
(2004) 01 AHC CK 0030
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 318 and 682 of 2003

Camphor and Allied Products Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Trade Tax Act, 1948 — Section 3B, 4B, 4B(2), 4B(6), 9

Citation : (2005) 139 STC 380

Hon'ble Judges : Poonam Srivastava, J;M. Katju, J

Bench : Division Bench

Advocate : Bharatji Agrawal, Piyush Agarwal and Amit Jaitly, for the Appellant;
The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—These two writ petitions are being disposed of by a common judgment.

2. Heard Sri Bharatji Agrawal and Sri Piyush Agarwal, learned counsel for the petitioner and learned Standing Counsel for the respondent.

3. This writ petition has been filed for a writ of mandamus/ prohibition restraining the respondent No. 2, Deputy Commissioner (Assessment) 1, Trade Tax, Bareilly, from realising any tax u/s 3-B of the U.P. Trade Tax Act, 1948, for the assessment year 2000-01 and for quashing the order dated March 31, 2003 passed by the respondent No. 2 vide annexure 4 to the writ petition so far as it relates to the imposition of tax u/s 3-B of the U.P. Trade Tax Act, 1948 on the purchase of furnace oil and RFO and used in the manufacture of camphor and allied products.

4. It is alleged in paragraph 1 of the writ petition that the petitioner is a public limited company and is carrying on the business of manufacture and sale of camphor and other allied products. The petitioner has been granted a recognition

certificate u/s 4-B of the U.P. Trade Tax Act, 1948.

5. It is stated in paragraph 2 of the writ petition that on the basis of the recognition certificate granted to the petitioner, the petitioner has been purchasing diesel, RFO (residue fuel oil)/furnace oil against form III-B u/s 4-B(2) of the U.P. Trade Tax Act, 1948. The goods manufactured, namely, camphor and other allied products, out of such raw material, whether purchased against form III-B or without form III-B have been sold within the State of U.P., in the course of inter-State trade or commerce and also in the course of export outside the country, vide paragraph 6 of the writ petition.

6. The camphor so manufactured by the petitioner is also transferred by way of stock transfer outside the State of U.P. on which the petitioner has been paying the differential tax in accordance with Section 4-B(6) of the U.P. Trade Tax Act, 1948. Section 4-B(2) states :

"Section 4-B. Special relief to certain manufacturers.- (1).....

(2) Where a dealer requires any goods, referred to in sub-section (1) for use in the manufacture by him, in the State of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form and subject to such conditions, as may be prescribed.

Explanation.-For the purposes of this sub-section,-(a) goods required for use in the manufacture shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants ; and....."

7. Even though u/s 4-B(2) the goods manufactured out of the raw material and processing material purchased against form III-B are required to be sold within the State of U.P. or in the course of inter-State trade or commerce or in the course of export but if such notified goods manufactured out of such raw material/processing material are sold otherwise than sale as mentioned above, then action u/s 4-B(6) can be taken and the differential amount is required to be deposited u/s 4-B(6) in respect of such stock transfer. Section 4-B(6) is reproduced below:

"(6) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased any goods after payment of tax at concessional rate under this section, or as the case may be, without payment of tax and the goods manufactured out of such raw materials or processing

materials or manufactured goods after being packed with such packing material are sold or disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, such dealer shall be liable to pay an amount equal to the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax calculated at the rate of four per cent, on the sale or purchase of such goods."

8. The Deputy Commissioner (Assessment) initiated proceedings u/s 3-B of the U.P. Trade Tax Act, 1948 on the ground that the petitioner has purchased fuel, namely, R.F.O. (residue fuel oil) and furnace oil against form III-B which was used for the manufacture of camphor but the camphor so manufactured was not only sold within the State of U.P., inter-State trade or commerce but was also transferred by way of stock transfer. Hence the petitioner was required to show cause as to why the differential rate of tax on the purchase of fuel be not charged.

9. The petitioner submitted a reply dated January 22, 2003 that the R.F.O. and furnace oil have been used as "fuel" for running the boiler and heater which has been used for the purpose for which it was purchased against form III-B, and hence no action can be legally taken u/s 3-B of the U.P. Trade Tax Act, 1948. True copy of the reply is annexure 3 to the writ petition.

10. In spite of the said reply having been filed, the assessing authority passed an order dated January 24, 2003 on the basis of the two judgments of this Court in the case of Mahabir Wire Netting Industries v. Sales Tax Officer 1987 UPTC 16 and Puri Industries v. Commissioner of Sales Tax 1988 UPTC 1197 and has held at page 8 of the assessment order that the action u/s 3-B is absolutely justified and the petitioner is liable for payment of differential amount of tax between the tax payable on the purchase of furnace oil and RFO and which was paid on furnishing of form III-B on the ground that the goods manufactured was sold by way of consignment sale and stock transfer.

