

Court No. - 7

Case :- SALES/TRADE TAX REVISION No. - 39 of 2008

Revisionist :- Kisan Sahkari Chini Mills Ltd. Through Its G.M.

Opposite Party :- Commissioner Commercial Taxes Lko.

Counsel for Revisionist :- P.Agarwal

Counsel for Opposite Party :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Shri Pradeep Agarwal, learned counsel for the revisionist as well as Shri Sanjay Sarin, learned counsel appearing on behalf of opposite parties.

2. The present revision has been preferred assailing the order of the Commercial Tax Tribunal (hereinafter referred to as "the Tribunal") dated 10.10.2007 in Appeal No.599 of 2004 for the assessment year 1999-2000.

3. The only controversy which arises in the present case is as to whether the welding electrodes and paints are consumable which are used in production of sugar. It has been submitted on behalf of the revisionist that the revisionist firm is registered as a dealer under the U.P. Trade Tax Act, 1948 and is engaged in manufacture and sale of sugar. The revisionist had applied for grant of "recognition certificate" under Section 4-B of the Act, 1948 read with the U.P. Trade Tax Rules, 1948 and was granted recognition certificate.

4. It is during course of assessment proceedings, it came to the notice that the revisionist had purchased 'welding electrodes' and 'paints' on concessional rate against Form-3B and hence, he was put under notice asking him to reply as to why he has purchased Paints utilizing Form-3B, despite the fact that the welding electrodes and paints are not a raw material used for

manufacture of sugar and as to why difference of tax be not realised from him.

5. Assessing Authority has rejected the explanation given by the revisionist and denied him the benefit of concessional rate for purchase of 'paints and welding electrodes', holding that the same are not raw materials used in production and manufacture of sugar. Similarly, the first appellate authority as well as Commercial Tax Tribunal has rejected the contention of the petitioner and accordingly, in the present revision, the aforesaid question has been raised.

6. It is noticed that the issue raised by the revisionist has already been considered by this Court in the case of M/s The Seksaria Biswan Sugar Factory Ltd. versus Commissioner of Trade Tax, U.P., (Sale/Trade Tax Revision No. 124 of 2007, order dated 04.07.2022), where this Court has held that Paints utilized by the sugar industry are not raw material used for production of sugar and accordingly, the revisionist therein was held not to be entitled for concessional purchase of paints against Form-3B. The aforesaid judgement is quoted hereinbelow:

"1. Heard Sri Pradeep Agarwal, learned counsel for the revisionist as well as Sri Rohit Nandan Shukla, learned counsel appearing for the opposite party.

2. The present revision has been preferred assailing the order of the Commercial Tax Tribunal (hereinafter referred to as "the Tribunal") dated 07.07.2007, whereby by means of common judgment, the second appeals preferred by the revisionist pertaining to assessment years 1999-2000, 2000-2001 and 2001-2002, have been dismissed on common question of law arising for determination before the Tribunal.

3. Against the impugned judgment of the Tribunal dated 07.07.2007 three revisions have been preferred and considering that common question of

law are involved, they are being disposed of by this common judgment.

4. Brief facts of the case are that the revisionist firm is registered dealer under the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act, 1948") and is engaged in manufacture and sale of sugar. The revisionist had applied for grant of "recognition certificate" under Section 4-B of the Act, 1948 read with U.P. Trade Tax Rules, 1948 and was granted recognition certificate no. ST433, dated 28.07.1994. Further applications were made for adding certain goods and by means of order dated 16.12.1998, recognition certificate was amended and revisionist was entitled to purchase the goods on concessional rate of tax, which were to be utilized by him for manufacture of notified goods.

5. It is during course of assessment proceedings it came to the notice that revisionist had purchased 'paint' on concessional rate of tax at the rate 2.5% (normal rate of tax 15%) against Form-3B and hence he was put under notice asking him to reply as to why he has purchased Paint utilizing Form-3B, despite the fact that Paint is not a raw material used for manufacture of sugar and hence why should difference of tax of 12.5% be not realised from him.

6. The revisionist responded to the said notice and in his defence stated that he had purchased Paint as it was covered under the heading "Consumable Stores" for which he had duly applied and in the recognition certificate issued on 28.07.1994 the said article was indicated at item no. 1. It was further stated that items no. 4 of amended certificate dated 16.12.1999 "material for consumable stores".

