(2003) 04 AHC CK 0260

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 293 of 1996

Allahabad Wire Drawing Industries Private Limited and Another	APPELLANT
Vs	
Uttar Pradesh Small Industries Corporation Limited and Another	RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:
Central Sales Tax Act, 1956 — Section 14, 15
Uttar Pradesh Trade Tax Act, 1948 — Section 29, 4B(2), 8A, 8A(2)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 25B

Citation : (2004) 138 STC 164

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a mandamus directing the respondents to refund the entire amount of sales tax/trade tax charged by the respondents amounting to Rs. 16,09,560.61 alongwith interest with rebate allowed by Steel Authority of India Ltd., under the Memorandum of understanding (MOU) Scheme.

2. We have heard the learned counsel for the parties and perused the writ petition, counter-affidavit, supplementary affidavit and the rejoinder affidavits.

3. The petitioner is a Private Limited Company incorporated under the Indian Companies Act and is carrying on the business of manufacture of wire for which the raw material is iron and steel namely wires rods, etc. The petitioner is registered both under the U.P. Trade Tax Act and the Central Sales Tax Act and has been granted recognition certificate u/s 4-B of the U.P. Trade Tax Act, 1948 in respect of wire rods, angles, iron, etc., as raw material for the manufacture of wires, vide annexure-1. The petitioner had purchased wire rods from respondents, which he used for manufacturing wires. Since the petitioner was

holding recognition certificate u/s 4-B of the Act, he has alleged that he was entitled to purchase the raw material, i.e., wire rods, etc., against form III-B, the declaration form in accordance with Section 4-B (2) of the Act read with Rule 25-B of the U.P. Trade Tax Rules, 1948. Section 4-B(2) is quoted in paragraph 5 of the writ petition, and Rule 25-B in paragraph 6 of the petition. During the assessment year 1994-95 the petitioner purchased wire rods from the respondents after payment of tax at the rate of two per cent against form III-B (3 Kha), which was charged by the respondents. Photocopies of a few invoices have been enclosed as annexure 1 collectively to the writ petition. The petitioner made these purchases from June 1, 1994 as stated in paragraph 8 of the writ petition.

4. The petitioner came to know that the respondents have made purchases of wire rods, angles, etc., from Steel Authority of India Ltd., Naraich, Hathras Road, Agra and the latter had charged tax at four per cent from the respondents in respect of the material supplied by them within the State of U.P. The same material, which was purchased by the respondents from Steel Authority of India Ltd., Agra was sold by the respondents to the petitioner, as admitted in paragraphs 9 and 10 of the supplementary counter-affidavit of A.K. Kudesia filed by the respondent in the writ petition. Annexure 3 are the invoices issued by the Steel Authority of India Ltd., Hathras Road, Agra, to the respondents for the sale of material within U.P. on which tax at the rate of 4 per cent was charged and realised. The name of the respondent appears in column No. 2 in each of the invoices as the purchaser.

5. Section 14(iv) of the Central Sales Tax Act, 1956 declares Iron and Steel as declared goods, which are of special importance in inter-State trade and commerce. Section 15 of the Central Sales Tax Act, provides specifically the restrictions and conditions with regard to tax on the sale or purchase of declared goods within the State. Section 15(a) of the Central Sales Tax Act, 1956 provides that the tax on sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage.

6. In paragraph 14 of the petition it is alleged that wire rods and other iron and steel namely angles, rods, etc., have already been subjected to tax when the tax was charged by Steel Authority of India Ltd., Agra while making the sales to the respondents, and the said tax was deposited by the Steel Authority of India Ltd., with their assessing authority at Agra. Hence it is alleged that no tax can be charged by the respondents while making the sales of the said items to the petitioner in view of Section 15(a) of the Central Sales Tax Act, 1956. In paragraph 15 of the petition it is alleged that the wire rods, i.e., iron and steel are declared goods u/s 14(iv) of the Central Sales Tax Act and the tax having been charged by Steel Authority, Agra at the rate of 4 per cent on the sales within the State of U.P. from Agra the respondents cannot charge any tax on the resale of the said goods in the bills raised by the respondents against the

petitioner as no tax is payable to the respondents on resale of the said goods in view of the decision of the Supreme Court in Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another, . In our opinion the contention of learned counsel for the petitioner is correct.

