Siddho Mal Paper Conversion Co. Vs. Commissioner of Sales Tax

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Court : Allahabad

Decided On : Jan-06-1989

Reported in : [1989]74STC242(All)

Judge : Om Prakash, J.

Appeal No. : Sales Tax Revision Nos. 1016 of 1886 and 383 of 1987

Appellant : Siddho Mal Paper Conversion Co.;commissioner of Sales Tax

Respondent : Commissioner of Sales Tax;siddho Mal Paper Conversion Co.

Advocate for Pet/Ap. : Bharatji Agarwal, Adv. in S.T.R. Nos. 1016 of 1986 and 383 of 1987

Disposition : Petition dismissed

Judgement :

Om Prakash, J.

1. These two revisions-one by the assessee and the other by the Revenue-have been directed against the Tribunal's order dated 19th November, 1986. Both the revisions are disposed of together and hence they are consolidated.

2. The assessee is engaged in the business of manufacture and sale of wrapper, that is, packing paper. The assessee also carried on this activity on job-work

basis. For the relevant year 1981-82, the assessee showed purchases of raw material against form III-B at Rs. 53,23,125. The assessee showed sales at Rs. 38,11,098 and the receipt from job-work at Rs. 56,11,176 for this year. The assessing authority was of the view that the assessee had used the raw material of Rs. 24,00,000, purchased against form III-B without tax, for the job-work and he, therefore, held that such purchases had been used for a purpose other than that for which the recognition certificate was granted under Sub-section (2) of Section 4-B of the U.P. Sales Tax Act, 1948 (briefly, 'the Act, 1948'). The penalty was, therefore levied by him under Sub-section (5) of Section 4-B at the rate of 8 per cent at Rs. 1,92,000. The assessee went in appeal before the Deputy Commissioner, Sales Tax, against the order of the assessing authority, who not only dismissed the appeal but estimated the purchases being used in the job-work at Rs. 36,00,000 as against Rs. 24,00,000 estimated by the assessing authority and enhanced the penalty from Rs. 1,92,000 to Rs. 4,32,000.

3. Then the dispute was carried to the Sales Tax Tribunal in second appeal. The Tribunal also affirmed the findings of the lower authorities that the purchases made against form III-B, without tax, were used by the assessee for the job-work and estimated such purchases at Rs. 16,00,000. This being so, the penalty was reduced by the Tribunal to Rs. 1,28,000. The Tribunal reached this conclusion observing that normal wastage shown by the assessee itself in this business in the earlier years was 18 per cent, but for the year 1981-82 the assessee claimed wastage at 42 per cent. Considering the opening stock, sales, closing stock, gross profit rate and the amount of the stock of paper, the Tribunal held that the assessee would have used raw material worth Rs. 24,40,000 only in the self-manufacturing as against the raw material worth Rs. 53,41,000 claimed to have been consumed in the self-manufacturing. The Tribunal was of the view that the assessee had used the raw material worth Rs. 29,00,000 (53,41,000 minus 24,40,000) in the job-work. But the Tribunal held that the Deputy Commissioner (Appeal) erred in having levied penalty at Rs. 4,32,000. Considering the purchases of Rs. 53,41,000 made against form III-B, opening stock of Rs. 5,48,332, closing stock of Rs. 7,42,168, gross profit rate, the stock of paper available with the assessee, the Tribunal took the view that the raw material worth Rs. 24,40,000 would have been used in self-manufacturing as against Rs. 53,41,000 shown by

the assessee. The Tribunal, therefore, concluded that the assessee had shown the consumption of raw material worth Rs. 29,00,000 in the self-manufacturing in excess. Taking the wastage ranging between 20 to 26 per cent in this type of business, the total wastage was determined by the Tribunal at Rs. 13,00,000 on the total purchases made against form III-B aggregating to Rs. 53,41,000. Then the Tribunal substracted Rs. 13,00,000 representing total wastage from Rs. 29,00,000 representing excess raw material. The Tribunal held that the penalty could be levied only on Rs. 16,00,000 being the difference of Rs. 29,00,000 and Rs. 13,00,000 and, thus, reduced the penalty to Rs. 1,28,000 giving the relief of Rs. 3,04,000 to the assessee.

4. Whereas, the assessee challenges the order of the Tribunal holding that Section 4-B(5) is attracted to the case, the Revenue is aggrieved of reduction of the quantum of penalty. According to the Revenue, the total wastage worked out at Rs. 13,00,000 ought to have been apportioned and should not have been deducted from Rs. 29,00,000 representing the raw material held to have been used in job-work.