7. The Assessing Authority rejected the explanation given by the revisionist and imposed penalty under Section 3(b) of the Act, 1948, holding that Paint is not a material which is utilized in the manufacture of sugar, but it is only used for maintenance of machinery and hence it is not covered under the definition of "consumable stores" and the revisionist was not eligible to purchase Paint against Form-3B on concessional rate of tax as it is not covered under the definition of "consumable stores".

8. Aggrieved by the aforesaid order dated 23.01.2020, the revisionist preferred first appeal before the Joint Commissioner (Appeals), Sitapur which was dismissed by means of order dated 16.07.2003, and

subsequently, second appeal was preferred before the Tribunal and all the three appeals were dismissed by means of common judgment and order dated 07.07.2007, which is impugned in the present revisions.

9. The only question which arise for determination by this Court is "as to whether the revisionist was entitled to purchase 'paint' at concessional rate of tax under Section 3(b) of the Act, treating it to be "consumable store", which is utilized in the manufacture of sugar.

10. Learned counsel for the revisionist has submitted that Paints are used to protect the plant and machinery as sugar juice is acidic in nature and sulphur-di-oxide is also used for clarification of sugar cane juice in the second stage of removal of colour which is also acidic in nature and corrodes the machinery and for prevention of which paints are necessary. He submits that in order to protect the plant and machinery, Paints are utilized and hence it cannot be said that they are not essential for manufacturing sugar and consequently revisionist is entitled to purchase Paints at concessional rate of tax utilizing Form-3B and submits that finding of the Assessing Authority, first Appellate Authority as well as the Tribunal are perverse, illegal and arbitrary and deserve to be interfered with by this Court in exercise of its revisional powers.

11. Learned counsel for the revisionist further submitted that similar controversy has also been determined by the Tribunal in the case of Commissioner of Commercial Tax Vs. Awadhesh Sugar Mills Ltd., Hargaon, by means of judgment passed in Appeal No. 307-2001, dated 01.01.2004, wherein the Tribunal held that Paints are included in the definition of "consumable store" and has set aside the penalty order while allowing the said appeal.

12. Sri Rohit Nandan Shukla, learned counsel appearing for the Revenue has supported the impugned judgment and order as well as the orders passed by the Assessing Authority as well as first Appellate Authority and has submitted that for manufacture of sugar 'paints' is not a raw material which is utilized for manufacture of sugar and hence revisionist has purchased the 'paints' utilizing Form-3B in clear violation of provisions of Section 4(b) of the Act and hence there is no infirmity in the orders passed by the authority below. He further submits that definition of "consumable store" was interpreted by the Hon'ble Supreme Court in the case of

Coastal Chemicals Ltd. Etc. Vs. Commercial Tax Officer, A.P., (2000) 117 STC 12, wherein the Court has held as follows :-

"The word 'consumables' in the said provision takes colour from and must be read in the light of the words that are its neighbours, namely, 'raw material', 'component part', 'sub-assembly part' and 'intermediate part' so read, it is clear that the word 'consumables' therein refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason that 'consumables' have been expressly referred to in the said provision, though they would fall within the broader scope of the words 'raw material'.

In the case of Thomas Stephen & Co., relied upon in the impugned judgment, it was held that cashew shells used as fuel did not get consumed in the manufacture of other goods and that "consumption must be in the manufacture as raw material".

To use the words of Thomas Stephen & Co. the natural gas used by the appellant does "not tend to the making of the end-product". it is not a 'consumable'."

13. The provisions of Section 4-B(2) of the Act, 1948 provide 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 him, and such notified goods manufactured or processed by him, 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 and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfied such requirements including requirement of depositing a fee, and conditions as may be prescribed, 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."

14. The word 'goods' as mentioned above, have been defined in Explanation (a) to Section 4-B(2) of the Act, 1948 according to which :-

"Explanation.- For the purposes of this sub-section-

(a) 'goods required for use in the manufacture' shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants;"

15. It is further provided in Section 4-B(5) of the Act, 1948 that :-

"(5) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased the goods after payment of tax at concessional rate under this section or, as the case may be, without payment of tax and has used such goods for a purpose other than that for which the recognition certificate was granted or has otherwise disposed of the said goods, such dealer shall be liable to pay as penalty such amount as the assessing authority may fix, which shall not be less than the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax payable under any other provisions of this Act but not exceeding three times the amount of such difference."

16. The Apex Court in the case of **Coastal Chemicals Ltd. Etc. (supra)** has clearly stated that word 'consumables' refers only to material which are utilized as an input in the manufacturing process namely 'raw material', 'component part', 'sub-assembly part' and 'intermediate part' etc.

