

Indian Copper Corporation Limited vs Commissioner Of Commercial Taxes, ... on 19 October, 1964

Equivalent citations: AIR1965SC891, 1965(0)BLJR460, [1965]16STC259(SC), AIR 1965 SUPREME COURT 891, 1965 BLJR 460, 1965 2 SCJ 668, 1965 (16) STC 259, 1964 2 SCWR 583, ILR 44 PAT 472

Bench: J.C. Shah, K. Subba Rao, S.M. Sikri

JUDGMENT

Shah, J.

1. The Indian Copper Corporation Ltd., is a company incorporated under the laws of the United Kingdom and has its registered office for the purpose of its business in India at Ghatsila, District Singhbhum in the State of Bihar. The Corporation mines copper and iron ore from its own mines, transports the ore to its factory and manufactures finished products from the ore for sale. The Corporation has for the purpose of its business to purchase diverse categories of goods from outside the State of Bihar. Some of those goods are used in its factory in the process of manufacture and in the copper and kyanite mines, other goods are purchased for use in its offices, factory and mines and in the hospitals set up for affording medical facilities to its employees.

2. On April 30, 1957, the Corporation applied to the Superintendent of Sales Tax, Jamshedpur, for registration as a dealer under the Central Sales Tax Act (74 of 1956) setting out a list of goods for specification in the certificate of registration under section 8 of the Act. The Superintendent of Sales Tax issued the certificate of registration to the Corporation without specifying certain categories of goods which the Corporation claimed should be specified under section 8(3)(b) of the Act. The Corporation then petitioned the High Court of Patna under Articles 226 and 227 of the Constitution for an order that the Superintendent of Sales Tax be directed to specify the goods mentioned in paragraph 4 of the petition in the certificate of registration granted to the petitioner, on June 24, 1957, and to forbear from levying or realising tax under the Central Sales Tax Act from the Corporation in excess of one per cent. under section 8(1) of the Central Sales Tax Act. The goods in respect of which the Corporation claimed specification in the certificate of registration were the following : (i) Locomotives and motor-vehicles;

(ii) Accessories and spare parts for motor-vehicles and loco-motives;

(iii) Household, laboratory, hospital and general furnishings and fittings;

(iv) Medical supplies;

(v) Stationery;

(vi) Tyres and tubes for motor-vehicles; and

(vii) Cane baskets.

3. The High Court was of the view that the following categories of goods fell within the terms of section 8(3)(b) of the Central Sales Tax Act and could be specified in the certificate of registration :

(i) Locomotives and motor-vehicles actually used in carrying and removing raw materials during the process of manufacture;

(ii) Locomotives and motor-vehicles used both underground and on the surface during mining operations;

(iii) Accessories and spare parts for such locomotives and such motor-vehicles;

(iv) Tyres and tubes for such motor-vehicles; and

(v) Laboratory fittings used for sampling and analysis of the ores and other raw materials in the initial stages of mining operations and in the process of manufacture.

4. The petition of the Corporation for specification of the remaining goods was dismissed. Against the order of the High Court, with special leave, the Corporation has appealed to this Court.

5. The material provisions of the Act which have a bearing in this appeal may be read. Section 6 authorises the Central Government to recover tax on all sales effected by a dealer in the course of inter-State trade or commerce during any year. Section 7 provides for registration of dealers. By the first sub-section it is provided :

"Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and every such application shall contain such particulars as may be prescribed. "By sub-section (3) it is provided :

"If the authority to whom an application under sub-section (1) or sub-section (2) is made is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder, he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-section (1) of section 8."

6. Sub-sections (2), (4) and (5) need not be reproduced.

7. Section 8, as it stood at the date of the petition, read as follows :

"(1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to - the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3); shall be liable to pay tax under this Act, which shall be one per cent. of his turnover.