7. Section 8-A(2)(b) of the U.P. Trade Tax Act (which is quoted in paragraph 16 of the petition) authorises a dealer to recover the amount of sales tax/trade tax, which is payable by him on the turnover from the person to whom the goods are sold. However, when no tax is payable on such turnover by the selling dealer then he cannot recover the said amount from the purchaser. Thus it is evident that in view of the specific prohibition of Section 8-A(2) the respondent has illegally collected tax at two per cent against form III-B in all the bills it raised on the petitioner in respect of the iron and steel sold by it to the petitioner. On July 1, 1994 the petitioner made an application (vide annexure 4 to the petition) to the respondent No. 1 to refund the amount of tax charged by the respondents in the bills at the rate of two per cent for which form III-B was also taken from the petitioner. The petitioner sent reminder on December 22, to the respondents (vide annexure 5 to the petition) requesting for the refund of the entire sales tax/ trade tax charged at the rate of two per cent in the bills raised by them on the petitioner, on which no tax was payable as the goods were tax paid and hence charging of tax again was contrary to Section 15(a) of the Central Sales Tax Act, read with Section 8-A(2)(b) of the U.P. Trade Tax Act, 1948. Another reminder was sent on January 13, 1998 vide annexure 6 to the petition.

8. The details of sales made by the respondents to the petitioner from Agra from November 1994 to March, 1995 and the details of sale made by the respondents to the petitioner from Kanpur from August, 1994 to March, 1995 are contained in the charts which are annexures 7 and 8 to the petition. In our opinion the tax charged by the respondents was dearly illegal, being in violation of Section 15(a) of the Central Sales Tax Act, 1956 and Section 8-A(2)(b) of the U.P. Trade Tax Act, 1948 and the entire amount is liable to be refunded.

9. It is alleged in paragraph 22 of the petition that the respondents have not deposited the sales tax/trade, tax realised from the petitioner but are retaining the amounts so realised with themselves. It is alleged that had the respondents deposited the amount, the petitioner could have made an application to the assessing authority for the refund. In our opinion the petitioner is clearly entitled to such refund. In Indu Engineering & Textiles Ltd. v. Assistant Commissioner (Assessment), Sales Tax 1987 UPTC 632 and Kalindi Bright Steels & Tubes Ltd. v. State of U.P. 1995 UPTC 201 the court directed refund of the amounts. The petitioner is hence entitled to refund along with 15 per cent interest from the date of payment of tax to the date of refund, which must be made within two months.

10. Some memorandum of understanding (M.O.U) has also been entered into between Steel Authority of India Ltd., and the respondents under which extra incentive and rebate of 1.25 per cent on the bill amount (on the yard price) is

also being allowed by the Steel Authority of India to the respondents. That memorandum of understanding is with the respondents, and not with the petitioner but reference of the memorandum of understanding is made in the invoices raised by the respondent to the petitioner dated January 12, 1995 filed alongwith the supplementary counter-affidavit. The respondents did not pass this amount to the subsequent purchaser. The rebate of 1.25 per cent is in addition to the rebate allowed by the Steel Authority of India Ltd., to respondents at the rate of Rs. 500 per M.T. for lifting a substantial quantity of iron and steel on the rebate of Rs. 500 per M.T. which has been passed by the respondents to the subsequent purchaser. This also reduces the cost of purchase of declared goods by respondents from Steel Authority of India Ltd. If the petitioner had to pay the stockyard price to Steel Authority of India Ltd., against form III-B the petitioner could have directly made purchases from Steel Authority of India Ltd., as there was no control on sale or purchase of iron and steel.

11. The respondent purchased iron and steel at the rate of Rs. 12,998.50 per M.T. from Steel Authority of India Ltd., on March 16, 1995 while they sold it to the petitioner on March 31, 1995 at the rate of Rs. 13,439 per M.T while the sales tax paid by the respondent to Steel Authority of India Ltd., was at 4 per cent on Rs. 12,998.50 not on Rs. 13,439. Simultaneously iron and steel purchased on March 16, 1995 by respondent from Steel Authority of India Ltd., at the rate of 13,171 was sold to petitioner Rs. 13,611 but the tax was charged by Steel Authority of India Ltd., on the price of Rs. 13,171 and not on the stock yard price of Rs. 13,611 as alleged by the respondents vide paragraph 6 of the supplementary counter-affidavit.

12. The principle of undue enrichment is not applicable in the present case inasmuch as admittedly the wire rods were purchased from the respondents and raw material was not sold as such but was consumed for the manufacture of other goods. Hence in view of the division Bench decision in the case of Vam Organic Chemicals Ltd. v. State of U.P. 1999 UPTC 13 paragraph 11 the doctrine of undue enrichment does not apply. The wire rods having been consumed are raw material for the manufacture of new commodities. Hence the petitioner is entitled for the refund of Rs. 16,09,560 alongwith 15 per cent interest per annum from the respondent U.P. Small Industries Corporation Ltd.

13. The petition is allowed with the above directions.

