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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

SALES TAX APPEAL NO. 1 OF 2021

BETWEEN:

M/S APOTEX RESEARCH PRIVATE LIMITED
SITE NO. 1, BOMMASANDRA INDUSTRIAL AREA,
4TH PHASE, JIGANI LINK ROAD,
BENGALURU - 560 099.
REP BY SHRI YOGANJANEYA REDDY, DIRECTOR.

...APPELLANT

(BY SRI.PRASHANTH S.SHIVADASS.,ADVOCATE)

AND:

THE ADDL. COMMISSIONER OF COMMERICAL TAXES
ZONE II, 6TH FLOOR, VTK 1,
GANDHINAGAR, BENGALURU - 560 009.

...RESPONDENT

(BY SRI.ADITYA VIKRAM BHAT.,AGA)

THIS STA FILED UNDER SECTION 66(1) OF THE KVAT ACT, 2003 AGAINST THE ORDER DATED 26.09.2019 PASSED IN NO.ADCOM/ZONE-II/APP-4/SMR/CR-17/2019-20 ON THE FILE OF THE ADDITIONAL COMMISSIONER OF COMMERICAL TAXES ZONE-II, GANDHINAGAR BANGALORE SETTING ASIDE THE ORDER DATED 12.06.2018 PASSED IN CST.AP. 59/2017-18 BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) 4 BANGALORE ALLOWING THE APPEAL AND FILED AGAINST THE PENALTY ORDER DATED 16.11.2016 PASSED UNDER SECTION 8(3)(b) OF THE CST ACT 1956, BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (LGSTO) - 26 BANGALORE FOR THE TAX PERIODS FROM 2009-10 TO 2013-14.

Digitally signed
by SHARADA
VANI B

Location: HIGH
COURT OF
KARNATAKA



THIS STA, COMING ON FOR FINAL HEARING, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

ORAL JUDGEMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This Appeal by the Assessee presented u/s.66(1) of the Karnataka Value Added Tax Act, 2003 (hereinafter "KVAT Act" or "2003 Act") seeks to lay a challenge to the order dated 26.09.2019 whereby the Respondent-Addl. Commissioner of Commercial Taxes having exercised revisional powers vested in him u/s.9(2) of the Central Sales Tax Act, 1956 (hereinafter "CST Act" or "1956 Act") r/w Sec.64 of the 2003 Act having set aside Joint Commissioner's order dated 12.06.2018 made in the Assessee's Appeal. As a consequence, the Penalty Order dated 16.11.2016 passed by the Asst. Commissioner of Commercial Taxes u/s.10A r/w Sec.A3(b) of the 1956 Act has been revived.



2. FOUNDATIONAL FACT MATRIX:

2.1 Appellant-Assessee is a Private Limited Company. It is registered as a dealer both under the provisions of 2003 Act and 1956 Act. It is engaged in the manufacture and sale of pharmaceuticals. The ACCT with his team conducted spot inspection of Assessee's business premises and discovered that the Assessee had effected inter-State purchases of goods not specified in the Assessee's Registration Certificate.

2.2 On the basis of Inspection Report 31.10.2014, the ACCT had issued notice dated 12.05.2016 u/s.10A of the 1956 Act proposing penalty at the statutorily specified rate. The Assessee filed his reply denying the allegation stating that a registered dealer is eligible to avail concessional levy of CST by issuing C-Forms against the purchases of goods that are intended for resale or for use in the manufacturing or for processing for resale as provided u/s.8(3)(b) of the Act. This reply was not agreed to and the ACCT found violation of the provisions of Sec.8(3)(b) on the ground that the very issuance of C-Forms was illegal since the subject goods do not answer the kind of goods enumerated in the Registration Certificate. Therefore, he made Penalty Order dated 16.11.2016 levying a penalty of Rs.3,50,47,471-00. Assessee's rectification application dated 18.12.2017 filed



u/s.69(1) of 2003 Act came to be negatived vide Endorsement dated 16.01.2018.

2.3 Aggrieved by the Penalty Order and the Endorsement, the Assessee preferred an Appeal before the JCCT (Appeals)-4 u/s.9(2) of the 1956 Act r/w Sec.62 of 2003 Act. The Appeal came to be allowed vide order dated 12.06.2018 recording a finding that the category of goods purchased by the Assessee as per the Reassessment Orders were found to be in the nature of capital goods utilized by him in the business activity and they match with the category of goods vide B-53 Code enlisted in the Registration Certificate since 2009 till the period of assessment.

2.4 The Addl. Commissioner of Commercial Taxes, Zone-II, Bangalore took up the matter in exercise of *suo moto* revisionary powers u/s.9(2) of 1956 Act r/w Sec.64 of 2003 Act. Having issued a proposition notice and having heard the Assessee, he set aside the order dated 12.06.2018 of JCCT Appeals by his order dated 26.09.2019. Now this appeal from the revisionary order is at our hand.

