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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **SALES TAX REFERENCE NO. 1/2012**

Date of decision: 11th September, 2013

NAND KISHORE MEGH RAJ JEWELLERS

..... Petitioner

Through Mr. Rajesh Mahna & Mr.
Ramanand Roy, Advocates.

versus

COMMISSIONER OF SALES TAX

..... Respondent

Through Mr. A.K. Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

Appellate Tribunal Value Added Tax, Delhi by their order dated
3rd January, 2012, have referred the following three questions under
Section 45(1) of the Delhi Sales Tax Act, 1975:-

“1. Whether on the facts and circumstances
of the case Tribunal was justified in holding
that the appellants contravened the third proviso
to Section 4(2)(a) even if part of the
manufacturing process is carried out outside

Delhi and then these goods have been received back in Delhi and the process of finishing howsoever insignificant but have been finally manufactured in Delhi where the finishing is done and the manufacturing process is completed in Delhi to make the goods marketable and goods are sold from Delhi in the course of Export out of India.

2. Whether the Tribunal in the facts and circumstances was correct and justified in ignoring the fact that manufacturing could be in number of processes and each process may be in itself be a process of manufacturing and till such time the last process is performed the goods remain in the “process of manufacturing” which is not in contravention to the requirement of Section 4(2)(a) of Delhi Sales Tax Act and the only requirement of law is that the goods should be manufactured in Delhi. Law being silent on part-manufacturing, whether Tribunal could still invoke the 3rd proviso in such case.

3. Whether on facts and circumstances of the case the conclusion of the Tribunal is just and right in construing that movement of raw material outside Delhi is permissible only for the “process not amounting to manufacture” as per rule 4 of Rules framed under Delhi Sales Tax Act, 1975 even if one process of manufacturing is partly done outside Delhi and remaining process is completed in Delhi and confirming the findings of the STO that petitioner is deemed to have violated the provisions of Section 4(2)(a) and so the dealer was liable to be taxed on the purchases.”

The questions arise from Appeal No. 307/STT/03-04 for Assessment Year 1995-96 and Appeal No. 308/STT/03-04 for Assessment Year 1997-98.

2. The petitioner-Nand Kishore Megh Raj Jewellers are registered dealers and engaged in sale of gold and silver ornaments. In the assessment proceedings for the two years, it was noticed that the petitioner had purchased standard gold/bullion/biscuits against statutory forms and these were sent to M/s Surender Kumar Vijay Kumar, Meerut, Uttar Pradesh and M/s Emrold Jewellers, Coimbatore, Kerala for making jewellery according to specific designs provided by the petitioner.

3. Question arose whether the said purchases made by the petitioner against statutory form, i.e., form No. ST-1 should be added to the turnover of the petitioner in view of violation of Section 4(2)(a)(v) of the Act.

4. Adjudicating Authority held that as the goods were manufactured outside Delhi, there was violation of third proviso to Section 4(2)(a)(v) of the Act and, therefore, the purchase value of the said goods should be included in the taxable turnover. Before the adjudicating authority, the petitioner had written a letter dated 7th May, 1999 accepting that the purchased raw material on which no tax was paid on strength of the statutory forms was sent to M/s Surender Kumar Vijay Kumar, Meerut for job work as per specific designs and the goods were received in form of 22 Carat gold ornaments. It was stated that finishing, polishing and accessories were attached in Delhi

in order to give the product a self life and thereafter the goods were exported to various countries.

5. Adjudicating Authority on examination of facts came to the conclusion that standard gold was sent to Meerut/Coimbatore for conversion into ornaments as per specific designs. Ornaments were fabricated/manufactured and thereafter the petitioner received new goods in form of 22 Carat gold ornaments. The raw material, i.e., standard gold/bullion/biscuits was subjected to manufacture and change outside Delhi. The standard gold was of 24 Carat and the gold sent outside Delhi had undergone a change and transformation in form and converted into ornaments. He observed that gold jewellery and ornaments came into existence after the workers had worked at Meerut and Coimbatore. Purity of gold had undergone a change. He rejected the contention of the petitioner that polishing or attaching accessories etc. would amount to manufacture. Adjudicating Authority referred to the invoices, which were produced before him and wherein it was recorded that the goods dispatched were new gold ornaments. Adjudicating Authority has recorded that the invoices received gave description of the item received/issued, purity of material, gross weight, net weight, purpose for which the gold was issued/received and labour charges were mentioned. He has recorded that the goods received by the petitioner were new ornaments and were in themselves

saleable commodities.