(2) * * * (2A) * * * (3) The goods referred to in clause (b) of sub-section (1) -

(a) * * *

(b) in the case of goods other than declared goods are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale 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 mining or in the generation or distribution of electricity or any other form of power;

(c) * * *

(d) * * * (4) * * *

8. Section 13 authorises the Central Government to make rules providing, inter alia, for -

"(1) * * *

(e) the enumeration of goods or class of goods used in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power. "Pursuant to the authority conferred by section 13 the Central Government had made rule 13 which provides :

"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 sale or in mining, or in the generation or distribution of electricity or any other form of power."

9. The Corporation had in annexure B-2 to its petition submitted the following reasons for specification of the goods in the certificate of registration :

(i) Locomotives and motor-vehicles. - These are used in carrying raw materials and removing materials during the process of manufacture and thereafter to different places and are also used both underground and on the surface in mining operations and in transport of crude ore and stores for mining operations.

(ii) Accessories and spare parts for locomotives and motor-vehicles. - These are necessary for maintaining and ensuring continuous operation of the locomotives and motor-vehicles.

(iii) Hospital equipment with furnishings and fittings. - These are necessary for the hospitals run by the Corporation for maintaining the health and fitness of persons employed in mining operations and manufacture of goods.

Laboratory fittings. - These are essential for sampling and analysis of ore and other raw materials in mining operations and in the process of manufacture.

(iv) Medical supplies. - These are required for treatment of the workers employed in the mining of ore and manufacture of goods.

(v) Stationery. - This is required for the maintenance of records, furnishing returns to various Government Departments, also Muster Rolls, payment of wages registers and all necessary forms and schedules under the Mines and Factories Acts. (vi) Tyres and tubes. - These are necessary for the maintenance of motor-vehicles set out in item (i).

(vii) Cane baskets. - These are required for carrying ore and other materials used in the course of manufacture and also are used by the sanitary department for collecting refuse and thereby ensuring the health and cleanliness of the colony of workmen employed in the manufacture of goods.

10. All these items were, it was claimed by the Corporation, required for the mining operations and in the manufacture of copper and for the workmen employed in those operations.

11. The High Court excluded from item (i) "Locomotives and motor-vehicles" those vehicles which were used by the Corporation after the mining operations were concluded and before the manufacturing process commenced and also vehicles used in carrying finished products from the factory on the conclusion of the process of manufacture. Those excluded vehicles were, in the view of the High Court, not intended for use in the manufacture or processing of goods for sale or in the mining operations. On that view the High Court excluded also the accessories and spare parts for locomotives and motor-vehicles [item (ii)] and tyres and tubes of those motor-vehicles [item (vi)]. The High Court further held that the laboratory fittings used for sampling and analysis of ore and other raw materials in initial stages of mining operation and in the process of manufacture should be specified, but not the hospital equipment with furnishings and fittings. These in the view of the High Court were not liable to be specified in the certificate of registration even though the Corporation was under a statutory duty to provide hospital facilities for workers. The High Court then held that neither stationery nor cane baskets for carrying refuse for protecting the health and

