

SUPREME COURT OF INDIA

Commercial Taxation Officer, Udaipur

Vs

Messrs Rajasthan Taxchem Limited

C.A.No.177 of 2007

(Altamas Kabir, Dr.Ar.Lakshmanan,JJ.,)

12.01.2007

JUDGMENT

Dr.Ar.Lakshmanan, J.

S.L.P. (Civil) No. 17015 of 2005

1. Leave granted.

2. The above appeal filed by the Commercial Taxation Officer Circle-B, Udaipur raises a very interesting question of law of general public importance, as to the parameters for the test for the determination of raw materials and in addition to whether the use of articles or commodities not generally used in the manufacturing process can still be categorized as raw materials for the purpose of concession in the levy of taxes, for consideration by this Court. In other words;

"Whether diesel can be called raw material in the manufacture of polyester yarn. In the present case, the respondent is engaged in the business of manufacture of polyester yarn and for the said purpose, it purchased diesel and used it for manufacturing electricity by D.G.-sets. The respondent has claimed a benefit under Section 10(1) of Rajasthan Sales Tax Act, 1994 (hereinafter referred to as 'the Act') claiming that diesel purchased is a raw material for the manufacture of the ultimate final product Polyester Yarn."

3. Under the notification issued under Section 10(1) of the Act, purchase of raw material for manufacture of final product is entitled to a concessional rate of tax @ 3% instead of the normal tax of 4%. The appellant submits that diesel is not a raw material for the manufacture of polyester yarn and, therefore, exigible to tax @ 4%. The said Section 10(1) of the Act and the notification issued thereunder are reproduced hereinbelow:

"Sec. 10- Levy of Tax on raw material and processing articles

(1) Notwithstanding anything contained in section 4, but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture in the State of goods for sale by him within the state or in the course of inter-state trade or commerce or in the course of export outside the territory of India shall be at such concessional rate as may be notified by the State Government."

"NOTIFICATION

In exercise of the power conferred by section.10(1), RST Act, 1994, The State Govt. hereby notifies that the rate of tax payable on sale to or purchase by a registered dealer of any raw material, for the manufacture in the state of goods (other than exempted goods), for sale by him within the state or in the course of inter state trade or concessional rate of 3% on the condition that the buying dealer issues a declaration from ST 17 to the selling dealer."

4. It is also beneficial to reproduce the definition of raw material which reads as under:-

"Section 2(34)- Raw Material- means Goods used as an ingredient in the manufacture of other goods and includes preservatives, fuel and lubricant required for the process of manufacture."

5. In this case, the Officers of the Department inspected the firm/office of the respondent and also examined the account- books and documents of the respondent. It was found that the respondent has purchased diesel in the year 1997-98 by paying 3% sales-tax whereas 4% sales-tax is leviable on purchase of diesel (according to the Department). The assessment for the year 1996-97 was completed by the Assessing Authority and it was found that the respondent had paid a lesser rate of tax on the purchase of diesel contending that the same was a raw material used in the manufacture of final product. The Assessing Authority held that since diesel was not directly used for the manufacture of final product, the respondent was not entitled to the benefit under the notification dated 29.09.1995 and it ought to have paid the tax @ 4%. The Assessing Authority, therefore, levied a differential tax @ 1% along with interest in total amounting to Rs.15, 02, 224/-.

6. Being aggrieved with the above order, the respondent filed an appeal before the Deputy Commissioner (Appeals) Udaipur being Appeal No. 164/RST/1999-2000. The Deputy Commissioner (Appeals) dismissed the appeal of the respondent and affirmed the order passed by the Assessing Authority. Being aggrieved by the above order, the respondent filed appeal before the Rajasthan Tax Board, Ajmer which allowed the appeal filed by the respondent and set aside both the orders passed by the Assessing Authority and the Deputy Commissioner (Appeals). Being aggrieved by the order of the Tax Board, the State filed a revision under Section 84 of the Act before the High Court being S.B. Civil Sales-Tax Revision No. 6 of 2005. The High Court dismissed the revision filed by the appellant while

holding that diesel used by the respondent was used as raw material and affirmed the order of the Tax Board.

7. We heard Mr. Sushil Kumar Jain, learned counsel for the appellant and Mr. Sanjay Jhanwar, learned counsel for the respondent.

8. Mr. Sushil Kumar Jain submitted that the respondent would be entitled for the concession under Section 10 for the purchase of raw material which is used in the manufacture of the final product. However, in the present case, diesel is being used for the manufacture of intermediate product electricity and, therefore it is not entitled for the benefit under the said section.