6. Similar findings have been reiterated for the Assessment Year 1997-98.

7. The aforesaid findings were upheld by the first appellate authority, i.e., Assistant Commissioner. He had observed that the petitioner had purchased standard gold/biscuits/bullion against ST-1 forms on the specific stipulation that manufacturing shall be carried out in Delhi, but the gold purchased was taken out of Delhi and was converted into ornaments at Meerut, Coimbatore, etc. After the ornaments were manufactured, they were received back by the petitioner at Delhi. Assistant Commissioner referred to the vouchers and observed there was no doubt that manufacturing of gold ornaments was done outside Delhi. This was in violation of Section 4(2)(a)(v) of the Act, which in clear terms stipulated that the goods cannot be transferred out of Delhi for manufacture and had to be utilised or consumed in Delhi. He affirmed the order passed by the Adjudicating Authority.

8. The petitioner did not succeed in the appeal before the tribunal, which has accepted the findings recorded by the tax authorities. Before the tribunal, the petitioner had contended that the word “manufacture” has been defined in Section 2(h) of the Act and would include polishing and other allied works carried out, including

finishing work. It was accordingly submitted that the ultimate and final manufacturing activity was undertaken at Delhi and, therefore, there was no violation of Section 4(2)(a)(v). The tribunal, however, did not agree and held there was violation of the declaration made by the petitioner when they submitted ST-1 form.

9. Learned counsel for the petitioner has drawn our attention to Section 2(h) of the Act, which reads as under:-

“2.(h) “manufacture”, with its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;”

10. It is accordingly submitted that finishing or polishing or attaching accessories to ornaments or otherwise processing or treating the ornaments amounts to manufacture. In other words, the contention raised is that even after the gold ornaments were received from Meerut/Coimbatore, manufacturing activity was undertaken in Delhi and, therefore, there is no violation of Section 4(2)(a)(v) of the Act.

11. We have considered the said contention but are unable to agree with the petitioner. Section 4(2)(a)(v) of the Act reads as thus:-

“4. Rate of tax

(2) For the purposes of this Act, “taxable turnover” means that part of a dealer’s turnover

during the prescribed period in any year which remains after deducting therefrom:

(a) his turnover during that period on-

XXXXX

(v) sale to a registered dealer –

(A) of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for use by him as raw materials in the manufacture in Delhi of any goods, other than goods specified in the Third Schedule or news papers, -

1. for sale by him inside Delhi; or
2. for sale by him in the course of inter-State trade or commerce, being a sale occasioning, or effected by transfer of documents of title of such goods during the movement of such goods from Delhi; or
3. for sale by him in the course of export outside India being a sale occasioning the movements of such goods from Delhi, or a sale affected by transfer of documents of title to such goods effected during the movement of such goods from Delhi, to a place outside India and after the goods have crossed the customs frontiers of India; or

(B) of goods of the class or classes specified in the certificate of the registration of such dealers as being intend for resale by him in Delhi, or for sale by him in the course of inter-state trade or commerce or in the course of export outside India in the

manner specified in sub-item (2) or sub-item (3) of item (A), as the case may be; and

(C) of containers or other materials, used for the packing of goods, of the class or classes specified in the certificate of registration of such dealer, other than goods specified in the Third Schedule, intended for sale or resale;

(vi) such other sales as are exempt from payment of tax under section 66 or as may be prescribed :

PROVIDED that no deduction in respect of any sale referred to in subclause (iv) shall be allowed unless the goods, in respect of which deduction is claimed, are proved to have been sold by the dealer within a period of twelve months from the date of his registration and the claim for such deduction is included in the return required to be furnished by the dealer in respect of the said sale:

PROVIDED FURTHER that no deduction in respect of any sale referred to in sub-clause(iv) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars in the prescribed form obtainable from the prescribed authority is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods:

PROVIDED ALSO that where any goods are purchased by a registered dealer for any of the purposes

mentioned in sub-clause (v), but are not so utilised by him, the price of the goods so purchased shall be allowed to be deducted from the turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer; and

(b) the tax collected by the dealer under this Act as such and shown separately in cash memoranda or bills, as the case may be.”

