IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

RESERVED ON: 25.11.2022
DELIVERED ON:13.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

W.P.T.T. NO. 01 OF 2022

EMERALD JEWEL INDUSTRY INDIA LIMITED

VERSUS

SENIOR JOINT COMMISSIONER, COMMERCIAL TAXES, WEST BENGAL,

LARGE TAX PAYERS UNIT & OTHERS

Appearance:-
Mr. Rajeev Kumar Agarwal, Adv.

........For the Petitioner

Mr. T.M. Siddique, Adv.
Mr. Debasish Ghosh, Adv.

........For the State

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This writ petition has been filed challenging the order passed by the tribunal. The facts which are necessary for the consideration of the relief sought for in the writ petition could be stated as follows:-

2. The petitioner is a private limited company engaged in the business of manufacturing of jewellery and ornaments and selling the same within the country as well as exports. The Bank of Nova Scotia had filed the revision case before the tribunal in RN No. 92 of 2018.The said bank, impleaded as a proforma respondent in this writ petition, is a registered dealer under the provisions of the West Bengal Value Added Tax Act, 2003, (WBVAT) carrying on business of banking and also a reseller of bullion, gold and silver. In their return for the period 2014-2015, they claimed exemption from tax under Rule 33A of the West Bengal Value Added Tax Rules, 2005 (the Rules) in respect of the sales made to the writ petitioner amounting to Rs. 18,60,65,057/-. The assessing authority of the said bank disallowed the claim for exemption on the sole ground that the purchasing dealer namely the writ petitioner did not manufacture the jewellery in the State of West Bengal but had manufactured the same at Coimbatore in Tamil Nadu state. The bank preferred appeal before the First Appellate Authority which was dismissed by the order dated 16.11.2017. Aggrieved by such order, the bank filed a revision petition before the tribunal. The said revision petition was dismissed by order dated 06.09.2021 which has now been challenged by the writ petitioner on the ground that they are the purchasing dealer and are aggrieved by such order.

3. We have heard Mr. Rajeev Kumar Agarwal, learned advocate appearing for the petitioner and Mr. T.M. Siddique and Mr. Debasish Ghosh learned advocates for the respondent state.

4. It is submitted by the learned advocate for the petitioner that they had purchased gold from the bank of Nova Scotia by furnishing declarations under Section 33A (1) (a) of the VAT Act to enable the bank to claim exemption from payment of value added tax. It is submitted that in terms of the relevant rule, the bank is entitled to sell gold to a registered dealer in West Bengal for use in the manufacture of jewellery to be exported outside India. In terms of Rule 33A (3), a certificate in the form appended to the rule has to be issued by the purchasing dealer, the petitioner. It is submitted that the form contained stipulations that the goods purchased are for the purpose of use in the manufacture of jewellery in West Bengal to be exported out of India and not intended to be disposed of otherwise. The learned advocate would submit that in Rule 33A there is no condition that the gold so purchased should be used for manufacture of jewellery in West Bengal and therefore the form of certificate is contrary to the rule. The petitioner had undertaken the manufacture of jewellery in Coimbatore and thereafter exported the same which has not been disputed by the department and therefore the petitioner has not disposed of the manufactured jewellery in any other manner. The learned counsel placed reliance on the decision of the tribunal in the case of ***Nayara Energy Limited Versus Senior Joint Commissioner of Commercial Taxes, LTU in Case No. R.N. 1399 2018 dated 13.11.2020*** wherein it was held that the form appended to the rules has to be in conformity with the provisions of