11. Section 3-B of the U.P. Trade Tax Act, 1948, states :

"Section 3-B. Liability on issuing false certificate, etc.-Notwithstanding anything to the contrary contained elsewhere in this Act, and without prejudice to the provisions of Sections 14 and 15-A, a person, who issues a false or wrong certificate or declaration, prescribed under any provision of this Act or the Rules framed thereunder, to another person by reason of which a tax leviable under this Act on the transaction of purchase or sale made with or by such other person ceases to be leviable or becomes leviable at a concessional rate, shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued :

Provided that before taking any action under this section, the person concerned shall be given an opportunity of being heard.

Explanation.-Where a person issuing a certificate or declaration discloses therein his intention to use the goods purchased by him for such purpose as will make the tax not leviable or leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong."

12. Learned counsel for the petitioner, Shri Bharatji Agrawal, has contended that Section 3-B is only concerned with the user of the goods so purchased in the manufacture of the notified goods u/s 4-B of the Act. He submitted that Section 4-B read with the explanation cannot be extended for creating the liability u/s 3-B and has nothing to do with the question how manufactured goods are ultimately sold or dealt with.

13. Admittedly the forms III-B were issued for use in the manufacture of camphor for purchase of fuel, and RFO, which having admittedly been used in the manufacture of camphor and other allied products for which the recognition certificate was granted. Hence the petitioner cannot be deemed to have issued any wrong or false certificate and no differential tax can be legally charged u/s 3-B of the U.P. Trade Tax Act. 1948.

14. It is further contended on behalf of the petitioner that a perusal of Section 3-B clearly shows that the petitioner has not issued any wrong or false certificate or declaration in form III-B inasmuch as both RFO and furnace oil have been used for the same purpose, namely, for use in the process of manufacture of the goods, i.e., camphor and allied products.

15. In the counter-affidavit filed on behalf of the respondent it has been mentioned in paragraph 3-B that against the order passed u/s 3-B an appeal is maintainable u/s 9 of the U.P. Trade Tax Act, 1948, and hence the present writ petition is not maintainable.

16. In paragraph 3-B of the counter-affidavit it has also been mentioned that the controversy is concluded by the judgment of this Court in the case Commissioner of Sales Tax, U.P. v. Vijendra Industries 1987 UPTC 653 and also in the case of Mahabir Wire Netting Industries v. Sales Tax Officer 1987 UPTC 16.

17. In the writ petition the petitioner has specifically relied upon the two decisions of this Court given by the learned single Judge in the case of Commissioner of Trade Tax v. Spox India and Allied Industries 1998 UPTC 631 and in the case of Arora Steel Udyog (P) Ltd. v. Commissioner of Trade Tax, U.P. 1999 UPTC 277 wherein it has been held that no action can be taken u/s 3-B of the U.P. Trade Tax Act, 1948, in respect of the material purchased against form III-B on the basis of the recognition certificate granted u/s 4-B (2) of the Act if the goods purchased are used for the manufacture of the notified goods.

18. It is true that ordinarily against an order passed u/s 3-B no writ petition shall be entertained and the petitioner has to follow the alternative remedy of appeal u/s 9. However, in view of the two conflicting decisions given by the honourable

single Judges in the case of Spox India and Allied Industries 1998 UPTC 631 and Puri Industries v. Commissioner of Sales Tax 1988 UPTC 1197, it shall be difficult for the appellate authorities or even for the Sales Tax Tribunal to take a contrary view. Hence in view of the peculiar circumstances of this case we are of the opinion that the petitioner shall not be relegated to his alternative remedy as the conflict should be resolved.

19. Admittedly the RFO and furnace oil was purchased against form III-B and the same was used in the manufacture of camphor and other goods mentioned in the recognition certificate granted u/s 4-B of the Act.

20. In the case of Commissioner of Trade Tax v. Spox India and Allied Industries 1998 UPTC 631 a learned single Judge of this Court has taken the view that the proceedings u/s 3-B and Section 4-B(5) cannot be taken since the assessee after purchase of the raw material has used the same for the manufacture of cycle parts, spokes and wire for which the recognition certificate was granted u/s 4-B of the Act. Similarly in the case of Arora Steel Udyog (P) Ltd. v. Commissioner of Trade Tax, U.P. 1999 UPTC 277 another single Judge of this Court has taken the view in favour of the assessee that where the materials are purchased against form III-B and the same was used for the manufacture of wires from wire rods, in respect of which the recognition certificate was granted then no proceedings u/s 3-B of the Act can be legally initiated since there was no wrong or false declaration issued by the dealer for purchase of the material against form III-B. It has been observed in paragraph 6 of the said judgment :

