

Navsari Cotton Silk Mills Ltd. Vs. the State of Gujarat

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Overruled by : [Assessing Authority Cum Excise & Taxation Officer, Gurgaon v. East India Cotton Mfg. Co. Ltd., Faridabad](#)

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Court : Gujarat

Decided On : Aug-07-1975

Reported in : [1976]37STC140(Guj)

Judge : J.B. Mehta and; T.U. Mehta, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 8, 8(1), 8(2), 8(3), 8(3), 10 and 10A

Appeal No. : Sales Tax Reference No. 20 of 1974

Appellant : Navsari Cotton Silk Mills Ltd.

Respondent : The State of Gujarat

Advocate for Pet/Ap. : S.L. Modi, Adv.

Judgement :

T.U. Mehta, J.

1. The applicant in this reference is a public limited company and its business is to manufacture textiles for sale. While making the assessment for the years 1967 and 1968, on the total turnover of the applicant-company for the purpose of sales tax, the taxing officer found that the goods worth Rs. 53,743 were purchased by the applicant-company against certificates in form C for use in manufacture of

goods for sale even though the purchases were not included in the certificate of registration. He also found that out of the goods purchased under the certificate in form C for use in the manufacture of the goods for sale, colours and chemicals worth Rs. 72,600 were used by the applicant-company for processing the goods belonging to Messrs. Gaekwar Mills Ltd., Bulsar, and that the colours and chemicals worth Rs. 54,050 were sold by the applicant-company to the said Gaekwar Mills. The taking officer, therefore, imposed penalty under section 10A of the [Central Sales Tax Act, 1956](#), for all these various defaults.

2. So far as the goods which were used for processing the goods belonging to Messrs. Gaekwar Mills Ltd., Bulsar, are concerned, the contention of the applicant-company is that these goods have, in fact, been used by it for the purpose of manufacturing the goods for sale. It is the contention of the applicant-company, that the goods which have been manufactured by it on job-work done for and on behalf of M/s. Gaekwar Mills Ltd., Bulsar, have been actually sold by the said mills and since neither section 8(3)(b) of the Act nor the undertaking given by it in C form contemplates that the processed goods should be sold by the assessee himself, it would be sufficient if it is shown that the goods, which have been processed on job-work, have actually gone for sale in the market. According to the applicant-company, therefore, these goods having been actually sold in the market by M/s. Gaekwar Mills Ltd., Bulsar, no penalty as contemplated by clause (d) of section 10 read with section 10A of the Act has been incurred.

3. Another contention of the applicant-company is that even if it is believed that it has incurred the penalty on account of the default contemplated by clause (d) of section 10 read with section 10A of the Act, the amount of penalty cannot be more than one-and-half times the rate of concessional tax contemplated by sub-section (1) of section 8 of the Act.

4. Both these contentions of the applicant-company have been rejected by the taxing authority as well as by the Tribunal. Being aggrieved by that, the assessee has preferred this reference in which the Tribunal has referred the following two questions for our opinion :

'(1) Whether, on the facts and in the circumstances of the case and on a proper interpretation of section 8 of the [Central Sales Tax Act, 1956](#), the Tribunal was justified in coming to the conclusion that the goods purchased against the declaration in form C should be used in the processing of the goods belonging to the dealer himself and the sale of which should also be made by him

(2) Whether, on the facts and in the circumstances of the case and on a proper interpretation of section 10A of the [Central Sales Tax Act, 1956](#), the Tribunal was justified in coming to the conclusion that the maximum penalty is leviable at 15 per cent, that is, one-and-half times of the usual rate and not one-and-half times of the concessional rate which was 2 per cent up to 30th June, 1966, and 3 per cent thereafter ?'

5. Out of these two questions, the second question is on the same lines, on which it was referred to us in *Gaekwar Mills Ltd. v. State of Gujarat* [[1976] 37 S.T.C. 129], (Sales Tax Reference No. 7 of 1974), which is disposed of by us today. We have held in our judgment in that reference that the penalty, which is contemplated by section 10A of the Act, is to be worked out by reference to the rates of tax contemplated by sub-section (2) of section 8 of the Act and not by reference to the rate contemplated by sub-section (1) thereof. Therefore, in view of that judgment, our answer to question No. (2) in this reference is in the affirmative.

6. So far as the first question is concerned, our answer even to that question is in the affirmative, for the reasons which follows.