the Act and the rules framed thereunder. It is submitted that initially the challenge made by the respondent bank was heard by the two member bench of the Tribunal which had agreed with the submissions made by the state and taking note of the facts that the decision of the tribunal in ***Nayara Energy Limited*** was a three member bench, the case of the respondent bank was referred to a three member bench and that is as to how the matter was dealt with and the impugned order came to be passed. It is submitted that the sole reason on which the case of the respondent bank was not accepted by the tribunal is by holding that both the rule and the form were laid down by the same rule making authority in the same sitting and therefore the form cannot be given any lesser significance and authority than Rule 33A. Further it is submitted that it was argued before the tribunal that any restrictions if it is to be placed depending upon the situs of manufacture, it will be a clear violation of Article 301 and 304 of the Constitution of India. The learned Advocate for the appellant had elaborately referred to the decision of the tribunal in the case of ***Nayara Energy*** and the decision was sought to be pressed into service to be in the nature of the arguments made by the learned advocate in the case before us. It is the submission of Mr. Agarwal that the form appended to the rules has to be in conformity with the provisions of the Act and rules framed thereunder and a form is lower in hierarchy to the rules and in the absence of any such restrictions that the goods have to be manufactured in West Bengal in the substantive rule, such a condition cannot be imposed by including a clause in the form. In other words, it is submitted that the form of declaration cannot prescribe restrictions or conditions beyond the rules. It is further submitted that the respondent state have accepted the decision in ***Nayara Energy***, it has become a binding precedent. It is further submitted that in Rule 26A of the WBVAT Rules deduction has been provided from taxable turn over when the purchasing dealer uses the goods (cotton yards) in the manufacture of goods in the State of West Bengal. Rule 26A and the form of certificate prescribes such as the condition which shows that the legislature was conscious of the requirements of manufacturing activity has to be done in the state whereas such a requirement has not been prescribed in Rule 33A and there cannot be any room for intendment. In support of his contention, learned advocate placed reliance on the decisions in:-

- ***Patina Gold Ornaments Private Limited Versus Assistant Commissioner (ct.) Park Road Circle, Erode and Another*** [1]***,***
- ***West Bengal Hosiery Associations and Others Versus State of Bihar and Another*** [2].
- ***Loarn Steel Industries Limited and Another Etc. Versus State of Andhra Pradesh and Another*** [3]
- ***State of U.P. Versus Jaiprakash Associates and Others*** [4],
- ***Commissioner of Income-Tax, Chennai Versus Tulsyan NEC Limited*** [5]
- ***Jai Matadi Enterprises Versus S.T.O. Asansol Charge & Others*** [6]
- ***IDL Chemicals Limited Versus Union of India*** [7]***,***

[1] (2018) 50 GSTR 114 (Mad)
[2] (1988) 4 SCC 134
[3] (1997) 2 SCC 37
[4] (2013) 39 Taxman.com 44 (SC)
[5] (2011) 196 Taxman 181 (SC)
[6] (2018) Volume 71 Sales Tax Advisors Page 22 (Tribunal)
[7] 1996 (86) ELT 182 (SC)

- ***Corporation Bank Versus M/s. Saraswati Abharansala and Another in Civil Appeal No. 6708 of 2008 dated 19.11.2008 (SC) and***
- ***Government of Kerala and Another Versus Mother Superior Adoration Convent*** [8]***.***

5. Mr. T.M. Siddique, learned counsel appearing for the respondent state submitted that in the form of certificate appended to the rules, it is prescribed that the purchasing dealer must certify that the goods purchased from the selling dealer are for the purpose of use in the manufacture of jewellery in West Bengal to be exported by him out of the country and are not intended to be disposed of otherwise. It is submitted that the said certificate appended to Rule 33A is integral part of the rule and cannot be read and interpreted separately. Further the said form has been laid down by the very same authority which had made the rule and therefore the question of the said form overriding the rule does not arise. Further it is submitted that the intention of the legislature is clear by insertion of the words in sub rule (1) namely "subject to conditions specified in sub rule 3" and sub rule (3) specifically lays down two pre conditions for claiming deduction under Section 16(1) (c) of the Act namely, (a) that the selling dealer shall furnish the relevant invoices / cash memo evidencing such sales and (b) a certificate in a form appended to the rule duly filled in and signed by the purchasing dealer. It is submitted that the said form clearly stipulates that the purchasing dealer must certify that the goods purchased from the selling dealer are for the purpose of use in the manufacture of

