**(2010) 04 GUJ CK 0118**

**In the Gujarat High Court**

**Case No :** Tax Appeal No''s. 1819 and 2020 of 2009 and Civil Application No''s. 413 and 448 of 2009

Yash Organics Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

**Date of Decision :** 09-04-2010

**Acts Referred:**

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12, 12(1)
Central Sales Tax Act, 1956 — Section 8, 8(1), 8(4)
Gujarat Sales Tax Act, 1969 — Section 15

**Citation :** (2010) 34 VST 105

**Hon'ble Judges :** H.N. Devani, J;D.A. Mehta, J

**Bench :** Division Bench

**Advocate :** M.H. Joshi, for Wadia Ghandy and Co, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

# Judgement

H.N. Devani, J.—Both these appeals arise out of common order dated June 16, 2009 made by the Gujarat Value Added Tax Tribunal (Tribunal), hence the same were taken up for hearing together and are disposed of by this common order.

2. In both these appeals which relate to 1998-99 and 1999-2000, respectively, the appellant, a registered dealer under the provisions of the Gujarat Sales Tax Act, 1969 (the Act) as well as under the Central Sales Tax Act, 1956 has challenged the common order dated June 16, 2009 made by the Tribunal proposing the following two questions stated to be substantial questions of law:

I. Whether, on the facts and in the circumstances of the case, the production of C forms received from the purchaser which is issued by a State Government of authority would be sufficient compliance of provisions of Section 8(4) of the Central Act?

II. Whether, on the facts and circumstances of the case, Section 8(4) of the

Central Act would pre-suppose verification of authenticity of the C form received from the purchaser by the dealer?

3. The appellant had effected inter-State sales to various persons during 1998-99 and 1999-2000 including sales to one Raj Chemicals, Agra. The assessing officer framed assessment for the years in question whereby he had rejected OGS sales to various dealers against C form and charged higher rate of tax at 10 per cent, and also charged interest and penalty. The appellant carried the matter in appeal before the Assistant Commissioner who summarily dismissed the appeal vide order dated December 29, 2006. The appellant carried the matter in further appeal before the Tribunal. The Tribunal remanded the matter to the first appellate authority for fresh consideration. In remand proceedings, the first appellate authority vide order dated April 12, 2006 partly allowed and partly disallowed the appeal. The first appellate authority after verification of all the records seized by the Government as well as the ones which were produced by the appellant concluded that the OGS sales except those made to Raj Chemicals, Agra, were genuine and accordingly reduced the tax to the concessional rate from ten per cent to four per cent in relation to all other dealers except Raj Chemicals (the purchasing dealer). The appellant carried the matter in appeal before the Tribunal but did not succeed.

4. Mr. M. H. Joshi, learned senior advocate for the appellant, has submitted that the appellant had received the C forms from the purchaser in the ordinary course of business and had no reason to doubt the genuineness of the same. It is submitted that the C forms bear the name of the issuing State, office of issue, date of issue, name of the purchasing dealer, date from which registration of such dealer is valid, serial number as well as the rubber stamp and signature of the concerned authority and its officers. It is submitted that there is no methodology to ascertain the genuineness of the C forms given by the purchasing dealer and as such there being no fault on the part of the appellant, the appellant ought not to have been deprived of the benefit of the C forms. It is also submitted that the forged C forms were provided to the appellant by the purchasing dealer, which were bearing all the necessary entries and marks making them appear genuine as if the same had been issued by the appropriate tax authorities. That the mere fact that the forms were forged or faulty cannot in any manner act to the prejudice of the appellant, who bona fide obtained the C forms for all the transactions with Raj Chemicals. It is further submitted that in absence of any mens rea to evade tax, amount of penalty and interest charged on the appellant ought to have been set aside.

5. The facts are not in dispute. The appellant had effected several OGS sales to the purchasing dealer, viz., Raj Chemical against two C forms. Subsequent verification with the concerned sales tax authorities revealed that the said C forms are not genuine. According to the appellant, the appellant is not a party to the fraud and is in fact a victim thereof, inasmuch as he believed the C forms which otherwise bear all the features of a genuine C form, to be genuine and had

no reason to doubt the same. According to the appellant when there is no methodology for a dealer to ascertain the veracity of a C form, and the C forms in question have been obtained bona fide during the course of routine transactions, which are proved, the appellant should not be denied the benefit of the C forms on the ground that the same are forged.

6. The Tribunal in the impugned order has noted that the appellant had effected transactions with Raj Chemicals at Agra for the years 1998-1999 and 1999-2000 which involved sale of goods worth Rs. 1,08,04,838 and Rs. 2,38,96,968, respectively and had produced 2 C forms for the said transactions for each year. At the time of assessment inquiry was made whereby the concerned authority cross-checked with the Deputy Commissioner, Agra, who vide order dated August 18, 2000 reported that according to the record produced by Raj Chemicals, the dealer had not effected any transaction of sale or purchase with the dealers of Gujarat State. The Tribunal compared the C forms issued by the concerned authority to Raj Chemicals with C forms produced by the appellant and found that two C forms produced by the appellant had not been issued by the concerned Sales Tax Officer from Agra. It was further found that two C forms produced by the appellant in support of the transactions from Raj Chemicals had not been obtained from the prescribed authority and that as per the report of the concerned authority no C forms bearing the number of the forms submitted by the appellant had been issued to Raj Chemicals. The Tribunal was, therefore, of the opinion that the basic requirement of Section 8(4) of the Central Sales Tax Act had not been fulfilled and as such the appellant was not entitled to the benefit of tax at the reduced rate.