2.5 A Co-ordinate Bench of this Court had admitted the Appeal vide order dated 10.01.2023 on the following questions of law:



"1. Whether the impugned order passed by the respondent is correct when the FAA has passed order in favour of the appellant on the same set of facts and documents?

2. Whether the impugned order passed by the respondent amounts to a re-assessment and not a revision?

3. Whether, penalty can be levied under Section 10-A of the CST Act, in the absence of 'mens rea' on the part of the appellant?"

3. Learned counsel appearing for the Assessee vehemently argues that the original Certificate of Registration as a dealer was obtained by his client on 01.04.2005; subsequently, amended Certificate of Registration was obtained on 24.02.2009 which has been in force till the relevant period; the goods in question answer the description of sub-category 'B', Code 53.01 as mentioned in the amended Certificate. The ACCT had committed an error which he refused to rectify his reassessment order despite a request; the JCCT in the first Appeal having rightly considered the matter held that the goods in question fall within the sub-category of the goods described in the amended certificate and therefore, had



set aside the Penalty Order; this order could not have been set at naught by the Addl. CCT for no reason or rhyme. In support of his contention, he banks upon a Coordinate Bench decision in ***M/S.KALABURAGI CEMENTS PVT LTD., vs. ADDL. COMMISSIONER COMMERCIAL TAXES¹***.

4. Learned AGA Mr.Aditya Vikram Bhat appearing for the Revenue resists the appeal with equal vehemence making submission in justification of the impugned order and the reasons on which it has been constructed. The thrust of his submission is that the subject goods which the Assessee admittedly had bought do not fit into the class of goods enumerated in the amended Registration Certificate; and further, the Assessee has not used these goods for the manufacture, resale or for processing for the purpose of resale; there is a wealth of material which the Addl. Commissioner has rightly considered to come to a conclusion that these goods have been utilized for the

¹2017 SCC OnLine KAR 4412



construction of Assessee's building. He adds that in interpreting the class of goods mentioned in the amended Registration Certificate, the rule of *ejusdem generis*; the goods enlisted have a *genus & species*. He also argues that the question of *mens rea* has to stay away from consideration. He disputes invokability of Co-ordinate Bench decision in the fact matrix of this case, arguing that it essentially related to mining, where different considerations figure. So contending, he seeks dismissal of the Appeal.

5. Having heard the learned counsel for the parties and having perused the Appeal papers, we decline indulgence in the matter answering the framed questions of law against the Assessee and in favour of the Revenue for the following reasons:

5.1 The first submission of the learned counsel appearing for the Assessee that goods in question bought by his client during the relevant period answer the description of those specified in the amended Registration Certificate



issued on 04.02.2009 is difficult to agree with. The said Certificate on its blurb, has the following contents:

CST COMMODITIES-ANNEXURE		
TIN:29510220067		
CST Act, 1956: COMMODITIES LIST		
Sub Category	Code	Commodity Description
B	53.01	PHARMA PRODUCTS INCLUDING CAPTIAL GOODS {10/02/2004}
B	62.01	CARTON BOXES {10/02/2004}

5.2 Section 8 of the 1956 Act, in so far as it is relevant to this matter, reads as follows:

"8. Rates of tax on sales in the course of inter-State trade or commerce.—

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

...

(3) The goods referred to in sub-section (1) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale 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 the tele-communications network or in mining or in



the generation or distribution of electricity or any other form of power;

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit."

5.3 The relevant form, namely Form-C is prescribed pursuant to Rule 12 of the CST (Registration & Turnover) Rules 1957. Thus, a Registered dealer purchasing the goods is eligible to avail concessional levy of CST by issuing C-Forms against the purchases of goods which are included in its Certificate of Registration and are intended for resale, for use in the manufacture or processing of goods for sale. The legislative intent is very clear. Such a concession cannot be availed if the goods bought by the Assessee are not included in its Certificate of Registration and are not used in the manner prescribed in Section 8 (3) (b). In the current context, the purchased goods ought to have been used in the manufacture or processing of goods for sale and not utilized in the construction of building or for office interiors of the Assessee.