[8] (2021) 5 SCC 602

jewellery in West Bengal. It is submitted that if the Rule 33A is read in its entirety, it is evident that there is a continuity of expression which ends with the form of certificate. Therefore, it is submitted that the words in the rule should be understood by harmonizing the same with the provisions of the Act and the object of the legislation. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in ***Durgabai Deshmukh Memorial Senior Secondary School and Another Versus J.A.J Vasu Sena and Another*** [9] and for the same proposition, reliance was placed on the decision of the Hon'ble Supreme Court in ***State of Uttar Pradesh Versus C. Tobit and Others*** [10]**.** It is further submitted that the intention was to promote the manufacture of jewellery in the State of West Bengal and therefore Rule 33A has prescribed that both purchasing and selling dealers must be registered under the WBVAT in West Bengal. This makes the intention of the legislature clear to mean that the registered dealer in West Bengal will ultimately use the gold in manufacturing jewellery in West Bengal. Thus, it is submitted that the statute has to be interpreted in such a manner bearing in mind the context and purpose of the statute. To support such arguments, reliance was placed on the decision of the Hon'ble Supreme Court in ***Harbhajan Singh Versus Press Council of India and Others*** [11]. To support his contention that the form of certificate is the part of the rule reliance was placed on the decision of the Hon'ble Supreme Court in the ***Maharashtra State Road Transport Corporation***

[9] (2019) 17 SCC 157
[10] AIR 1958 SCC 414
[11] (2002) 3 SCC 722

Versus Babu Goverdhan Regular Motor Services and Others[12]. It is further submitted that Rule 33A relates to deduction on turnover of sales and it is not akin to denial of the rebate of tax or input tax credit (ITC) on the basis of geographical restrictions. To buttress the said submission, reliance was placed on the decision of the Hon'ble Supreme Court in ***Jindal Stainless Steel Limited Versus State of Haryana***[13]**.** Further by relying upon the decision of the Hon'ble Supreme Court in ***Commissioner of Customs (Import) Versus Dilip Kumar and Company and Others*** [14], it is submitted that the concession granted by the Rule 33A has to be strictly interpreted and such interpretation should lean in favour of the revenue.

6. Mr. Agarwal reiterated that neither in Sub rule (1) nor in sub rule (3) of Rule 33A there is any condition prescribed that the manufacture of jewellery has to be undertaken in the State of West Bengal and it appears only in the form of certificate which cannot override the rule. With regard to the decision in the case of ***Babu Goverdhan Regular Motor Service***, it is submitted that the issue in the said case was with regard to the entitlement of stage carriage permit by submitting the required information in a prescribed application form and the legal issue raised in this writ petition was not subject matter in the said case. It is further submitted that the decision in ***Jindal Stainles Limited*** has absolutely no application to the facts of the case on hand. Further the decision in ***Jindal Stainless Limited*** was considered in ***Patina Gold Ornaments*** and the decision has been rendered in favour of the dealer. It is further submitted that the decision in

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[12] 1969 (2) SCC 746
[13] (2017) 12 SCC 1
[14] (2018) 9 SCC 1

Dilip Kumar will not apply to the facts of the case on hand as it pertains to entitlement of general exemption and not deduction from turnover of sales. Further there is no ambiguity in Rule 33A and the only issue is with regard to the inconsistency of the form of certificate. The decision in ***Dilip Kumar*** had been explained in the decision in ***Mother Superior Adoration Convent***. Further the argument of the state that the rule seeks to promote manufacture of jewellery within the state was a similar argument which was dealt with in ***Patina Gold Ornaments***. Further it is submitted that if the stand taken by the respondent is accepted then the assessee who is a registered dealer in West Bengal would not be able to undertake the manufacture on job work basis outside the state which is not envisaged in the rules. That apart, denial of deduction under Rule 33A on the basis of situs of manufacture would be ultravires under Article 301 and 304 of the Constitution. It is submitted that in ***Corporation Bank*** an identical issue, the Hon'ble Supreme Court had issued directions to the state to refund the value added tax directly to the buyer of the gold instead of claiming refund through the seller of the gold.

7. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record.

8. The issue which falls for consideration in this case is whether the form of certificate occurring in Rule 33A is inconsistent with Rule 33A. In order to find the answer to this query, we first need to take note of the Rule 33A in its entirety.