"It is well-settled that proceedings u/s 3-B shall be initiated only when the assessee issues a false or wrong certificate or declaration provided under any of the provisions under the Act or Rules framed thereunder. This view has been constantly taken by this Court in Sahni Engineering Works v. Commissioner of Sales Tax 1994 UPTC 70, Commissioner of Sales Tax v. B.K. & Co. Engineering Works, Agra 1995 UPTC 502 and S.G. Industries v. State of Uttar Pradesh [1998] 108 STC 328; 1997 UPTC 616 of this Court. Therefore, unless it was shown that the form III-B issued by the revisionist were false or wrong, or the declarations made therein was false or wrong, no proceedings u/s 3-B of the Act could have been initiated. It is also not the case of the department that the assessee did not use the goods purchased by him for the purpose for which exemption certificate was granted to him. Therefore, the assessee cannot be deemed to have issued a wrong certificate."

21. On the other hand, in the impugned order, the assessing authority has relied upon the decision of this Court in the case of Puri Industries v. Commissioner of Sales Tax 1988 UPTC 1197 in which a learned single Judge has held that the assessee is liable to pay the amount u/s 3-B of the Act in respect of the purchase of raw material against form III-B since the declaration furnished by the assessee was wrong and he was only entitled to purchase on concessional rate and not on total exemption.

22. In paragraph 3-B of the counter-affidavit it has been alleged that the controversy is concluded by another judgment of a learned single Judge of this Court in Commissioner of Sales Tax v. Vijendra Industry 1987 UPTC 653 in which the imposition of tax u/s 3-B was held to be valid on the ground that the purchasing dealer misrepresented to the selling dealer that he was entitled to make purchases without payment of any tax when in fact he was entitled to purchase against form III-B on concessional rate of tax.

23. In view of these conflicting decisions of the learned single Judge of this Court we are not inclined to uphold the contention of the learned Standing Counsel that the writ petition should be dismissed on the ground of alternative remedy. Even if the matter comes up before this Court by way of a revision against the order of the Tribunal u/s 11 of the Act since it shall be cognizable by a learned single Judge, the matter will have to be considered by a larger Bench. Hence in our opinion the remedy of appeal before the appellate authority is not efficacious remedy. In this connection reliance is placed upon the Full Bench decision of this Court in Engineering Traders v. State of Uttar Pradesh [1973] 31 STC 456 : 1973 UPTC 91 (paragraph 3) in which it was observed:

".....Then there are two decisions of this Court, referred to above, where it has been held that centrifugal pumps and other pumping sets are not agricultural implements. So long as these decisions stand, no sales tax authority is likely to take a contrary view. Even if the matter comes before this Court by way of a reference, the same is bound to be decided against the assessee unless a Full Bench is constituted to reconsider the aforesaid two decisions. All this is bound to take a long time and tax being recurring one, the petitioner is likely to be subjected to a huge liability, which might impair his business. In these circumstances, we are of the opinion that the alternative remedy under the Act is not efficacious and speedy."

24. Even otherwise, the question has to be decided as to whether in respect of the fuel purchased against form III-B which has been admittedly used in the manufacture of camphor, any proceedings u/s 3-B can be legally initiated only on the ground that manufactured goods are sold in the course of inter-State trade or commerce, within the State and also by way of stock transfer. So long as the observations made in Mahabir Wire Netting industries 1987 UPTC 16 and Vijendra Industry 1987 UPTC 653, are not explained and clarified by this Court no authority can take a contrary view as held by a division Bench of this Court in Dass Hitachi (Pvt.) Ltd. v. Assistant Commissioner (Assessment), Sales Tax, Ghaziabad [1981] 48 STC 142: 1980 UPTC 1020 in which it was observed (vide paragraph 13 ; page 147 of STC):

"We find force in the submission made on behalf of the petitioner that in the circumstances it will not be proper to refuse to entertain and resolve the controversy raised in these petitions under article 226 of the Constitution on the ground that the petitioner can get its grievances redressed by having recourse to the proceedings under the U.P. Sales Tax Act. The principal submission made by

the learned counsel for the petitioner before us has been that the observations made by this Court in *Scientific Importers*" case [1978] 42 STC 328: 1978 UPTC 398 are not accurate. So long as those observations are not clarified by this Court, it will not be open to the sales tax authorities to entertain petitioner's submission that electric K.W.H. Meters manufactured and sold by it, which undoubtedly are instruments used for measuring electrical energy, do not fall under entry No. 7 but their turnover is covered by the entry at item No. 7-A of Notification No. 7096/X-1012 dated 1st October, 1965. Such a submission can be made only before this Court. Consequence of accepting such submission would necessarily be that it will have to be held that in various assessment orders regarding which the notices u/s s 22 and 21 of the Act impugned in these petitions have been issued, the petitioner's turnover had been brought to tax by applying the correct rate and that neither do the assessment orders suffer from any error much less an error apparent on the record nor could there be any occasion for the assessing authority to reopen the petitioner's assessment u/s 21 of the Sales Tax Act on the ground that any part of its turnover for the year 1974-75 had been assessed to tax at a rate lower than that at which it should have been taxed under the Act."