7. It is clear that the controversy between the parties is on the question whether the goods which are purchased by a dealer by making the declarations contemplated by form C should not only be used by the dealer in manufacturing the other goods, but should also be sold in the market by the very same dealer or not. This controversy arises out of the language of clause (b) of sub-section (3) of section 8 of the Act. In *Gaekwar Mills v. State of Gujarat* [[1976] 37 S.T.C. 129] (Sales Tax Reference No. 7 of 1974), we have considered the scheme of sections 8, 10 and 10A of the Act, at length, and, therefore, we do not find it necessary to repeat the same. However, since clause (b) of section 8(3) of the Act is the bone of the contentions between the parties, it would be necessary to quote the same. It

is in the following terms :

'(3) The goods referred to in clause (b) of sub-section (1)

(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

8. The contention of the assessee is that it had purchased the goods against form C, by giving an undertaking that these goods were purchased for use 'in the manufacture or processing of goods for sale'. According to the assessee, it has carried out this undertaking even with regard to the job-work which it has done for the outside parties, because, it is not in dispute that the goods purchased against form C have, in fact, been used by it in processing the goods which were obtained in the job-work. The concern for which the job-work was done has, according to the assessee, also sold away the goods so processed. According to the assessee, therefore, it has not committed any default, which would attract any penalty under section 10A of the Act.

9. As against this, the contention of the revenue is that the dealer, who gives an undertaking to use the goods purchased against form C, should use those goods, not only in the manufacture or in the processing of goods, but should also sell the manufactured or processed product for his own purpose. It was pointed out that since in this case, the sale of the processed goods is made by the outside party, whose job-work was undertaken by the assessee, it cannot be said that the above-referred essential undertaking given in the C form, has been complied with. According to the revenue, therefore, the assessee has committed a default contemplated by clause (d) of section 10 of the Act.

10. Shri Modi, who appeared on behalf of the assessee, pointed out that if the language used by the legislature in clause (b) is scrutinised, it will be found that with regard to the goods which are purchased for the purpose of 'resale', it has been specifically mentioned that the said resale should be by the dealer himself.

This is evident from the words, 'for resale by him'. Shri Modi further pointed out that unlike the purpose of resale, the purpose of 'manufacturing or processing of the goods for resale' does not specifically mention that the 'resale' should be by the dealer himself. According to Shri Modi, therefore, the distinction which is envisaged by the legislature between the cases in which the goods are purchased for resale, and the cases in which they are purchased for manufacturing or processing purposes, shows, in unequivocal terms, that the sale of the manufactured goods need not necessarily be by the dealer who purchased the goods against C forms and can be by any person who sells these processed and manufactured goods in the market.

11. We find ourselves unable to accept this contention of Shri Modi. On close scrutiny of the grammatical structure of the language used by the legislature in clause (b), we find that the words, 'for use by him', which precede the words, 'in the manufacture or processing of the goods for sale', govern the whole of the later clause, with the result that a dealer who purchases the goods against C forms by making the necessary declaration as regards the manufacture and processing, is required not only to use the goods so purchased in the manufacture or processing of the other goods, but is also required to sell for himself the goods so manufactured and processed.

12. This would be further evident if the whole scheme of section 8 of the Act is taken into account. Reference to sub-section (1) of section 8 shows that a dealer who sells goods in the course of inter-State trade or commerce, to a registered dealer, other than the Government, is required to pay the tax at the concessional rate of three per cent, provided the goods fall within the description referred to in sub-section (3). One of the descriptions referred to in sub-section (3) requires the use of these goods in the manufacture or processing of the goods for sale. The undertaking which the purchasing dealer is required to give in form C also shows that the purchaser incurs the tax liability at the concessional rate only if he gives an undertaking to use the goods purchased against form C, in the manufacture or processing of the goods for sale. Thus, the concessional rate contemplated by sub-section (1) of section 8 of the Act can be availed of only by the person who makes the declaration in form C and by no other person. If that be so, the

undertaking contemplated by the declaration is to be carried out only by the person making that declaration and none else. If we accept the contention of the assessee, it would mean that an undertaking given by one person can be implemented by any other person who is not bound by that undertaking. If such a position is accepted some absurd results would follow because then the implementation of the undertaking will precariously hang upon the fiat of one who does not feel himself bound by the terms of that undertaking and who, therefore, is beyond the pale of the penal provisions of the Act. If such a person fails to sell the manufactured or processed goods in the market, who would be liable to the penalty contemplated by section 10A Obviously that person cannot be penalised for the simple reason that he has given no undertaking. But can the dealer who has given an undertaking in form C be penalised for the fault of the person for whom he has done the job-work Or, should both of them go scot-free so that they can further indulge in such tax evading devices on a larger scale These and other questions are bound to crop up if this contention of the assessee is accepted. Under the circumstances, the contention of the assessee that the sale of the processed or manufactured goods can be made even by the outside parties, who have not given any undertaking contemplated by form C, cannot be accepted as that proposition runs contrary to the basic scheme contemplated by section 8 of the Act.

