

State of Rajasthan

Vs

M/S. Jaipur Udyog Ltd.

Civil Appeal No. 137 of 1969

(Hegde, J.)

11.08.1972

JUDGMENT

HEGDE, J. –

1. We find no merit in this appeal. The respondent is carrying on the business of manufacturing of cement at Sawai Madhopur under the name and style "Jaipur Udyog Limited" and is registered under Section 7 of the Central Sales Tax Act, 1956 (which will hereinafter be referred to as the Act). In the certificate of registration the business of the Respondent was described as "wholly manufacture of cement". The Respondent claimed liability to pay tax at the preferential rate of one per cent under Section 8(1), reads with Section 8(3)(b) of the Act which includes "machineries". The Respondent purchased from outside the State of Rajasthan earth-moving machinery comprising bull-dozer, dumpers and tipping wagons during the period August 5, 1957 to March 31, 1959, on payment of tax under the Act at the preferential rate. The Assessing Authority held that the Respondent was not entitled to have the benefit of the preferential rate of tax on the above-said purchases and imposed a penalty of Rs. 50,000/- under Section 10-A of the Act. In Appeal the Deputy Commissioner, Sales Tax (Appeals) modified the order of the Assessing Authority and reduced the penalty to Rupees 28,000 on the ground that no penalty could be imposed on purchases effected before October 1, 1958, when Section 10-A was brought into force.

2. The Respondent filed a Review Petition before the Board of Revenue. That Petition was heard by a Division Bench. The members forming the Division Bench differed in their conclusion as to whether the purchases in question were covered by the certificate given to the Respondent or not. One member took the view that they were covered by the certificate but the other member took the view that the same was not covered by the certificate. In view of this difference of opinion the matter was referred to the Chairman of the Board. The Chairman agreed with the view taken by one of the members that the purchases in question were not covered by the certificate and as such the Respondent was not entitled to get the benefit of the preferential rate. Thereafter, at the instance of the Respondent, the Board referred to the High Court the following two questions of law for its opinion :

(1) Whether on the facts and circumstances of the case the bull dozers, dumpers and tipping wagons were chargeable with sales tax at the full rate or at the preferential rate under Section 8(3)(b) of the Act.

(2) Whether in the circumstances of the case penalty under Section 10-A of the Act can be imposed upon the dealer for non-payment of the tax at the full rate on the above goods.

Both the Judges of the High Court answered the first question in favour of the Respondent. In view of that conclusion the answer to the second question has to be in favour of the assessee.

3. Section 10-A(1) of the Act reads :

"If any person purchasing goods is guilty of an offence under clause (b) or clause (d) of Section 10, the authority who granted to him or, as the case may be, is competent to grant him a certificate of registration under this Act may, after giving him a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty a sum not exceeding one and half times the tax which would have been levied under this Act in respect of the sale to him of the goods if the offence had not been committed :

Provided that no prosecution for an offence under Section 10 shall be instituted in respect of the same facts on which a penalty has been imposed under this section."

4. We are told that the Respondent is guilty of an offence falling under Section (b) which reads :

"If any person being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by this certificate of registration"

Now the only question is whether the Respondent was guilty of falsely representing, when purchasing the goods referred to earlier that those goods were covered by the certificate of registration. Unless it is shown that he had made such a false representation, Section 10-A is not attracted. Two Judges of the High Court and one Member of the Board of Revenue have come to the conclusion that the Respondent was entitled to the preferential rate which he claimed. That is the view of the law taken by them. Assuming, without deciding, that the view taken by them is incorrect, even then it is impossible to say under the circumstances of the case that the Respondent was guilty of making any false representation. The view of the law, which he is contending for is supported by the view taken by two Judges of the High Court and one Member of the Board of Revenue. Hence we fail to see how such a view of the law can be taken as false representation.

5. In view of our above conclusions it is not necessary for us to decide the first question referred to by the High Court. In the result this Appeals fails and is dismissed with costs.

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