> *33A. Exemption from tax on certain sales of gold, silver, platinum and diamond or precious stones- (1) Where-*

(a) any scheduled commercial bank, authorised by the Reserve Bank of India to import gold or silver or platinum from outside India; or

(b) the Minerals and Metals Trading Corporation of India Limited (a Government of India enterprise) (hereinafter referred to as MMTC),

sells gold, silver or platinum to a registered dealer in West Bengal for use of such goods by such registered dealer in manufacture of jewellery to be exported by him or by MMTC out of the territory of India, such scheduled commercial bank or MMTC may, subject to the conditions specified in sub-rule (3), deduct turnover of such sales of such goods under clause (c) of sub-section (1) of Section 16.

(2) Where any registered dealer sells diamond or precious stones to a registered dealer in West Bengal for use of such goods by such purchasing registered dealer in manufacture of jewellery to be exported by him out of the territory of India, such selling registered dealer may, subject to the conditions specified in sub-rule (3), deduct turnover of such sales of such goods under clause (c) of sub-section (1) of Section 16.

(3) For claiming the deduction under clause (c) of sub-section (1) of section 16 as referred to in sub-rule (1) or sub rule (2), as the case may be, the selling registered dealer shall furnish relevant invoice/cash memo evidencing such sales and a certificate in the form appended to this rule, duly filled in and signed by the purchasing registered dealer or by a person authorised by such purchasing registered dealer for the purpose.

FORM OF CERTIFICATE

[*See sub-rule (3) of rule 33A*]

Serial No…….. *Date……….*

To

………………….(bank/MMTC/dealer)

…………………(Address)

…………………(Certificate of Registration No., if any)

*Certified that the goods purchased from you as specified in the invoice/cash memo stated below are for the purpose of use in the manufacture of jewellery in West Bengal to be exported by *me/us out of the territory of India and are not intended to be disposed of otherwise by – me/us.*

Invoice/Cash Memo No. and date	Description of goods	Quantity	Amount
(1)	(2)	(3)	(4)

Name and address of the purchasing dealer:
Certificate of Registration No:

Date………………

Signature and status of the person signing the certificate

*Strike out which is not applicable.

9. Rule 33A deals with exemption from tax on a certain sales of gold, silver, platinum and diamond or precious stones. Sub rule (1) states that where any scheduled commercial bank, authorised by Reserve Bank of India to import gold or silver or platinum from outside India or the minerals and metal trading corporation of India sells gold, silver or platinum to a registered dealer in West Bengal for the use of such goods, by such registered dealer in manufacture of jewellery to be exported by him or by MMTC out of the territory of India, such scheduled commercial banks or MMTC may, subject to the condition specified in Sub rule (3), deduct the turnover of sales of such goods under Clause (c) of sub section (1) of Section 16 of the Act. Sub section (2) is not relevant for the purpose of our case. Sub rule (3) provides for the manner of claiming deduction under clause (c) of

sub section (1) of Section 16 as referred to in sub rule (1) of Rule 33A. Thus a registered dealer in the State of West Bengal who sells gold, silver or platinum to another registered dealer in the State of West Bengal for use of such goods in the manufacture of jewellery to be exported by him subject to the conditions prescribed in sub rule (3) will be entitled to deduct such turnover of such sales under Clause (c) of sub section (1) of Section 16. What is required to be done by the registered dealer is spelt out in Sub rule (3) of Rule 33A stating that the selling registered dealer shall furnish relevant invoice or cash memo evidencing such sales and the certificate in the form appended to the rule duly filled in and signed by purchasing dealer. The form of certificate as required by purchasing dealer to certify that the goods purchased are for the purpose of use in the manufacture of jewellery in West Bengal to be exported by him out of the territory of India and not intended to disposed of otherwise. The invoice No., date, description of goods, quantity and the amount have to be furnished apart from the name and address of the purchasing dealer and certificate of registration number. The contention of the petitioner is that in Rule 33 (1) and (3) there is no such restrictions that the gold, silver or platinum purchased has to be used in the manufacture of jewellery in the State of West Bengal and to be exported and such a condition is contained only in the form and the form cannot override the rule. Thus, the sum and substance of the argument of Mr. Agarwal is that in the hierarchy the form is in the lowest rung and the rule occupies a higher pedestal in the hierarchy than the form and the Act in highest pedestal in the hierarchy and a condition which is neither contained in the Act nor in the rules could not be incorporated in the form of certificate. At the first blush, the argument of Mr. Agarwal appears to be attractive but we are required to examine the rule in its entirety by bearing in mind the cardinal principle of statutory interpretation that is to say that the rule has to be read as a whole and in the context and the object of the legislation.