13. Shri Modi contended on behalf of the assessee that by such a construction, we will be adding words to the language of the statute, even though, the legislature has not preferred to make any such addition. According to him, by reading the section in the manner we do, we would be adding the words, 'by him', at the end of the phrase, 'for use by him in the manufacture or processing of goods for sale'. He pointed out that the legally established position is that a taxing statute has to be read as it is without making any addition to the language used by the legislature with a view to carry out the supposed intention of the legislature. He further contended that even if it is found that the language employed by the legislature in a taxing statute is capable of double meaning, only that meaning should be accepted which is beneficial to the taxpayer.

14. We find ourselves unable to accept any of these contentions, because we find that on a plain grammatical reading of the above-referred disputed phrase, the only conclusion which can be reached is that the goods, which are purchased against C forms, are to be used in manufacture or processing, and the materials so obtained by manufacture and processing, should be sold by the dealer himself. It is true that as held by Rowlatt, J., in *Cape Brandy v. Commissioners of Inland Revenue* [[1921] 1 K.B. 64], in a taxing statute, one has to look at what is clearly stated and there is no room for any intendment. In the words of Rowlatt, J., 'There is no equity about a tax. There is no presumption about a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' But this principle is not applicable to the facts of the present case. As observed by the Supreme Court in *J.K. Steel Ltd. v. Union of India* [A.I.R. 1970 S.C. 1173 at 1177] :

'No rule or principle of construction requires that close reasoning should not be employed to arrive at the true meaning of a badly drafted entry in an Excise Act.'

15. So far as the disputed phrase is concerned, we are of the opinion that it is not even badly drafted. This will be evident from the discussion which follows :

The words, 'for use by him', in our opinion, govern all the remaining words of the phrase, viz., 'in the manufacture or processing of goods for sale'. The phrase, on proper analysis, involves three concepts as under :

- (i) The goods which are purchased should be for the use of the dealer himself;
- (ii) Such use should be for the purpose of manufacture or processing of the goods;
- (iii) Such manufacture or processing of the goods should be for sale.

16. All these three concepts are so interlocked and interdependent that they cannot be read independently of each other. The result is that the concepts of manufacture, processing and sale are the concepts which are controlled by the concept of personal use by the dealer himself.

17. Looking from this angle, if we split up the phrase, it reads as under :

'The goods should be for use by him, in the manufacture of goods for sale, or for use by him in the processing of goods for sale.'

18. Thus, the words 'for sale' go with the concept of manufacture as well as of processing. They cannot be read separately as done by the High Court of Punjab and Haryana in *East India Cotton Manufacturing Company Private Limited v. Assessing Authority-cum-Excise and Taxation Officer, Gurgaon* [[1972] 30 S.T.C. 489]. If so read, it becomes evident that the words, 'for use by him', govern the whole clause. The personal use contemplated by these words takes within its ambit, not only the manufacture and processing but also the sale. Therefore, even the manufactured and processed articles which are produced by using the goods purchased against C forms, are required to be used for sale by the same dealer. In other words, if a dealer, who has made purchases of raw materials against C forms, does not himself sell the manufactured or processed goods prepared from such raw materials, he commits a breach of the undertaking given by him in C form declaration.

19. In our opinion, the above interpretation of the disputed phrase does not result in reading anything more in the language of the statute. What we are actually doing is to read the disputed phrase closely so as to bring about its plain and obvious meaning. In our opinion, it was not at all necessary for the legislature to use the words 'by him' at the end of the disputed phrase, as is done with reference to the word, 'resale', because, that would have been a mere repetition, in view of the fact that the words connoting the same idea have been already employed by using the words, 'for use by him', at the beginning of the phrase. There is, therefore, no question of reading anything more in the language. On the contrary, our effort amounts to nothing more than looking 'fairly at the language used' - to employ the words of Rowlatt, J., in *Cape Brandy Syndicate case* [[1921] 1 K.B. 64].

20. As for the contention of Shri Modi that out of the two alternative interpretations, only that interpretation should be accepted which is favourable to the taxpayer, we find ourselves unable to accept the same, because the principle propounded does not apply to the case where relief in the form of concession in the tax rate is given.

