Act subject to any conditions, then, in the event of breach of such conditions, in respect of any goods so sold or purchased, the seller or purchaser responsible for such breach he liable to pay tax on such specified sale or purchase, as the case may be, to the extent to which it was exempted u/s 49 from the payment of tax. Therefore, if we hold that there is any breach of the conditions or recitals contained in form "Z" by the applicant, it is liable to pay purchase tax u/s 50 of the said Act.

11. Keeping the above provisions of law in mind we shall have to decide the questions of law referred to us for our decision. The goods in question are "beaters" purchased by the applicant from a registered dealer against form "Z". The applicant is, therefore, required to satisfy the conditions aforesaid in order to earn the exemption. Firstly the applicant is a "new industry", secondly, it is a certified manufacturer, thirdly, it has purchased "beaters" against form "Z" issued to selling dealer declaring therein that the "beaters" are required by the applicant

for use by him within the State as raw materials, processing materials or as machinery. Question which is required to be answered at this stage is as to whether the "beaters" which are used by the applicant can be said to have been used by the applicant as raw materials, processing materials or machinery in the manufacture of its ultimate product, namely, "sand".

12. Mr. S. L. Mody, learned advocate appearing for the applicant contends before us that quartz stones are purchased by the assessee. Beaters are used for converting the small pieces of quartz stones into sand and in this process, over a period of 24 hours 70 tones of sand is produced and the beaters which are used for beating or hammering quartz stones get completely worn out. He further submits that during this process beaters get converted into minute particles which were indistinguishable from the sand produced. On the aforesaid process which results in the production of sand, Mr. Mody contends that the beaters are actually used as machinery. He submits that the word "machinery" as occurring in entry 53 shall have to be widely construed since it is an entry granting exemption from tax and any narrow or restricted meaning to the word "machinery" would result in denying the benefit of just exemption to the new industry which is to be established in backward areas. In support of this submission, Mr. Mody, learned advocate appearing for the applicant, relies upon the decision of the Division Bench of this Court in the case of State of Gujarat v. Minu Chemical Pvt. Ltd. reported in [1982] 50 STC 339. It may be stated that in that case the Division Bench was dealing with the claim of exemption under this very notification issued by the State Government. The assessee before the Division Bench was a certified manufacturer who had established new industry within the meaning of this very entry 53(1) of the Government Notification, dated 11th November, 1970. Before the Division Bench the assessee purchased certain articles, namely.

- (a) Deoxidised copper ethyl acetate purification unit with copper kettle and packed column No. 1;
- (b) Copper deoxidised condenser horizontal type 10 M.Z. No. 1
- (c) Resident tank flat bottom and conical top No. 1;
- (d) Aluminium ethyl acetate tank of 10 M. capacity No. 1; and
- (e) Benzene horizontal underground tank capacity 2560 M. x 500 M. long with accessories No. 1.

In the course of assessment proceedings the assessee claimed set-off in respect of the amount of tax paid by it on the purchases of the above articles under rule 42-A of the Gujarat Sales Tax Rules, 1970, on the ground that those articles were "machinery" used by it in manufacturing goods for sale. It may be noted that the requirements prescribed by rule 42-A are now prescribed in column 4 of entry 53. Rule 42-A also employed the words of "raw materials, processing materials and machinery or packing materials used by him in the manufacture of

goods for sale". These very words are used, in condition No. 3 in column 4 of entry 53.

13. In the above case the Division Bench was required to decide as to whether the articles purchased by the assessee can be said to be "machinery". The Division Bench made reference to various meanings of the word "machinery" as given in Webster's New Twentieth Century Dictionary of the English language and the court found the word "machinery" to mean anyone of the following meanings :

- (i) the component parts of a complex machine,
- (ii) machines collectively,
- (iii) any combination of persons or things, the harmonious workings of which result in a desired end, as the machinery of Government.

The court found that in order to be a "machinery" the following factors" must exist, namely :

- (i) a complete and integrated collection of several objects or articles;
- (ii) these objects or articles or parts or members of machine which, when they are assembled, form a complete machine and should interact in unison upon or with each other;
- (iii) some such of those parts which, when they are so assembled with the other necessary parts, would form a complete machine;
- (iv) this interaction is prompted by application of force which may be manual or motive power and that should be with a view to do some specific activity or to obtain specific or definite result.