25. In another division Bench of this Court in *Cannon India Pvt. Ltd. v. State of U.P.* [2003] 131 STC 160; it was held that where the question is of recurring nature and does not involve disputed questions of fact the petitioner need not be relegated to the alternative remedy of appeal. The division Bench held (vide paragraph 25) in the said decision:

"25. As regards the plea of alternative remedy by learned Standing Counsel, the learned standing counsel for the petitioner has referred the various decisions, e.g., *Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another*, ; *Oudh Sugar Mills. Ltd. v. State of U.P.* [1995] 97 STC 386 (All.) ; *Hindustan Aluminium Corporation Ltd. Vs. The State of Uttar Pradesh and Another*, ; . In *Union of India (UOI) and Another Vs. State of Haryana and Another*, and *State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd.*, , it was held that where the controversy is likely to be of a recurring nature and it does not involve disputed questions of fact but only questions of law then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy."

26. In the present case we find that the petitioner has admittedly used RFO and furnace oil purchased against form III-B for the manufacture of camphor and other allied products for which the recognition certificate was granted u/s 4-B of the Act. Merely because the final product has been sold not only within the State, in the course of inter-State trade or commerce but also some of the final product has been transferred by way of stock transfer, the provisions of Section 3-B will in our opinion not be attracted.

27. A learned single Judge of this Court in *Commissioner of Trade Tax v. Spox India and Allied Industries* 1998 UPTC 631 and *Arora Steel Udyog (P) Ltd. v.*

Commissioner, Trade Tax 1999 UPTC 277, has held that no action can be taken u/s 3-B of the Act in respect of the raw material purchased against form III-B on the basis of the recognition certificate granted u/s 4-B(2) of the Act if goods purchased are used for the manufacture of the notified goods.

28. The petitioner purchased RFO/furnace oil against form III-B for manufacture of its final product, namely, camphor and other allied products. Section 3-B clearly shows that it is the user of the goods which is relevant for the purpose for which form III-B was given and not how the finished product or manufactured goods are sold. Admittedly form III-B was issued for use in manufacture of camphor and other allied products and RFO/furnace oil for which the recognition certificate was granted. Hence in our opinion the petitioner cannot be deemed to have issued any wrong or false certificate and tax cannot be legally charged u/s 3-B of the Act.

29. The decision in Mahabir Wire Netting Industries" case 1987 UPTC 16, is in our opinion not applicable in the present case. The decisions in the case of Puri Industries 1988 UPTC 1197 and Vijendra Industry 1987 UPTC 653, are also not applicable inasmuch as in those cases the dealer purchased the raw material against form III-B on the ground that he is entitled for total exemption without payment of any tax on such purchases, while under the recognition certificate the dealer was entitled only for a concessional rate on such purchases and not for the total exemption. Hence it was held in those case that there was a false declaration given by the purchasing dealer that he is entitled for total exemption and not for concessional rate of tax on the purchase of raw material.

30. In the present case the purchases of RFO and furnace oil were made for the manufacture of camphor and other allied products for which the recognition certificate was granted on concessional rate of tax. No false declaration was given by the petitioner.

31. In the present case RFO and furnace oil have admittedly been used in the manufacture of camphor and allied products for which recognition certificate was granted. Hence it cannot be deemed that the petitioner has issued any wrong or false certificate. It is evident from the facts that the petitioner has not issued any wrong or false certificate or declaration in form III-B inasmuch as both RFO and furnace oil have been used for the same purpose, namely, in the process of manufacture of goods, i.e., camphor, and another allied products.

32. In these circumstances, the order of respondent No. 2 for the assessment year 2000-2001 dated January 24, 2003 in Writ Petition No. 318 of 2003 and the order dated March 31, 2003 for the assessment year 2001-2002 in Writ Petition No. 682 of 2003, in so far as they relates to imposition of tax u/s 3-B of the U.P. Trade Tax Act, 1948 is concerned, are illegal and are quashed.

33. The petition is allowed. No order as to costs.