10. The first and foremost aspect which is conspicuously present in Rule 33A is that both the purchasing dealer and the selling dealer should be registered dealers under the provisions of the WBVAT. Unless this pre condition is satisfied the claim for exemption from tax on sales of gold, silver and platinum and diamond or precious stones is impermissible. It is not in dispute that the petitioner and the respondent bank are registered dealers in West Bengal.

11. The second condition is that the gold, silver or platinum which is sold/purchased has to be used by such registered dealer (registered purchasing dealer in West Bengal) in manufacture of jewellery to be exported by him. If both the registered dealers fulfils this criteria the exemption is to the effect that the selling dealers can deduct the turnover of such sales of goods under clause (c) of Sub section (1) of Section 60. This exemption is subject to the conditions specified in sub rule (3) of Rule 33A. Sub rule (3) requires two conditions to be fulfilled for claiming deduction under Section 16(1) (c) namely the selling dealer should furnish the invoice evidencing such sales and the purchasing dealer should furnish the certificate in a form appended to the rule. Unlike other rules where statutory forms are given in the schedule to the rule in Rule 33A the form of certificate

forms part of the Rule 33A. Thus, the twin conditions required to be fulfilled under sub rule (3) of Rule 33A is not by the selling dealer alone as both selling dealer as well as the purchasing dealers are bound over by their respective condition. This is precisely the reason for which the rule 33A (1) mandates that both the selling and purchasing dealers have to be registered in the State of West Bengal. Therefore, we find that the form of certificate is embodied in the rule and unless the form is read along with the sub rule (3) it becomes meaningless and such interpretation is impermissible. That apart, the petitioner cannot contend that it is sufficient if the selling dealer furnishes the relevant invoices evidencing such sales and they would be free to carry on job work with the gold so purchased by doing the job work outside the State of West Bengal. The intention of legislature is clear from reading the rule as a whole as it mandates both the dealers should be registered in State of West Bengal and the gold so purchased should be used in the manufacture of jewellery to be exported. Thus, the rule read in its entirety clearly shows that unless both the conditions are satisfied namely condition to be complied by the selling dealers and the condition which has to be complied with by the purchasing dealer such exemption is not available. As held by the Hon'ble Supreme Court, the Constitution Bench of the Hon'ble Supreme Court in ***CCE Versus Hari Chand Shri Gopal***[15] a manufacturer qualified to seek exemption was required to comply with the pre-conditions for claiming exemption and therefore is not exempt or absolved from following the statutory requirements as contained in the Rules. Further it was held that a person who claims exemption or

[15] (2011) 1 SCC 236

concession has to establish that he is entitled to that exemption or concession and such provision has to be construed strictly with certain exceptions depending upon settings of which the provision has been placed in the statute and the object and purpose to be achieved. Further the mandatory requirements of those conditions must be obeyed or fulfilled exactly though at times some latitude can be shown.

12. In ***Dilip Kumar,*** the Hon'ble Supreme Court clarified the position of "plain meaning rule or clear an unambiguous rule" with respect to tax law by holding that the when the language in the statute is plain and unambiguous, the court has to read and understand the plain language as such and there is no scope of any interpretation. Further it was held that in interpreting a taxing statute equitable considerations are entirely out of place, a taxing statute cannot be interpreted on assumptions and presumptions and it has to be interpreted in the light of what is clearly expressed, it cannot imply anything which is not expressed, it cannot import provisions in the statute so as to supply any deficiencies and that any vagueness in the exemption clauses must go to the benefit of revenue.