14. It is, therefore, clear that any contrivance in order to be properly styled as machinery must, by itself or in combination with one or more other mechanical contrivances, by combined movement and on interdependent operation of the respective parts, generate power or evoke, modify, apply or direct natural forces with the end in view of producing a definite and specific result. Therefore, an article to be machinery must either be a complete machine or a number of completed machines or parts or members of a machine which, when they are assembled, form a complete machine. In the case before us the "beaters" which are used by the assessee as parts of crushers they at least play the role of a part of member of a machine. In fact, the function of "beaters" is to beat constantly or hammer constantly the quartz stones into sand. In such a process even the beaters get worn out. Beaters are, therefore, the most essential part of that machine which is being used for the purpose of crushing or grinding quartz stones. Beaters would, therefore, be machinery and we cannot give restricted meaning to the word "machinery" specifically when we construe the word in the context of exemption notification. The object of the said entry is to give benefit to "machinery" in its wider sense so as to include its parts also. Any restricted

meaning to the word "machinery" would render the exemption meaningless because a new industry would be required to pay tax for purchase of essential parts of machine. The very object of exemption would be defeated. We, therefore, hold that the word "machinery" as used in entry 53 must be widely construed. In the case before us the beaters are the most integral part of the crusher or the machine without which quartz stones cannot be crushed.

15. In the alternative, Mr. Mody has also contended that beaters are processing materials. According to Mr. Mody, learned advocate appearing for the applicant, beaters are required to be used for converting quartz stones (raw materials) into sand (final product), and in this process, beaters play an important role in changing or converting quartz stones into sand, and therefore, beaters are processing materials. In view of the fact that we have already found that the beaters are part of machinery, we do not think it necessary for us to decide as to whether the beaters can be said to be processing material. However, we may state that the words "processing material" are used along with "raw material" in the entry. We are, therefore, of the opinion that only that material which is used along with raw material in the process of manufacturing final product can legitimately fall within the meaning of the words "processing material", and we do not think it necessary specifically to deal with the decision in the case of Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, .

16. We are of the opinion that the Tribunal was not right in holding that the "beaters" are not machinery and the assessee is, therefore, not entitled to claim exemption on that account.

17. Turning now to the second question, we shall have to find out from the facts aforesaid as to whether the assessee has committed breach of recitals of declaration in form "Z" when the sand manufactured at Pall factory was used as further raw material in the manufacture of glass for sale at Vallabh Vidyanagar. The raw material, namely, beaters, is used by the assessee as machinery within the State. The requirement further is that the beaters must have been used by the assessee in the manufacture of any goods for sale. The final product which was manufactured by the assessee was sand. The part of the said product was, thereafter, as per the finding given by the Tribunal was transported to parent company at Vallabh Vidyanagar for the purpose of manufacturing glass. It is, therefore, clear that the product that was manufactured, namely, sand, was not used by the assessee for sale, but in fact, the assessee has transported the same to its parent company for the purpose of manufacturing another product, namely, glass. The assessee, in fact, did not sell the article manufactured by it. It may be mentioned at this stage that the assessee is a certified manufacturer and it has purchased beaters against form "Z" from the registered dealer. Admittedly, the parent unit of the company at Vallabh Vidyanagar is not the certified manufacturer. The benefit of exemption is to be available to the certified manufacturer. Certified manufacturer required the beaters for the purpose of manufacturing its final product, namely, sand. Such product was required to be

sold by the certified manufacturer as per the recitals contained in form "Z". Admittedly, the assessee did not wholly sell the goods manufactured by it and as per the findings of the Tribunal part of the goods manufactured by it were transported to the parent company for the purpose of manufacturing glass. To that extent, the assessee committed breach of liability to pay purchase tax u/s 50 of the said Act. We, therefore, find that the Tribunal was right in holding that there was breach of recitals of declaration in form "Z" when the sand manufactured by Pall factory was used as further raw material in the manufacturing of glass for sale at Vallabh Vidyanagar.

18. As regards the third question we are of the opinion that it is a question which requires, in fact, reappreciation and reassessment of findings of fact reached already by the Tribunal. The question as to whether there was or was not any bona fide plea on the part of the applicant-company is not a question of law but it is purely a question of fact on which all the three authorities have reached concurrent finding. We, therefore, do not think it necessary to answer the third question it being purely question of fact, and we, therefore, refuse to answer the third question. Mr. Mody, learned advocate for the applicant, has also not seriously disputed this position.

19. In the result, we answer the question No. 1 in negative, i.e., in favour of the assessee and against the department, the second question in affirmative, i.e., in favour of the department and against the assessee. There shall be no order as to costs.

20. References answered accordingly.