(1987) 01 AHC CK 0052

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 568 to 570 of 1986

Apex Traders APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11, 5, 6

Citation : (1988) 69 STC 261

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : Sunil Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Om Prakash, J.—These are three ''revisions relating to the assessment years 1980-81, 1981-82 and 1983-84 under the Central Sales Tax Act against a combined order of the Tribunal dated 31st March, 1986.

2. The assessee dealing in brass wares claimed exemption within the meaning of the proviso to Section 6 of the Central Sales Tax Act, 1956 (for short "the Act, 1956"). Sub-section (1) of Section 6 says that every dealer shall with effect from the date fixed by the Central Government be liable to pay tax under this Act on all sales of goods effected by him in the course of inter-State trade or commerce during any year on and from the date so notified. The proviso to Sub-section (1) says that a dealer shall not be liable to pay tax under this Act on any sale of goods, which in accordance with the provisions of Sub-section (3) of Section 5, is a sale in the course of export of those goods out of the territory of India. Sub-section (1) of Section 5 says that a sale or purchase of goods shall be deemed to take place in the course of the export of goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods, after the goods have crossed the customs frontiers of India. Sub-section (3) of Section 5 brings within the category of inter-State sales, the last sale or purchase of any goods preceding the sale or

purchase occasioning the export of those goods, if such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export. But the sales or purchases coming within the purview of Sub-section (3) of Section 5 have been exempted under the proviso to Sub-section (1) of Section 6 of the Act, 1956.

3. The assessee claimed exemption under the proviso to Sub-section (1) of Section 6 stating that it effected sales to the exporter and furnished forms H in this behalf before the appellate authority. As there were certain cuttings, overwritings and other omissions, the claim of exemption was refused by the Assistant Commissioner (Judicial).

4. The dispute was carried in appeal to the Tribunal. The latter observed :

We have looked into these forms and find that the details of the same have been filled in different inks and they have not been authenticated.

5. The Tribunal gave some other reasons also to confirm the refusal of exemption, but the Revenue has not supported those reasons. So the only question for consideration is, whether the claim of exemption can be rejected for the above reproduced reasons. From the defects pointed out in the forms H by the Assistant Commissioner (Judicial), it appears that the bill of lading was shown to him. Since the bill of lading was before the Assistant Commissioner (Judicial), mere use of different ink and the cuttings having not been authenticated will not render the assessee ineligible to claim the exemption under forms H. There is no finding that forms H were fictitious documents. The overwritings, cuttings and use of different ink may raise a doubt in the mind of the assessing officer or the appellate authority, but since the bills of lading were produced before the appellate authority, the cutting and portions which bore overwritings could have been scrutinised with the help of the bill of lading. There is no clear finding that the cuttings and the overwritings led to the conclusion that forms H were not conforming to the bill of lading, and that there was no link between forms H and bill of lading at all. Moreover, the omissions or defects pointed out in the forms H are not only minor, but are such, which could not render the claim of exemption unsupportable and not maintainable.

6. It was argued on behalf of the Revenue that, under Sub-rule (4) of Rule 8A of the Central Sales Tax (Uttar Pradesh) Rules, 1957, the case be sent back to the assessing officer with the direction that he may afford an opportunity to the assessee to rectify the minor omissions or defects occurring in the forms H. This would have been done, if there were any omission or defect of such a nature as to render the assessee ineligible for claiming the exemption. For a defect of trivial nature, having no adverse effect on the claim of exemption, I find that there will be no justification to send the matter back.

7. For reasons, I hold that the assessee covered by the proviso to Sub-section (1) of Section 6 of the Act, is entitled to exemption on the sales effected to the exporters.

8. All the revisions are, therefore, allowed. There will be no order as to costs. Let a copy of this order be sent to the Tribunal to pass an order u/s 11(8) of the Act.