13. As mentioned above, if we read the scheme of the WBVAT and the rules, it is clear that the Rule 33A was intended to give a special benefit to dealers registered in the State of West Bengal that is both the selling and purchasing dealer who deal with gold and who sells gold purchased by another registered dealer in the state who manufactures jewellery for export. Therefore, the arguments that by preventing the petitioner from carrying out job work outside the State of West Bengal would violate Article 301 and 304

of the Constitution is an argument which is stated to be outrightly rejected. It was argued by Mr. Agarwal that a comparison of Rule 33A with Rule 26A will clearly reveal the intention of legislation. We are not impressed with the said submission as we are to test as to whether there is any inconsistency in the form appended to the Rule 33A to that of the rule itself. The intention, the object and the purpose of such exemption cannot be interpreted by referring to Rule 26A which operates in entirely different field. Further we reiterate that sub rule (3) of Rule 33A imposes a mandate on the selling dealer to produce a form of certificate to be signed by the purchasing dealer who has also to be registered in the State of West Bengal, affirming that the gold purchased by him from the selling dealer "registered in West Bengal" has been used in manufacture of jewellery in the State of West Bengal and exported out of India. Full particulars of the purchases effected have to be furnished. Therefore, we find there is absolutely no inconsistency nor the form is contrary to the Rule 33A rather the form is part of the rule itself. The decision in ***Patina Gold Ornaments*** is clearly distinguishable on facts as in the said case the relief sought was to forbear the official respondent from relying on the provisions of the Sections 19(2) (ii) and Section 19 (4) of the Tamil Nadu Value Added Tax Act, 2006 or recover input tax credit under Section 27 (2) of the said Act in respect of purchase of inputs entrusted to a job work outside the state for manufacture of condition of return into the State of Tamil Nadu and found sold in the State of Tamil Nadu. In effect the challenge was to Section 19(2) and 19(4) of the Tamil Nadu Value Added Tax Act. Therefore, the decision does not render any assistance to the case of the petitioner. The other decisions relied on by Mr. Agarwal stating that the denial of exemption to the selling dealer merely on the ground that the purchasing dealer had done job work could violate Article 301 and 304 of the Constitution has already been negatived by us for reasons set out in the preceding paragraphs and therefore the decisions relied on the said point are not discussed. The decision in ***Babu Goverdhan Regular Motor Service*** relied on by Mr. Siddique is closer to the facts of this case and we do not accept the submissions of Mr. Agarwal that the decision would not have any application to the case on hand. The ratio of the decision is that the Section 46 of the Motor Vehicles Act, 1939 and the relevant rule and the form prescribed have been held to be read together and so read, it follows that an applicant for stage carry permit must comply at any rate, substantially with the various matters mentioned therein. It was held that by prescribing the form the State Government has not acted beyond the rule making power as the form is an integral part of the Rule 80 of the said rules which the State Government therein was authorised to make under Section 68 of the Motor Vehicles Act, 1939. As held by us, the form is not only integral part of the rule but embodied in the rule itself as it is mandatory condition imposed on the selling dealer in obtaining a certificate from the purchasing dealer. This condition could be imposed only because Rule 33A (1) insists that the selling dealer and the purchasing dealer are both registered under WBVAT. The decision in the case of ***Corporation Bank*** relied on by Mr. Agarwal is of no assistance to the case of the petitioner as it pertains to the case of refund which stage has not occurred in the case on hand as the case is at the threshold stage. Interestingly, the fourth respondent which had filed revision case before the tribunal chose not to challenge the order of tribunal and it is not the clear as to whose case, the writ petitioner is canvassing. Therefore, the locus standi of the petitioner is also largely questionable especially when the order passed by the tribunal arose out of the order passed by the assessing officer of the fourth respondent bank and the petition filed before the tribunal was not challenging the validity of the rule for the petitioner herein to contend that it would remotely affect its rights. However, this issue appears to have not been specifically raised by the respondent before us.

14. Thus, for all the above reasons, we find that the order passed by the learned tribunal rejecting the revision petition filed by the fourth respondent to be just and proper and does not call for any interference.

15. In the result, the writ petition is dismissed. No costs.

(T.S. SIVAGNANAM, J.)

I agree.

(BIVAS PATTANAYAK, J.)

(P.A- SACHIN)