17. Applying the aforesaid definition to the facts of the present case, it is noticed that 'Paints' are not utilized either as raw material or processing material such as raw material, plant, machinery, equipments, spare parts, but as per the revisionist 'paints' are utilized only for maintenance of plant and machinery.

18. It is also clear that 'Paints' are not used as input in the manufacturing process of sugar and hence clearly they are not consumed in the process of manufacture of sugar and are also not involved in making of end product and hence it cannot be said that they are 'consumables'.

19. Similar controversy was determined by this Court in the case of **Kisan Sahkari Chini Mills Vs. Commissioner of Sales Tax, 2002 (125) STC 216 (Alld.)**, where cement, steel and paints were sought to be included as

goods which are directly involved in the manufacture of sugar. This Court relying upon the judgment of **Ballarpur Industries Ltd. Vs. State of Karnataka, (1978) 42 STC 401 (Kar)**, wherein the Apex Court held as follows :-

"--- One of the valid tests, in our opinion, could be that the ingredient should be so essential for the chemical processes culminating in the emergence of the desired end-product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end-product, but the dependence of the end-product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end-product in the sense that without its absence the presence of the end-product, as such, is rendered impossible. This equality coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus."

20. This Court in the case of **The Kisan Sahkari Chini Mills Ltd. (supra)**, has observed as under :

"20. It is not the case of the applicant that the three items mentioned above are either raw material or consumables. On the other hand it is the specific case taken by the applicant that they fall under the description of the word "stores". The word "store" has not been defined under the Act or the Rules framed thereunder. In Webster's Third New International Dictionary of the English Language, Unabridged, 1971 Edition, the word "stores" has been defined as under:

"articles (as of food) accumulated or some specific object and issued or drawn upon as needed : the raw or unworked material supplies of a manufacturing concern."

21. Thus, the dictionary meaning of the word "stores" is material supplies of a manufacturing concern or articles accumulated for some specific object and issued or drawn upon as needed.

22. -----

23. Applying the aforementioned principles, I find that the cement which is

required by the applicant for use in the construction of factory building and or foundation, as held by the honourable Supreme Court in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. [1965] 16 STC 563 ; AIR 1965 SC 1310, which has been followed by the honourable Karnataka High Court in the case of Ballarpur Straw Board Mills Ltd. [1978] 42 STC 401 and this Court in the case of Sivalik Collulose Ltd. 1992 UPTC 1 cannot be said that it is used either directly or even remotely in the manufacture of finished goods. Similar is the case of steel and paints, which too is required only in the repairs of boiler and protection of machineries. They cannot be said to be used even indirectly in the manufacture or processing of goods for sale. Thus, all the three items would not fall under the description of the word "stores", which are used in the manufacture of finished goods."

21. The High Court rejected the contention of the revisionist and held that cement, steel and paints were included in the definition of "consumable stores".

22. The judgment of the Tribunal in the case of **Awadh Sugar Mills Hargaon (supra)** is firstly distinguishable on the facts inasmuch as interpretation of 'Industrial Paints' is distinguished from 'Paints' which is sought to be included as "Consumable Stores" by the revisionist and secondly, in the said judgment there is no discussion as to whether "Industrial Paints" are utilized in the manufacture of sugar and the revision has been allowed only on the ground that recognition certificate was granted to the revisionist therein.

23. The aforesaid judgment of Tribunal, in our considered view does not lay down the law correctly and we do not approve of the said decision.

24. This Court is of the considered view that "Paints" are not utilized either as raw material utilized for manufacture of sugar nor is so closely connected with the manufacturing process so as to be included as "consumable stores" and therefore the revisionist was not entitled to purchase the same utilizing Form - 3B, and we do not find any infirmity in the judgment of the Tribunal and hence the revisions are **dismissed**.

24. The question of law is answered in favour of Revenue and against the revisionist. "

7. From the above, it is noticed that the judgment in the case of M/s The Seksaria Biswan Sugar Factory Ltd. versus Commissioner of Trade Tax, U.P. is squarely applies to the facts of the present case and accordingly, this Court is of the considered view that the paints and welding electrodes are not utitlized either as raw materials utilized for manufacture of sugar nor they are closely connected with manufacturing process so as to be included consumable stores and therefore, the revisionist was not entitled to purchase the same utilizing Form-3B and hence, we do not find any infirmity in the judgment of the Tribunal and hence the revision is **dismissed**.

8. The question of law is answered in favour of the Revenue and against the revisionist.

Order Date :- 19.7.2024
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(Alok Mathur,J.)