7. Over and above the finding that the C forms submitted by the appellant were not genuine, the Tribunal has also recorded that the appellant had entered into more than 50 to 60 transactions in a year with the concerned dealer but had submitted a single C form in respect of all the transactions entered into in a year. According to the Tribunal as far as possible, C form should be obtained for every single transaction and that there must be an explanation for obtaining a single C form for more than one transaction; the appellant has obtained single C form for all the transactions for the year 1998-99 and another C form for all the transactions for the year 1999-2000 and had not furnished any explanation for obtaining a single C form in relation to all the transactions worth more than Rs. 2.38 crores. The Tribunal has also recorded certain other irregularities in the C forms produced by the appellant, viz., no exact date is mentioned in the C forms and that the appellant had not furnished any explanation for receipt of C forms after long time. The Tribunal accordingly came to the conclusion that the two C forms produced by the appellant are doubtful and as such the appellant is not entitled to get the benefit of the said C forms for reduced rate at four per cent.

8. The Tribunal has thereafter recorded that assuming that the appellant may have accepted C forms as being genuine, however the same were forged documents and as such did not vest any right in the appellant to get benefit of

reduced tax rate.

9. The Central Sales Tax Act, 1956 (the Central Act) inter alia provides for levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce. Section 8 of the said Act provides for "rates of tax on sales in the course of inter-State trade or commerce". In case of inter-State trade, a dealer was at the relevant time entitled to reduced rate of tax at the rate of four per cent under the Central Act. At this juncture it may be germane to refer to the provisions of Sub-section (4) of Section 8 which reads thus:

(4) The provisions of Sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

10. Thus, under Sub-section (4) of Section 8 a dealer would be entitled to pay tax at the rate fixed under the Central Act in respect of an inter-State sale, only upon furnishing to the prescribed authority in the prescribed manner a declaration duly filled and signed by the dealer to whom the goods are sold after obtaining the prescribed form from the prescribed authority.

11. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 provides for furnishing of declarations and certificates. Sub-rule (1) of Rule 12 lays down that the declaration and certificate referred to in Sub-section (4) of Section 8 shall be in forms C and D. Thus to get the benefit of reduced rate of tax under the Central Act, a dealer has to furnish a C form duly filled and signed by the dealer to whom the goods are sold.

12. At this stage it may be pertinent to refer to the decision of the Supreme Court in Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, wherein it has been held thus (at page 222):

The scheme of the rules read with the Act is that the purchasing dealer as well as the selling dealer must register themselves under the Central Sales Tax Act. If declared goods are specified in the certificate of registration of the purchasing dealer and if it be certified that the goods are intended for resale by him, the sale is subject to concessional rate of tax u/s 8(1). In respect of sales of other classes of goods specified in the certificate of registration of the purchasing dealer, if the goods are purchased either for resale by him, or for use in the manufacture of goods for sale, or for use in the execution of contracts, the concessional rate of tax is available, provided the selling dealer obtains from the purchasing dealer the declaration in the prescribed form duly filled in and signed by the latter containing the particulars that the goods are ordered, purchased or supplied under a certain specific order, bill or cash memo or challan, for all or any of the purposes mentioned and that the goods are covered by the registration certificate of the purchaser described therein and issued under the Act. If the certificate is defective in that it does not set out all the details, or that it contains false particulars about the order, bill, cash memo or challan, or about the number and date of the registration certificate and specifications of goods covered by the certificate of the purchasing dealer, the transaction will not be admitted to concessional rates.

13. In Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore, the Supreme Court while dealing with Rule 6(b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which provided for furnishing of original C form in order to claim the concessional rate of tax held thus (at page 343 of STC):

The very purpose of prescribing the filing of C forms is that there should not be suppression of any inter-State sales by a selling dealer and evasion of tax to the State from where the actual sales are effected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C form to the selling dealer. Since the dealer should issue C form, has to maintain a detailed account of such C forms obtained from the Department prescribed under the States taxation law. The C form is a declaration to be issued only by the sales tax authorities of the concerned States. By issuing declaration in C form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of four per cent as prescribed by the concerned State of the purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where selling dealer is situated.

14. Having regard to the Scheme of the Act, in the light of the principles enunciated in the decisions referred to hereinabove, a dealer would not be entitled to the benefit of concessional rate of tax even if the C form submitted by him is defective. The appellant''s case stands on a weaker footing inasmuch as in the facts of the present case the Tribunal has found that the C forms submitted by the appellant are not genuine. In the circumstances the appellant cannot be permitted to avail of the benefit of concessional rate of tax under the Central Act.

15. Apart from the scheme of the Act, even on basic principles, if the C forms submitted by the appellant are forged and the appellant has been duped, at best the appellant may have a case against the purchasing dealer, but in no case can he be entitled to the benefit of concessional rate based upon forged certificates. The following observations of the Supreme Court in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., are apposite:

13. The observation of the Division Bench of the Punjab and Haryana High Court in National Insurance Co. Ltd. v. Sucha Singh [1998] 1 SCC 219 that renewal of a document which purports to be a driving licence, will robe even a forged

 

document with validity on account of Section 15 of the Act, propounds a very dangerous proposition. If that proposition is allowed to stand as a legal principle, it may, no doubt, thrill counterfeiters the world over as they would be encouraged to manufacture fake documents in a legion. What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sancti-fication subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery.

16. For the foregoing reasons, it cannot be stated that the impugned order of the Tribunal which is based upon findings of facts recorded after appreciation of the evidence on record suffers from any legal infirmity so as to warrant interference.

17. No question of law as proposed or otherwise, much less any substantial question of law can be stated to arise out of the impugned order of the Tribunal.

18. The appeals are accordingly dismissed.

Civil Application Nos. 413 of 2009 and 448 of 2009

19. In view of the order passed in the main tax appeals, these applications do not survive and are disposed of accordingly.