5. The question for consideration is as to what is the correct interpretation of Sub-section (6) of Section 4-B of the Act, 1948 and whether, on the facts and the circumstances of the case, the authorities below were right in holding that the penalty was leviable. In this case, sales and purchases have been accepted. The opening stock and closing stock have not been disturbed. Only the wastage shown by the assessee has not been accepted. As against the wastage claimed by the assessee at 42 per cent, the Tribunal found that the wastage in this type of business varied from 20 to 25 per cent.

6. The submission of Sri Bharatji, learned counsel for the assessee, is that the sales and purchases having been accepted and opening stock and closing stock having not been disturbed by the authorities, there is no justification in not having accepted the wastage shown by the assessee. This submission is devoid of force. Sales and purchases may be accepted, opening stock and closing stock may not be disturbed, yet on the facts and circumstances of a given case, inference may be drawn that wastage claimed is excessive and the raw material has either been

disposed of otherwise that is, other than in the manufacturing, or has been used in the job-work, if the assessee carries on such activity. When the wastage is not accepted, then the normal inference is that either the sales have been suppressed or the raw material has been used or disposed of otherwise. No doubt, in the instant case, sales have been accepted, but right from the inception, the wastage claimed by the assessee was found to be excessive. The sales and the receipt from job-work being unproportionate, the Revenue doubted the case of the assessee in regard to wastage. The Deputy Commissioner (Appeal) also considered two comparable cases of Wrappers India and Supreme Packaging, which furnished the proof that the wastage varied from 15 to 20 per cent. The Tribunal on appraisal of the whole material determined the wastage varying from 20 to 25 per cent. This being so, I do not see any error in the inference drawn by the lower authorities that the assessee claimed higher wastage in self-manufacturing to cover up the use of raw material purchased against form III-B, without tax, in job-work.

7. Then, the question is whether the use of raw material purchased against form III-B, without tax, in the job-work done for others, can be said to be used for a purpose other than that for which the recognition certificate was granted within the meaning of Sub-section (5) of Section 4-B. Sri Bharatji drew my attention to the conditions, incorporated in form XIX for the grant of recognition certificate. This form sets out five conditions for the grant of the certificate. But Sri Bharatji relied on condition No. 3, which is as follows :

3. The goods purchased on the strength of this certificate shall be used only by the recognised dealer only for the manufacture of the notified goods.

8. It is, therefore, submitted that form XIX containing conditions for grant of certificate simply requires that the purchases shall be used only for the manufacture of notified goods. The submission is that the goods manufactured under the job-work contract are also notified goods and, therefore, this condition is not violated. Before laying down the conditions for granting the certificate, form XIX states :

This Recognition Certificate is hereby granted under Section 4-B of the U.P. Sales Tax Act, 1948 (hereinafter referred to as 'the Act') and subject to the provisions of the Act and the Rules, regulations and orders made thereunder and also to the conditions specified herein to....

9. From the delineated portion, it is abundantly clear that the grant of certificate is not only governed by the conditions laid down in form XIX, but the certificate is granted under Section 4-B subject to the provisions of the Act and the Rules made thereunder. Therefore, the whole scheme of Section 4-B will have to be considered for coming to the conclusion whether the assessee has used the raw material acquired without tax against form III-B for a purpose other than that for which the recognition certificate was granted within the meaning of Sub-section (5) of Section 4-B. Clause (a) of Sub-section (1) of Section 4-B provides that if a dealer holds a recognition certificate issued under Sub-section (2) in respect of the goods liable to tax under Sub-section (1) of Section 3-D or the goods purchased in circumstances in which such dealer is liable to pay purchase tax under Section 3-AAAA, shall be liable in respect of those goods to tax either at the concessional rate or with full or partial exemption as may be notified in the Gazette. Sub-section (2) of Section 4-B states that where a dealer requires any goods referred to in Sub-section (1) for use in the manufacture by him in the State of any notified goods or in the packing of such notified goods manufactured or processed by it and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form or manner as may be prescribed for the grant of the recognition certificate in respect thereof and the assessing authority shall grant to him in respect of such goods a recognition certificate in such form and subject to such conditions as may be prescribed. Sub-section (2) clearly requires that the notified goods should be manufactured by a dealer himself and such notified goods must be intended to be sold by him. Both these conditions should exist concomitantly and not in the alternative. What Sri Bharatji argued is that the assessee is engaged in the manufacture of notified goods and under job-work contract also, the notified goods are manufactured. Manufacturing of notified goods is only one of the conditions and the other requirement is that the notified goods so manufactured, must be intended to be sold by the dealer himself. The