9. It is also submitted that the later part of Section 2(34) (raw material) which includes fuel as a raw material, is qualified by the words "required for the process of manufacture" and that diesel is not required for the process of manufacture. The respondent requires electricity for the manufacture of its final product and, therefore, it may be entitled to a lesser rate of tax on the purchase of electricity but not for the purchase of diesel which is used to manufacture electricity. According to the learned counsel, the respondent is using the DG-sets as a back-up/stand by and is generally manufacturing goods by purchasing electricity from the electricity board in the State and that the diesel did not get transformed in the ultimate product and it is also not used as raw material in the manufacture of the ultimate product. It was further submitted that generation of electricity is not part of the process of manufacture and diesel used in the same cannot become raw material entitled to a lesser rate of tax. In other words, diesel is used in the instant case in generating electricity and hence it cannot be said to be a raw-material but it is a processing material and levy of tax at the rate of 4% upon the processing material is in accordance with law and following this proposition, the Deputy Commissioner (Appeals) has held the levy of tax @ 4% to be just and proper. Concluding his arguments, Mr. Jain submitted that the Rajasthan Tax Board was not justified in setting aside the liability of tax and interest upon the respondent in the facts and circumstances of the case.

10. Mr. Sanjay Jhanwar, learned counsel for the respondent submitted on merits as under:

1. That the respondent is a manufacturer of Synthetic Blended Yarn in the State of Rajasthan.

2. That for the said purpose, the Respondent purchases diesel as raw material in accordance with the provisions of Section 10(1) of the Rajasthan Sales Tax Act, 1994 by paying a concessional rate of tax as notified by the State Government.

3. The respondent purchased diesel as raw material pursuant to the specific entry in its Registration Certificate by making the payment of tax at concessional rate of 3% in accordance with the provisions of section 10(1) of the Rajasthan Sales Tax Act, 1994. The appellant even on change of opinion cannot revoke/cancel or amend the Registration Certificate with retrospective effect on account of the principle of promissory estoppel. It was submitted that the registration certificate granted to the

assessee is an order. Section 37 which deals with the rectification of a mistake provides that any officer appointed under this Act can rectify any mistake apparent from the record either suo moto or otherwise. Any order passed by him within a period of four years from the date of the order can be sought to be rectified. Similarly, the Commissioner under the provisions of section 87 of the Rajasthan Sales Tax Act, 1994 is provided with the power to revise any order passed by officer subordinate to him if he considers it to be prejudicial to the interest of the revenue within a period of five years from the date on which the order sought to be revised was passed. Thus the power is given by the Act to rectify or revise the registration certificate prospectively.

11. Learned counsel for the respondent has also placed strong reliance on three decisions *CTO vs. Hindustan Radiator*¹, reported in *Bowen Press vs. State of Maharashtra*, reported in² *Commercial Taxes Officer vs. M/s Alcobex Metal Corporation*, reported³ in support of his contention. In view of these judgments, it was submitted that once the commodity is recorded in the registration certificate as raw material then the Department cannot roll back from their stand to the detriment of the assessee as the assessee has not violated any condition but acted on the belief of the Department.

We have perused the Assessment Order and the order passed by the Deputy Commissioner (Appeals), the Rajasthan Tax Board and the order of the High court.

12. In the present matter, the State has challenged the order of the High Court by which the Court has upheld the contention of the respondent, which entitles it to purchase diesel at a concessional rate of tax under the provisions of Section 10(1) of the Rajasthan Sales Tax Act. According to the appellant the respondent has not disputed the fact that diesel is being used by it to generate power/electricity which is in turn used in the manufacture of final products and the gensets used by the respondent is not the main source of power in the industrial unit but it has an electricity connection and the gensets are used only in the case of power failure. Thus in view of the undisputed facts, learned counsel for the state submitted that the claim of the respondent for a concessional rate of tax on the purchase of diesel cannot be sustained in law as the said concession is available only to raw materials which is required for the process of manufacture and therefore the claim of the respondent cannot be sustained in respect of diesel.

13. Learned counsel for the state has also submitted that the concession under the Act is only for the raw materials required in the process of manufacture of goods and the power generated by the use of diesel is used not only in the industrial establishment but also in the offices within the same compound and therefore the whole of the diesel purchased by the respondent would not be entitled for the concession under section 10(1). Concluding his reply, learned counsel for the State submitted that unless the fuel used is an essential requirement of the manufacturing process, the same cannot be categorized as a raw material.

14. We are unable to countenance the submission made by the learned counsel for the appellant. It is not in dispute that the respondent is a manufacturer of synthetic blended yarn

in the State of Rajasthan and for the said purpose, respondent purchases diesel as raw material in accordance with the provisions of Section 10(1) of the Rajasthan Sales Tax Act, 1994 by paying a concessional rate of tax as notified by the State Government.

