Raysinet Kemical Company Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Apr-07-1980

Reported in : [1986]62STC314(MP)

Judge : G.P. Singh, C.J. and ;B.C. Varma, J.

Appeal No. : M.P. No. 1732 of 1975

Appellant : Raysinet Kemical Company

Respondent : State of Madhya Pradesh and ors.

Disposition : Petition allowed

Judgement :

G.P. Singh, C.J.

1. The petitioner is a dealer registered under the M.P. General Sales Tax Act, 1958. The petitioner carries on the business of manufacturing chemicals, viz., refined naphthalene balls, solvent naphtha, naphthalene powder, synthetic resins, etc. The raw materials utilised by the petitioner for manufacturing the above chemicals are coal-tar, other coal-tar by-products, rosin, dephenolised oil, sulphuric acid, caustic soda, etc. The periods with which we are concerned in this petition are 1st April, 1971, to 31st March, 1972, and 1st April, 1972, to 31st March, 1973. The petitioner purchased the raw materials mentioned above within the State against declarations in form XII-A at a concessional rate of tax under Section 8(1) of the State Act. The petitioner also purchased raw materials from outside the State against declarations in C form under the Central Act. By order dated 29th June, 1975, a penalty of Rs. 7,150 was imposed on the petitioner under Section 8(2) of the State Act for the period 1971-72. Similarly, by order dated 29th June, 1975, a penalty of Rs. 50,000 was imposed under Section 8(2) for the period 1972-73. The petitioner filed two revisions against these orders which were dismissed by the Deputy Commissioner of Sales Tax by two separate orders on 2nd September, 1975. The petitioner then filed this petition under Article 226 of the Constitution for challenging the orders imposing the penalty and the orders dismissing the petitioner's revisions. Apart from attacking the orders on merits, the petition raises question as to the constitutional validity of Sections 8(2) and 7 of the Act, but the learned counsel for the petitioner has not argued these points and has stated that he does not want to challenge the constitutional validity of these provisions at this stage.

2. The contravention found proved against the petitioner for imposition of penalty under Section 8(2) is that the petitioner purchased the raw materials in form XII-A under Section 8(1) but the goods manufactured out of the said raw materials were

not sold within the State or in the course of inter-State trade or commerce but were sold outside the State. The assessment order for the first period was passed on 9th September, 1974. The material findings recorded in this order and the order dated 29th June, 1975, imposing penalty are that the petitioner purchased raw materials of the value of Rs. 2,44,580.66 against declarations in form XII-A within the State. The petitioner also purchased raw materials of the value of Rs. 2,02,806.51 against declarations in C form from outside the State. The manufactured goods of the value of Rs. 2,93,266.40 were sold outside the State. The estimated value of raw materials used for the manufactured goods sold outside the State is Rs. 1,15,000. On these facts, the Sales Tax Officer as also the Deputy Commissioner came to the conclusion that the raw materials which were used in manufacturing goods which were sold outside the State must be taken to be those raw materials which were purchased within the State by the petitioner in form XII-A. In our opinion, there is no justification for any such conclusion. The local sales of manufactured goods in 1971-72 were of the value of Rs. 3,96,641.98. The inter-State sales in this period were of the value of Rs. 3,96,505.02. We have already mentioned that the petitioner had purchased raw materials of the value of Rs. 2,02,806.51 from outside the State and these raw materials could very well have been used for manufacturing the goods which were sold outside the State for the simple reason that according to the finding of the Sales Tax Officer the estimated value of the raw materials consumed in manufacturing goods which were sold outside the State is only Rs. 1,15,000 which is much below the value of the raw materials that were purchased by the petitioner from outside the State. The presumption is that every person acts in a lawful manner. Consistent with this presumption it cannot be held that the raw materials purchased under Section 8(1) were utilised for manufacturing goods sold outside the State to the extent these goods could have been manufactured from raw materials purchased from outside the State. Sub-section (2) of Section 8 under which the petitioner has been made liable provides that where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified in the said sub-section, such dealer shall be liable to pay penalty. The purpose specified in Sub-section (.1) is manufacture of other goods for sale in the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India. The burden to prove that the penalty has been incurred in any particular case by contravention of the purpose for which the raw materials were purchased under Sub-section (1) is on the department. It may be that the department is able to discharge that burden in some cases by calling upon the dealer to show as to how the goods purchased under Sub-section (1) were utilised by him. In the instant case, however, on the facts found by the Sales Tax Officer, it cannot be said that the burden is discharged for the entire quantity of manufactured goods sold outside the State could be manufactured out of the raw materials purchased from outside the State and thus there is nothing to establish that the raw materials purchased within the State were used in manufacturing goods sold outside the State. Similar reasoning has consistently been adopted by the Board of Revenue, and in our opinion rightly, in deciding cases of penalty under Section 8(2) [see J.C. Mills Ltd. v. Commissioner of Sales Tax [1977] 10 VKN 225 and Vinay Dal Mills v. Commissioner of Sales Tax (Appeal No. 292-PBR/78 decided on 28th November, 1978) and other cases referred to therein]. The learned Government Advocate relied upon a decision of the Supreme Court in the case of Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax [1978] 41 STC 409 (SC), to show that the burden of proof which is on the department can be discharged by calling upon the dealer to produce his books of account of evidence to show as to how the raw materials were utilised. In the instant case however on the facts found by the Sales Tax Officer from

the account books, it cannot be said that the dealer committed any contravention of the purpose mentioned in Section 8(1) in respect of goods purchased in form XII-A and utilised the goods for manufacturing other goods which were sold outside the State.

3. As regards the period ,1972-73, the facts found are that manufactured goods of the value of Rs. 11,67,845.50 were sold outside the State. Inter-State sales of manufactured goods amounted to Rs. 4,68,993 01. The petitioner had purchased raw materials of the value of Rs. 3,58,907.65 from outside the State. The petitioner had made local purchases of raw materials against declarations in form XII-A under Section 8(1) of the value of Rs. 8,50,633.38. The finding of the Sales Tax Officer is that raw materials of the value of Rs. 8,00,000 were used in manufacture of goods which were sold outside the State. As mentioned above, the petitioner had purchased raw materials of the value of Rs. 3,68,907.65 from outside the State. These raw materials could have been utilised in the manufacture of goods which were sold outside the State without contravention of any law. Deducting this amount from the amount of Rs. 8,00,000, it follows that the raw materials of the value of Rs. 4,41,092.35 which were locally purchased in form XII-A were used for manufacture of goods which were sold outside the State. It is to this extent that a case under Section 8(2) is made out and the petitioner is liable for penalty. The Sales Tax Officer, however, assessed the penalty at Rs. 50,000 on the basis that the raw materials of the value of Rs. 8,00,000 purchased within the State under Section 8(1) were used for manufacture of goods sold outside the State. This basis, in our opinion, is wrong and the penalty should have been assessed on the basis that raw materials of the value of Rs. 4,41,092.35 which were purchased locally in form XII-A were used for manufacture of goods sold outside the State. The penalty will, therefore, have to be reassessed on this basis.

4. The petition is allowed. The order imposing penalty for the period 1971-72 is quashed. The order imposing penalty for the period 1972-73 is also quashed. The Sales Tax Officer is, however, directed to reassess the penalty for the year 1972-73 in accordance with law. There shall be no order as to costs of this petition. The security amount be refunded to the petitioner.