goods manufactured under the job-work contract will be sold by the dealer at whose instance and for whom they were manufactured by the assessee and they shall not be sold by the assessee itself. So one of the ingredients of Sub-section (2) is missing and the assessee cannot build up its case merely on the basis of condition No. 3 attached to the grant of certificate in form No. XIX. The grant of certificate is subject to the provisions of the Act and the Rules framed thereunder and is further subjected to the conditions attached in form No. XIX. The conditions laid down in form No. XIX cannot be read independent of the provisions of the Statute and the Rules framed thereunder. Sri Bharatji argued that the word 'intended' occurring in Sub-section (2) of Section 4-B, does not signify that the sale of notified goods by the dealer himself is a sine qua non for obtaining the certificate. He says, if it were so, then the phrase in Sub-section (2) would have been 'and such notified goods are sold by him'. The use of the word 'intended', Sri Bharatji says rather signifies that the sale of notified goods by the dealer, who manufactured them, is not an essential ingredient of Sub-section (2). I do not see any force in this submission. This is a cardinal principle of interpretation that no word being used in a statute will be taken as surplus, but every word conveys some meaning. If Sub-section (2) is interpreted in the way as is sought to be by Sri Bharatji, then the use of the word 'intended' in Sub-section (2) will lose its efficacy. Sale will be effected only after the notified goods having been manufactured, but before the actual manufacturing, only the intention of the dealer to sell the notified goods will be relevant. The statute, in my view, cannot be interpreted to mean that there should be intention to sell the notified goods only at the time of applying for recognition certificate and later the fact whether such goods were sold by the dealer himself is immaterial. If such interpretation is accepted, then the use of the word 'intended' in Sub-section (2) will become redundant.

10. Then Sri Bharatji to support his contention relied on Assessing Authority-cum-Excise and Taxation Officer, Gurgaon v. East India Cotton Mfg. Co. Ltd. [1981] 48 STC 239 (SC). In this case, the Supreme Court interpreted Section 8(3)(b) of the Central Sales Tax Act, 1966, which was then as follows:

8. (3) The goods referred to in Clause (b) of Sub-section (1)-

(a)...

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power ;

11. While interpreting the above underlined* portion, the Supreme Court observed on page 246 that if the legislature intended that the sale of the manufactured goods should be by the registered dealer manufacturing the goods and by no one else, there is no reason why the words 'by him' should have been omitted after the words 'for sale' when the legislature considered it necessary to introduce those words after the words 'for resale' in the first Sub-clause of Section 8(3)(b). The omission of the words 'by him' is clearly deliberate and intentional and it cannot be explained away on any reasonable hypothesis except that the legislature did not intend that the sale should be limited to that by the registered dealer manufacturing the goods. Section 8(3)(b) of the Central Sales Tax Act, 1956, is worded entirely different from that of Sub-section (2) of Section 4-B. In Sub-section (2) the words 'and such notified goods are intended to be sold by him' are significant and they only indicate that the sale of notified goods by the dealer himself is a concomitant condition to the earlier one that a dealer is engaged in the manufacture of notified goods. The language used in Sub-section (2) of Section 4-B and in Section 8(3)(b) of the Central Sales Tax Act being entirely different, Sri Bharatji cannot successfully rely on the authority cited by him.

12. For the reasons, I hold that by having used the purchases made against form III-B in the job-work, the assessee has acted in violation of the terms and conditions of the recognition certificate as laid down in Sub-section (2) of Section 4-B in addition to those set out in form No. XIX and, therefore, the penalty is exigible under Sub-section (5) of Section 4-B.

13. This finishes up the revision of the assessee and then I come to the revision of the Revenue.

14. The short point canvassed by the Revenue is that the Tribunal having held that the wastage of Rs. 13,00,000 was attributable to the total purchases made against form III-B, erred in not having apportioned the wastage and in not having found out the wastage proportionate to Rs. 29,00,000 representing the purchases made against form III-B but used in the job-work. It was argued that the entire wastage to the tune of Rs. 13,00,000 should not have been substracted from Rs. 29,00,000, but wastage should have been apportioned to work out the purchases used in the job-work. On principle, what the Revenue urged may be correct, but the fact remains that the Tribunal recorded a finding of fact that on the facts and circumstances of the case penalty could be levied only to the tune of Rs. 1,28,000 and that being so, I see no error in the Tribunal's judgment.

15. For the reasons, both the revisions of the assessee as well as of the Revenue are dismissed. No order as to costs.