5.4 From a reading of the order of the assessing officer as well as the order in *suo moto* revision, it becomes clear that the Assessee has issued C Forms in respect of the following items:

- "• Clean room accessories and room accessories including pre-fabricated clean rooms.*
- Glass-ware for factory doors housing raw materials and components.*
- Room accessories and clean room accessories including the following items; Hi Pharma walkable False Ceiling (Nicomac Clean Rooms), Hi Pharma Double Skin Walls, Glasses, Grills, Aluminium Coving, 90 Degree Corners, Single sliding doors, Double doors View Glasses on doors, Change Lockers, Apron Cup Boards."*

By no stretch of imagination, it can be assumed that these goods answer the description found in the Certificate of Registration. Mr. Aditya Vikram Bhat is right in his submission that the description at Sub-Category (b) Code 53.01 is "PHARMA PRODUCTS INCLUDING CAPITAL GOODS". The expression "Pharma Products" is genus and the expression "including Capital Goods" that follows it is, species. In other words, the goods should have the characteristics of genus i.e., Pharma products. Otherwise, any goods would fit into the inclusive category and that would defeat the very legislative purpose.



5.7 The meaning of the expression "*in the manufacture of goods*" was considered by the Apex Court in ***JK COTTON SPINNING AND WEAVING MILLS LTD²***.

The Supreme Court held that:

*"This expression would normally encompass the entire process carried on by the dealer of **converting raw materials into finished goods.** Where any particular process is so **integrally connected** with the ultimate production of goods that but for that process, manufacture or processing of goods would be **commercially inexpedient**, goods required in that process would, in our judgment, fall within the expression in the manufacture of goods.*
(emphasis supplied)"

The same judgment has expressly considered the case of materials that go into a building that may house a manufacturing unit by observing:

***"Building materials** including lime and cement not required in the manufacture of tiles for sale **cannot, however, be regarded within the meaning of Rule 13, as raw materials in the manufacture or processing of goods** or even as "plant". It is true that buildings must be constructed for housing the factory in which machinery is installed. Whether a building is a "plant" within the meaning of Rule 13, is a difficult question on which no opinion need be expressed. But to qualify for specification under s. 8 (3) (b) goods must be intended for use of the nature mentioned in Rule 13, in the manufacture of goods. **Building materials used as raw materials for construction of "plant" cannot be said to be used as plant in the manufacture of goods.** The Legislature has contemplated that the goods to*

² AIR 1965 SC 1310



qualify under s. 8 (3)(b) must be intended for use as raw materials or as plant, or as equipment in the manufacture or processing of goods, and it cannot be said that building materials fall within this description"

In this background, the vehement submission of learned counsel for the Assessee that the subject goods even if utilized for the building of the structure, his client will be entitled to concessional benefits, runs counter to the statutory policy enacted in Rule 13 of Central Sales Tax (Reign and turnover) Rules, 1957, which has the following text:

"The goods referred to in clause (b) of sub-section (3) of Section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel, or lubricants in the manufacture or processing of goods for sales or in mining, or in the generation or distribution of electricity or any other form of power."

The above Rule has to be construed in the light of Section 8(3)(b) of the 1956 Act which we have already extracted above.

5.6 There is one more aspect of the matter that Mr Bhat, AGA draws our attention to. The record before us does not show any effort on part of the Appellant Assessee to actually demonstrate that his purchases meet the test of "integral connection" to the ultimate production of goods. It is one thing to say so repeatedly and it is another to



prove the integral connection. The test of integral connection, we note is laid down by the Hon'ble Supreme Court in ***JK COTTON*** *supra*. We also note that this judgment is placed before us by the Appellant Assessee himself in his compilation filed across the Bar. When the Apex Court has dealt with building material specifically in ***JK COTTON*** and held it to be ineligible for the purposes of Section 8 (3) (b) of the 1956 Act, there is very little room for the Appellant to maneuver. However, Mr. Bhat is right. In telling us that it was for the Appellant-Assessee to demonstrate the integral connection since those are facts exclusively within his knowledge. When the Revenue asks an Assessee to "show cause" and makes a proposition notice, that is exactly what the Assessee is expected to do. The appellant Assessee ought to have placed unimpeachable literature and other evidence of sterling quality before the Assessing Officer to make out his case of "integral connection" of the purchased material to the manufacture of his goods.

5.7 The impugned order is justifiably structured and rightly has set aside the order of the Joint Commissioner of Commercial Taxes. The reliance of the learned counsel appearing for the Assessee that a Coordinate Bench of this Court having construed the very same provisions has granted relief to a similarly circumstanced dealer and therefore, his client cannot be discriminated against, does



not impress us vide ***M/S.KALABURAGI CEMENTS, supra***. Obviously, as Mr. Aditya Vikram Bhat points out, it was a case relating to mining industry; secondly, the Certification of Registration had enlisted the class of goods into which the ones involved in a case had answered the description of. Essential facts of that case are demonstrably lacking in this. It hardly needs to be stated that *a decision is an authority for the proposition articulately laid down in the fact matrix of the case*, as observed by Lord Halsbury in ***QUINN vs. LEATHEN***³.

In the above circumstances, this Appeal fails, costs having been made easy.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Snb/Bsv/cbc
List No.: 1 SI No.: 42

³(1901) AC 495, 506.