cleanliness of the colony of the workmen employed in the mines and factory were liable to be so included. Even cane baskets used for carrying ore and other materials, the High Court held, did not fall within the description under section 8(3)(b) read with rule 13. The Commissioner of Commercial Taxes, Bihar, did not file any affidavit in rejoinder to the petition filed by the Corporation. The Commissioner was, it appears, prepared to meet the claim made by the Corporation on the footing that the averments made in the petition and the annexure B-2 which supplied particulars about the intended use of the goods were true. It is in the circumstances difficult to appreciate the ground on which the High Court sought to exclude from the "locomotives and motor-vehicles" those vehicles which were used by the Corporation after the mining operations were concluded and before the manufacturing process commenced, and those which were used in carrying finished products. There was not even an averment that vehicles which were used for the excluded purposes were different from the vehicles used in carrying and removing raw materials during the process of manufacture and vehicles used underground and on the surface in mining operations. This by itself would be sufficient to reject the reservation made by the High Court. We are also of the opinion that in a case where a dealer is engaged both in mining operations and in the manufacturing process - the two processes being interdependent - it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacturing process starts. It appears that the process of mining ore and manufacture with the aid of ore copper goods is an integrated process and there would be no ground for exclusion from the vehicles those which are used for removing goods to the factory after the mining operations are concluded. Nor is there any ground for excluding locomotives and motor-vehicles used in carrying finished products from the factory. The expression "goods intended for use in the manufacturing or processing of goods for sale" may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage. If this be the correct view, the restrictions imposed by the High Court in respect of the vehicles and also the spare parts, tyres and tubes would not be justifiable. We are, therefore, of the opinion that the Corporation was entitled to specification as set out in the petition and explained in annexure B-2 to the petition in respect of items (i), (ii) and (vi). The statutes relating to factories and mines impose upon the owner of the factory and the mine obligation to maintain effective health services for the benefit of the workmen. But it cannot on that account be said that the goods purchased for the hospital such as equipment, furnishings and fittings are intended for use in the manufacture or processing of goods for sale or in the mining operations. The mere fact that there is a statutory obligation imposed upon the owner of the factory or the mine to maintain hospital facilities would not supply a connection between the goods and the manufacturing or processing of goods or the mining operations so as to make them goods intended for use in those operations. for the Corporation contended that the expression "equipment" used in rule 13 is wide enough to include hospital equipment, furnishings and fittings and maintenance of such equipment being made obligatory by statute, it fell within rule 13. But rule 13 requires that the goods including equipment should be intended for use by the owner as equipment in the manufacture or processing of goods for sale or mining operations. If the equipment is not so intended to be used, rule 13 will not be attracted. For reasons already mentioned, we are unable to hold that hospital equipment, furnishings and fittings fall within the description of equipment intended for use in the manufacture or processing of goods for sale or in mining operations. The High Court was therefore right in declining to specify hospital equipment, furnishings and fittings. The same considerations would apply to medical supplies [item (iv)]. In

respect of household furnishings and fittings, there is not even a statutory obligation to which our attention has been invited which requires the Corporation to provide them. The goods falling under that description therefore cannot be specified under section 8(3)(b) read with rule 13. "Stationery" also is not intended for use in the manufacture or processing of goods for sale or for mining operations. Use of stationery undoubtedly facilitates the carrying on of a business of manufacturing goods or of processing goods or even mining operations; but the expression "intended to be used" cannot be equated with "likely to facilitate" the conduct of the business of manufacturing or of processing goods or of mining.

12. Those cane baskets which are intended to be used by the sanitary department for collecting refuse to protect the health and cleanliness of the colony and the workmen employed in the manufacture of goods, cannot, on the test set out earlier, be specified in the certificate of registration. But we are unable to agree with the High Court that the cane baskets which are required for carrying ore and other materials used in mining or in the manufacture of goods are not intended for use in the process of manufacturing or mining operations.

13. We are also unable to appreciate why the High Court specified laboratory fittings used for analysis and sampling ore and other raw materials only in the initial stages of mining operations and in the process of manufacture. There is no discussion in the judgment in support of this observation, and we see no ground to support the reservation which restricts the specification to laboratory fittings used only in the initial stages.

14. The order passed by the High Court will therefore be modified. Items (i), (ii) and (vi), laboratory fittings out of item (iii) used for sampling and analysis of the ore and other raw materials in the mining operations and in the process of manufacture for sale and cane baskets out of item (vii) used for carrying ore and other materials used in the course of manufacture, will be specified in the certificate of registration. Household, hospital equipment with furnishings and fittings [part of item (iii)], medical supplies [item (iv)], stationery [item (v)] and cane baskets used for collecting refuse to protect the health and cleanliness in the colony of workmen [part of item (vii)] will not be included in the certificate of registration. This appeal is partially allowed. In view of the partial success of the parties, there will be no order as to costs.