15. We have already reproduced the question raised before this Court by the appellant as to whether the diesel purchased by the respondent can be termed as raw material for the manufacture of the final products yarn and fabric. Diesel is a raw material for the respondents which is being purchased and utilized in the process of manufacturing by way of generation of power through which the plant and machinery are being operated. It is relevant to consider that before purchasing any goods as raw material, it is necessary for the purchaser to apply to the Assessing Officer concerned for issuance of registration certificate specifically mentioning such items as raw material. In the instant case, the respondent accordingly approached the appellant who granted the registration certificate after considering all the aspects of the matter and taking a conscious decision. It is not the case of the appellant that at the time of grant of such registration certificate all facts were not placed before the appellant and that there is concealment of any material facts. The registration certificate so issued has been in effect during the concerned period and has not been cancelled, revoked or modified. The registration certificate issued by the appellant to the respondent has been marked as Annexure-R1. Classified list of material to be purchased under Section 8(3) as raw material is annexed to the certificate of registration which reads thus:-

"Raw Material

Polyster Staple Fibre

Viscose Staple Fibre

Cotton Fibre

Acrylic Fibre

Synthetic Fibre And Filament Yarns

Spin Finish

Fuel & Lubricants

Dyes, Chemicals & Colours

All Type Of Wax And Wax Washer Etc

Polyster, Acrylic And All Other Types Of Waste

Acrylic And Polyster Tow

Acetate Fibre

Viscose/Polyster Filament Yarn & All Sorts Of

Man Madefibre And Yarn

Silk Wool"

16. We have already extracted the definition of raw material under Section 2(34) which specifically includes fuel required for the purpose of manufacture as raw material. The word includes gives a wider meaning to the words or phrases in the Statute. The word includes is usually used in the interpretation clause in order to enlarge the meaning of the words in the statute. When the word include is used in the words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact but also those things which the interpretation clause declares they shall include. There is no dispute in the instant case that the diesel and lubricant is used to generate electricity through DG sets which is admittedly used for the purpose of manufacturing yarn. Thus, it is seen that as diesel is specifically and intentionally included in the definition of raw material by the legislature, the question that whether it is directly or indirectly used in the process of manufacture is irrelevant as argued by Mr. Sushil Kumar Jain. The respondent purchased the diesel as raw material pursuant to the specific entry in its registration certificate by making the payment of tax at concessional rate of 3% in accordance with the provisions of Section 10(1) of the Rajasthan Sales Tax Act, 1994. The registration certification granted to the assessee, in our opinion, is an order. Section 37 which deals with the rectification of a mistake provides that any officer appointed under this Act can rectify any mistakes apparent from the record either suo motu or otherwise of any order passed by him within a period of 4 years from the date of order sought to be rectified. Similarly, the Commissioner under the provisions of Section 87 of the Rajasthan Sales Tax, 1994 is provided with the power to

revise any order passed by officers subordinate to him if he considers it to be prejudicial to the interest of the revenue within a period of 5 years from the date on which the order sought to be revised was passed. Thus, the power is given by the act to rectify or revise the registration certificate prospectively.

17. Learned counsel for the respondent cited *Commercial Taxes Officer vs. Hindustan Radiator, reported*⁴in which was rendered by a Division Bench of the Rajasthan High Court at Jodhpur. In this case, the assessee was carrying on the business of manufacture of motor radiators and was a registered dealer under the Sales Tax Act, 1954. The assessee purchased hydrochloric acid which has been included in the registration certificate as raw material, by furnishing a declaration to use it as raw material for manufacturing of radiators and, therefore, was entitled to pay concessional rate of tax. The Commercial Taxes Officer took the view that hydrochloric acid was not a raw material for manufacture of radiators and that the dealer was not entitled to concessional rate of tax. The assessee's appeal was upheld by the Deputy Commissioner (appeals) and penalty was deleted. The revision and special appeal by the commercial tax officer before the Single Judge and the Division Bench of the Board respectively have failed. On reference, the High Court held as follows:-

"(i) that under section 5C(1) for paying concessional rate of tax on the sale or purchase price of raw material, the following conditions were to be satisfied: (1) The purchaser should be a registered dealer, (2) the purchase should be of raw material, (3) the raw material should be for manufacture of goods in the State and (4) the goods so manufactured should be sold within the State or in the course of inter- State trade. The entry in the registration certificate issued to the dealer-assessee showed that hydrochloric acid was purchased as raw material for manufacture of the radiators and unless and until it was cancelled or modified it was binding on the department and was conclusive proof of the fact that hydrochloric acid was raw material for manufacture of radiators by the dealer assessee. Further, there was nothing to show that the dealer assessee had committed any breach of the conditions attached to the concession that was made available to it and in this view penalty under section 5C(2) could not be imposed".