12. In the present case, we are concerned with sub-clause (A) to Section 4(2)(a)(v). It is accepted that the goods in question are not covered by Third Schedule or newspapers. Sub-clause (A) was considered by the Delhi High Court in *Seagull Laboratories (I.) Private Limited versus Delhi Administration and Others*, (1991) Vol. 81 STC 90 (Delhi). Effect of Section 4(2)(a)(v) of the Act was elucidated, observing that where a registered dealer purchases goods without payment of sales tax, on furnishing a declaration that the goods were for the purpose of manufacture and manufactured goods would be sold in Delhi or sold in course of intra-State sale or in course of export, but there was violation of the said declaration, then the price of the goods so purchased would be included in the turnover of the purchasing dealer. The third proviso had been inserted to the Section in order to penalise mis-utilization of the declaration form. By

furnishing the declaration form, the purchasing dealer gave an undertaking to the seller and in turn to the Government of Delhi to the effect that raw material purchased by him would be used for manufacture in Delhi and goods would be subjected to sale in Delhi, in course of intra-State trade or in course of export outside India. Movement of such goods from Delhi should be occasioned by the sale and not for/by any other purpose. Therefore, when a purchasing dealer did not adhere to the declaration, which he had furnished, the State was wrongfully deprived of revenue i.e. sales tax. Accordingly, the turnover of the purchasing dealer would include the goods covered by the mis-declaration. The taxable event was mis-utilisation of the declaration form, which took place when the goods were transferred for manufacturing outside Delhi. But for the declaration form, the purchasing dealer was liable to pay sales tax at the time of the purchase made by him. Thus, the taxable event and the tax, which was due and payable but not paid in view of the declaration, became payable as there was mis-utilisation and false or wrong declaration.

13. Learned counsel for the petitioner tried to distinguish the said decision and submitted that in *Seagull Laboratories (I) Private Limited* (*supra*) there was transfer of goods on consignment basis and there was no sale. That is one aspect of the matter, but the decision in the case of *Seagull Laboratories (I.) Private Limited* (*supra*) primarily

relates to interpretation of Section 4(2)(a)(v) of the Act. In fact, the constitutional validity of the said Section was challenged. Sub-clause (A) to Section 4(2)(a)(v) comes into operation when there is violation of the condition/declaration that the goods purchased under statutory form were raw material for manufacture of goods in Delhi. In other words, the goods should be used as raw material for manufacturing in Delhi and should not be transferred outside Delhi for manufacturing activities. In the present case, the goods, i.e., standard gold were transferred out of Delhi to Meerut, State of Uttar Pradesh and Coimbatore, State of Tamil Nadu. The reason for the said transfer was manufacture of ornaments. Thus, manufacturing activity was carried out and the standard gold was converted into ornaments. 24 Carat gold became 22 Carat gold, when the ornaments were skilfully fabricated by the goldsmiths as per the designs given by the petitioner. A new and different product, with considerable value addition, known and identified as a different commodity came into existence. The petitioner before the Assessing Officer had accepted that they had provided specific designs and had received back the gold in form of 22 Carat gold ornaments.

14. Learned counsel for the petitioner emphasised that the petitioner had carried out finishing, polishing and had attached accessories at Delhi. The said contention of the petitioner has been rejected by all the

authorities, including the tribunal. The petitioner has not been believed. Firstly, the said finding is a finding of fact. Before us, the petitioner has not placed on record any material or evidence to show nature and what activity undertaken in Delhi and whether it amounted to “manufacture” and not mere activity of polishing or fixing threads etc. It is not the case of the petitioner that they had a manufacturing unit in Delhi. No details of goldsmith employed by them and the nature and the character of the said activities have been indicated/stated. Mere hand polishing, packing or fixing threads to ornaments in Delhi would not amount to manufacture. Every shopkeeper when he puts the goods on display or sells his products does polish and clean the goods or can make small modification, but this does not amount to manufacture. The finding recorded by the tribunal and the lower authorities is that the petitioner had received back new gold ornaments. The raw material purchased should not have left Delhi for manufacturing. Violation of the declaration took place when the raw material i.e. the gold was taken from Delhi to Uttar Pradesh and Tamil Nadu.

15. In view of the aforesaid discussion, we answer the questions of law mentioned above against the petitioner and it is held that there was violation of Section 4(2)(a)(v) of the Act. There was violation of the undertaking/declaration as the goods were sent for manufacture outside

Delhi.

Reference is disposed of. No costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

SEPTEMBER 11, 2013
VKR/NA