

(2009) 25 VST 143

Calcutta High Court

Case No: W.P.T.T. No. 42 of 2008

Asit Baran Ghosh

APPELLANT

Vs

Sales Tax Officer and
Others

RESPONDENT

Date of Decision: Dec. 8, 2008

Acts Referred:

- West Bengal Value Added Tax Act, 2003 - Section 114, 23(2), 23(4), 24
- West Bengal Value Added Tax Rules, 2005 - Rule 6(2), 8

Citation: (2009) 25 VST 143

Hon'ble Judges: Sankar Prasad Mitra, J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: K.P. Ghosh and Subir Kumar Mukherjee, for the Appellant; Prasenjit Basu and Boudhayan Bhattacharyya, for the Respondent

Final Decision: Dismissed

Judgement

Pinaki Chandra Ghose, J.

We have heard the learned Counsel appearing for the respective parties at length.

2. This is an application filed by the petitioner against a judgment dated July 18, 2008 See page 124 Supra passed by the West Bengal Taxation Tribunal in Case No. RN 387 of 2007.

3. The only question that arises in this application is that if the dealer has failed to comply with the provisions in Sub-section (2) of Section 23, he would not get any benefit to register as dealer under the West Bengal Value Added Tax Act, 2003 in question from the date of the application which he has filed. Incidentally, it is admitted that there was a default on the part of the petitioner to apply under Sub-section (2) of Section 23 for registration of the said VAT Act. According to Sub-section (2) of Section 23, it amply clarifies that a dealer is required to make an application from the date of incurring liability

to pay tax under the VAT Act and such application shall be filed from the date of ninety days by the dealer. It further appears from Section 24 of the said Act that every dealer liable to pay tax shall make an application for registration in the prescribed manner to the prescribed authority, and such application shall be accompanied by a declaration in the prescribed form duly filled up and signed by the dealer concerned for making such application and after being satisfied of such application, the prescribed authority shall grant a certificate of registration in such form as has been specifically mentioned in the said Act and subject to the conditions as prescribed thereunder. It is also to be noted that such certificate is to be issued within a particular period as mentioned therein.

4. The other point which has been tried to be urged before us is Sub-rule (2) of Rule 6 which has been framed by the State authorities u/s 114 of the said VAT Act should be declared as ultra vires since according to the learned Counsel appearing on behalf of the petitioner the said Rule 6(2) is in violation of the objects and reasons from which the Act has been enacted by the legislators. It appears that the question of declaring the rule or section is whether it comes within the purview of the test already stated by the apex court in their decisions. It appears from a decision [Chaudhury Iron Co. \(P.\) Ltd. Vs. State of West Bengal and Others](#), the rule-making power which has been given to the State Government to make Rules under the Act in question, u/s 114 of the VAT Act, the said Government may by a notification make Rules with prospective or retrospective effect for carrying out the purposes of the Act in question. Now let us see the motive of the legislators for enacting the value added tax which would be amply dear from the Act in question and it appears from the objects and reasons which has to be sought to be raised before us by the learned Counsel has been specifically stated that "whereas it is expedient to provide for the levy of tax on sale of goods in West Bengal on the basis of value added to such goods at each stage of sale of such goods on purchases of certain goods in West Bengal in specified circumstances and to provide for matters connected therewith or incidental thereto".

5. It appears to us that after taking into such considerations, we have examined Rule 6(2) of the Act in question which sets out hereunder:

6(2) where the dealer has made the application within the time-limit specified in Sub-section (2) of Section 23, the certificate of registration shall be made valid from the date of incurring the liability and in case of such application made after the said time-limit, the certificate of registration shall be valid from the date of order of granting registration.

6. It specifically appears from the said rule that the dealer has to make an application within the time-limit mentioned in Section 23(2). In the instant case, it appears that the dealer has failed to apply within the time mentioned in Section 23(2) and the certificate of registration shall be made valid from the date of incurring liability which has already been defaulted by the dealer as it appears from the facts in question, and, further it has been specifically stated, in case such application made after the said time-limit, certificate for registration shall be valid from the date of order of granting registration. Therefore, in the

facts and circumstances of the case, such rule has been prescribed by the authority which has been given authority u/s 114 of the VAT Act and furthermore, u/s 23(2) of the said Act. Therefore, we do not find that there is any infirmity in the said rule which has been framed by the authority without taking into consideration the moot and reasons as has been stated for enacting the Act in question. Accordingly, in our considered opinion, there is no violation by the said authority in framing of such rule and, thereby, it cannot be said that there is any violation of the Act in question or any article of the Constitution of India. Therefore, we cannot declare that the said Rule 6(2) is ultra vires in the facts and circumstances of the case.

7. We have also considered the decisions delivered by the learned Tribunal. It appears that the learned Tribunal has specifically dealt with the questions which were raised before the learned Tribunal and it appears that the learned Tribunal also dealt with the matter in paragraphs 20 and 21 which sets out hereunder : (page 134 supra)

Contention of the learned senior advocate appearing on behalf of the petitioner is that restriction imposed under Sub-rule (2) of Rule 6 of the VAT Rules is beyond the rule-making power of the State as conferred by Section 114 of the VAT Act because of the fact that the State has been empowered to frame Rules only for carrying out the purposes of this Act. While admitting that reduction of cascading effect of taxation by allowing rebate of input-tax credit at the time of purchase of taxable goods by a registered dealer from a registered dealer was one of the objectives behind framing of the VAT Act, the Legislature has also intended to widen the tax base and ensure better compliance. Compliance means to act in accordance with a wish or command, to meet some specified standard. The provision of the Act has imposed certain restrictions for the dealers who would like to avail of the benefit of input-tax credit. The VAT Act has not allowed the dealers, incurring compulsory liability, to submit their application for registration according to their own sweet will and at the same time, claiming benefit of input-tax credit from the date of incurring the liability, thus knowingly violating the command or wish of the Legislatures as contained in the VAT Act. Moreover, better tax compliance demands transparency of the transaction effected between two dealers and also demands better monitoring. It can reasonably be expected that such demands can be fulfilled only when the transactions are made between two registered dealers. With this object in view, the registration procedure has been liberalized considerably and for counter-balancing the effect of liberalization, so that liberalized policies are not abused, the rule-making authority has imposed certain restrictions. Input-tax credit is an incentive. It helps the registered dealer to sell his product at a competitive price. When certain benefits/ incentives are allowed, it is incumbent upon such beneficiary to abide by the conditions and restrictions imposed under relevant Act and Rules framed thereunder.

The problem as raised in this application is the alleged conflict between the provision of Section 23(4) of the VAT Act and Rule 6(2) of the VAT Rules. Section 23(4) of the VAT Act provides that if a dealer files an application for registration beyond the period prescribed u/s 23(2) of the VAT Act without having any reasonable cause, the

Commissioner may, by an order in writing after giving the dealer an opportunity of being heard, impose upon such dealers by way of penalty a sum not less than five hundred rupees and not exceeding one thousand rupees for each month of default, in such manner as may be prescribed. Such power has been delegated to Deputy Commissioner, Assistant Commissioner, and Sales Tax Officer and prescriptions have been made under Rule 8 of the VAT Rules.

8. In view of that we do not find any reason to accept the contention of the learned Counsel for the petitioner as has been tried to be canvassed before us by him and also there is no reason to admit this application.

9. Hence, we do not find that there is any infirmity or irregularity in respect of the order so passed by the learned Tribunal.

10. Accordingly, this application must fail and is hereby dismissed.