18. The Bench also held as under:-

"We agree with the view taken in *Bowen Press's case* ⁵1977 Indlaw MUM 26 (Bom) that the entry in the registration certificate of the dealer-assessee that certain articles are raw material for the manufacture of goods is conclusive and in face of the entry in the registration certificate, it is not open to the assessing authority to contend that though a particular article has been mentioned in the registration certificate as raw material, is not in fact a raw material within the meaning of section 2(mm) of the Act and if nay cancellation or modification is sought in respect of that entry, then, it is only by following the procedure laid down under the Act and the Rules framed thereunder that entry can be cancelled or modified."

19. In *Bowen Press vs. State of Maharashtra*⁵, (Bombay), the High Court held as under:-

"When an application by a registered dealer for recognition under section 25 of the Bombay Sales Tax Act, 1959, is made to the Sales Tax Officer, he has to determine whether the dealer is entitled to get the certificate of recognition. Before granting the recognition certificate in form 7, the officer has necessarily to determine whether the goods mentioned in the list are goods in respect of which a recognition certificate can be granted, for which the officer has to make such enquiry as he thinks fit. When a recognition certificate is granted by the officer and any particular goods are included in the list appended to the recognition certificate, the grant of this certificate implies a finding by the officer that the goods listed are goods in respect of which recognition can be granted. This could be as a result of a quasi-judicial enquiry. If it is felt that the decision of the officer is incorrect, it could be revised by the appropriate authority. But once the recognition certificate is granted, it is not open to another officer assessing a dealer, who had sold the goods to the registered dealer holding the recognition certificate, to dispute the inclusion of any particular item in the recognition certificate and to come to a conclusion that to that extent the recognition certificate was incorrectly granted. If this were permitted, it would lead to confusion and chaos, because different Sales Tax Officers assessing different third parties, who had sold goods to such a dealer holding a recognition certificate, might come to different conclusions regarding the same item. Moreover, the result of allowing the assessing Sales Tax Officers to do this would be that the recognition certificate would have hardly any binding value at all and the holder of a recognition certificate might find it liable to be altered in effect in proceedings in which he would not even be heard."

20. It is also stated that the State's SLP against the CTO vs. Hindustan Radiators was dismissed by this Court which was registered as SLP (Civil) No. 1538 of 1988. Thus, in view of these judgments, it was submitted that once the commodity is recorded in the registration certificate as raw material then the department cannot roll back from their stand to the Department of the assessee as the assessee has not violated any condition but acted on the belief of the Department. It was also contended that the appellant is entitled to charge additional tax of 1% under Section 10(2) only where the registered dealer had purchased any commodity as raw material by paying a concessional rate of tax for a specified purpose and the goods are not utilized by him for the purpose specified. In the instant case, it can be seen that the respondent has purchased diesel as raw material and utilized the same for the purpose specified in the registration certificate and thus no condition is violated for invoking the provisions of Section 10(2) of the Act. In view of the fact that the diesel is being used for the purpose of running the generator set for the production of the ultimate product which is also required for the purpose of manufacturing the end product the diesel can only be termed as raw material and not otherwise. The Rajasthan Tax Board was, therefore, justified in setting aside the orders passed by the Assessing Authority as confirmed by the Deputy Commissioner (Appeals).

21. To avail the concessional rate of tax under Section 10, the assessee has to satisfy 3 conditions:

“a) He must be a registered dealer of any raw material;

b) Raw material must be used for the manufacture of goods; and

c) The said manufacture in the State should be for the purpose of sale by him within the State or in the course of inter-state trade or commerce or in the course of export outside the territory of India.”

22. The respondent before us satisfy all the above tests and, therefore, the assessee-respondent, in our opinion, shall be entitled to such concessional rate as may be notified by the State Government.

23. The respondent-assessee used diesel as raw material for the manufacture of the end product, namely, yarn and fabric. The diesel used by the assessee is a fuel and lubricant as defined under Section 2(34) of the Sales Tax Act. In the result, we hold that the arguments advanced by learned counsel for the appellant has no force and merit. Accordingly, we dismiss the civil appeal filed by the State arising out of SLP (C) No. 17015 of 2005. However, there will be no order as to costs.

Judgment Referred.

¹62 STC 0374

³9 STC 367 (Bom)

³1986 RTC 150

⁴1962 STC 374