After perusing the scheme of section 8 of the Act, we have no doubt in our mind that the normal rate of taxation in the case of sales in the course of inter-State trade or commerce is the one provided in sub-section (2) of section 8. Concession from this normal rate is prescribed in sub-section (1) of that section, provided the conditions stipulated therein are satisfied. This concession obviously results in relief to the taxpayer and operates as an exception to the application of the normal rate stipulated by sub-section (2). The rule of construction in favour of a taxpayer has no application to such exceptions. This position is so well-established that it need not be fortified by citations. Shri Modi, however, contended on behalf of the assessee that the rate stipulated by sub-section (1) of section 8 of the Act, is not a concessional rate or the rate which operates as an exception to the normal rate. In his view, it is merely a rate like any other rate stipulated by various schedules attached to the local Sales Tax Act. The schedules to the local Act describe different items of different categories, but section 8 contemplates the articles of the same category, viz., those which are sold in inter-State trade or commerce. For the sale of such articles, two rates are stipulated. The concessional rate is stipulated by sub-section (1) on fulfilment of certain conditions, but if these conditions are not satisfied, the case falls within sub-section (2), which is a general clause governing the rest of the cases. Rates stipulated by such a general clause are the normal rates, because the rates stipulated by sub-section (1) are to be applied only in special cases where certain conditions are satisfied. It is, therefore, evident that sub-section (1) works as an exception to the generality stipulated by sub-section (2). It is, therefore, not correct to say that even the rate contemplated by sub-section (1) of section 8 of the Act is a normal rate. It should be noted that simply because sub-section (1) prescribes a rate, it does not cease to be an exception to sub-section (2), because even an exception, which gives tax concession, can prescribe a different rate.

21. We are, thus, of the opinion that the principle of accepting an alternative interpretation which favours a taxpayer, has no application to the facts of the present case.

22. The matter can be viewed from another angle. If the contention canvassed by Shri Modi on behalf of the assessee is accepted, it would result in a large sale

evasion of tax and the frustration of the very object for which concessional rates contemplated by sub-section (1) of section 8 are provided by the legislature. It is evident that if it is left to a particular dealer to decide whether the articles manufactured out of the goods purchased by him against C forms are or are not intended to be put to sale by an outside dealer, the whole question of rate concession contemplated by sub-section (1) of section 8 of the Act will depend upon the judgment of the dealer who makes purchases against C forms. The question is how the dealer who manufactures goods out of the raw materials purchased against C forms, is going to enter into an inquiry as to whether the purchaser of the manufactured goods from him is really going to put these goods in the market for sale. It is an admitted position that the Rules framed under the Act, nowhere prescribe any form containing an undertaking from such purchasers that the manufactured or processed goods purchased by them will be put to sale. Therefore, the said dealer would be required to rely implicitly on the oral statements made by his purchasers. It would be difficult for these dealers, therefore, to prove at the time of assessment, which would be taking place subsequently, that his purchasers had purchased the manufactured or processed goods from him only for the purpose of sale in the market. Such a situation could never have been contemplated by the legislature. Taking therefore, all these facts and the position of law into consideration, we find ourselves unable to accept the contention which is canvassed by Shri Modi on behalf of the applicant. For the same reason, we find ourselves unable to accept the ratio of the decision given by the learned Judges of the High Court of Punjab and Haryana in the above-referred case of East India Cotton Manufacturing Company Private Limited. [[1972] 30 S.T.C. 489]. On the contrary, we find support from the view taken by the High Courts of Karnataka, Kerala and Madhya Pradesh in S. S. Umadi v. State of Mysore [[1974] 34 S.T.C. 228], O. Paramasivan v. State of Kerala [1971 Tax L.R. 1241] and Commissioner of Sales Tax, Madhya Pradesh v. S. R. Sharma [[1973] 31 S.T.C. 480], respectively.

23. In view of what is stated above, our answer to the first question referred to us by the Tribunal is in the affirmative. As already stated, we have provided an answer to the second question also in the affirmative in our judgment recorded in Gaekwar Mills Ltd. v. State of Gujarat [[1976] 37 S.T.C. 129] (Sales Tax Reference

No. 7 of 1974). This reference is, thus, decided in favour of the respondent-State of Gujarat and against the assessee. It is accordingly disposed of and it is ordered that the applicant-assessee shall bear the costs of the respondent, State of Gujarat, in this reference.

24. Reference answered accordingly.

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