(2015) 06 UK CK 0003

In the Uttarakhand High Court

Case No : Commercial Tax Revision No. 31 of 2010

Commissioner, Commercial Tax APPELLANT

Vs

Ballarpur Industries Ltd. RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 14, 15-A, 3-AB, 3-B, 4-B(2)

Citation : (2015) 86 VST 96

Hon'ble Judges : K.M. Joseph, C.J;V.K. Bist, J

Bench : Division Bench

Advocate : H.M. Bhatia, for the Appellant; Mohit Maulekhi, Advocates for the Respondent

Judgement

K.M. Joseph, C.J—Revisionist is an Assessing Authority, namely, Commissioner of Commercial Tax. The assessment order was completed for the year 1993-94 in respect to the respondent/assessee, by which it was found that the respondent/assessee, who is engaged in the business of manufacturing glass bottles, inter alia, sold packing trays (corrugated boxes) to the tune of Rs. 9,98,561.21. The assessee had purchased these packing materials on the strength of declaration under Section 3-B of the U.P. Trade Tax Act, 1948 (hereinafter referred to as ''the Act''). It was found that the sale of packing material in the same form and condition violated Section 4-B(5) of the Act. Accordingly, penalty equal to twice at the rate of 10%, namely, Rs. 1,99,712/- was imposed by the Assessing Officer, vide Annexure-1. The appeal before the 1st Appellate Authority was unsuccessful, but the Tribunal in further appeal by Annexure-5 judgment dated 10.09.2009 allowed the appeal filed by the assessee on the following reasons:-

"From perusal of the file we find that adverse inference against the appellant has been taken only on the ground that he had shown the amounts of glass bottles as well as packing material (packing trays) sold separately in the detailed chart submitted for assessment purposes before the authority. Neither there is any finding of the authority that the assessee has ever been caught selling packing material or raw material in the same form and condition in which it was purchased by him against Form 3-B nor the facts available on record reveal such position. The learned State-Representative too could not submit any proof which may lead to a conclusion that the assessee has actually sold the packing material separately to the dealers in the form and condition in which the same was purchased against Form 3-B. Rather the manufacturer has used the said material in the packing of his product viz. glass bottles and has charged the value of glass bottles of packing material separately which makes no difference as per provisions of Section 3-AB. In such circumstances of the case we find that the round taken for imposition of penalty is not good and sufficient. Hence the penalty imposed upon the appellant u/s. 4-B(5) is liable to be knocked off. This appeal, thus, deserves to be allowed in full."

2. The substantial question of law, which is framed, is as follows:-

"Whether the learned Tribunal was legally justified in holding, as per facts and circumstances of the case, that there is no violation of Section 4-B(5) of Trade Tax Act?"

3. We heard the learned counsel for the State/revisionist Shri H.M. Bhatia and Shri Mohit Maulekhi, learned counsel on behalf of the respondent.

4. Section 3-B of the Act reads as follows:-

"3-B. Liability on issuing false certificates, 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 issue 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 or being heard.

Explanation.- Where a person issuing a certificate or declaration discloses therein his intention to use goods purchased by him for such purpose as will make the tax not 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."

5. Therefore, if a declaration is given that he intends to use goods purchased by him for a particular purpose and it is made use for any other purpose then under the explanation the declaration will be treated as wrong leading to the invocation of Section 3-B. Likewise Section 4-B(2) of the Act reads as follows:-

"4-B. Special relief to certain manufacturers.- (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 which such period as may be prescribed, for the grant of a recognition certificate in respect thereof; and if the applicant satisfies such requirement 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 manufacture shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants; and

(b) ''notified goods'' means such goods as may, from time to time, be notified by the State Government in that behalf."

And finally we come to Section 4-B(5) of the Act, which reads as follows:-

"4-B. Special relief to certain manufacturers.- (5) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased the goods after payment of tax at concessional rate under this section, or as the case may be, without payment of tax and has used such goods for a purpose other than that for which the recognition certificate was granted or has otherwise disposed of the said goods, such dealer shall be liable to pay as penalty such amount as the assessing authority may fix which shall not be less than the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax payable under any other provisions of this Act but not exceeding three times the amount of such difference."

6. A perusal of Section 4-B(2) of the Act would show that it contemplates grant of recognition certificate when a dealer requires any goods referred to in sub-section (1) for the purpose of either manufacturing goods or processing goods by him which are notified goods or in the packing of such notified goods. Then we come to Section 4-B(5) of the Act. It contemplates a situation where a dealer, who has a recognition certificate, purchases goods either on concessional rate or without paying any tax and if he uses goods for a purpose other than that for which recognition certificate is granted or has otherwise disposed of the goods then he would be liable to be proceeded under Section 4-B(5) of the Act. The authorities has invoked Section 4-B(5) and imposed penalty in the matter. The learned counsel for the revisionist would contend that the orders of the Assessing Authority and the 1st Appellate Authority were justified for the reason that it is a case where the respondent/assessee had purchased the packing material

(corrugated boxes) on the strength of the recognition certificate and on declaration under Section 3-B and purportedly for using the same for packing the goods manufactured by it, but it has sold the packing material separately and in the condition in which it was purchased. It was neither used in the manufacturing of any goods, nor was used for packing. This fact sought to be proved the fact that in the accounts the cost of the packing material is separately shown in the ledger. Still further more the circumstance that the packing material (packing tray) was, admittedly, returned to the assessee by the buyer is relied on.

7. Per contra, the learned counsel for the assessee would submit that actually it was used for packing. The packing material itself consists of two parts. One part consists of the corrugated boxes and there is also a tray. Some part of the packing material, namely, corrugated boxes are consumed in the process and they are not returned back but packing tray is returned back. As far as the accounts separately reflecting the cost of the packing material is concerned, he would put it down to accounting practice and he would submit that actually in the invoices raised it is only a consolidated sum shown which includes the price of the packing.

8. We are concerned with the finding by the Tribunal which is a final fact finding authority as only on a substantial question of law, a revision can be successfully premised under the Act. The fact finding authority has found that neither is there finding of the authority that the assessee was caught selling packing material or raw material in the same form and condition in which it was purchased. It is found that the State could not submit any proof which may lead to a conclusion that the assessee has actually sold packing material separately in the form and condition in which it was purchased under Form 3-B.

9. Though the revisionist has a case in the revision memo that this finding was without any material, when we asked whether there is anything to show that the packing material was not used or the goods were sold without their packing material being used for the purpose of packing, the learned counsel for the revisionist was not able to show any material as such. What is material referred to is the fact that the packing material is returned back and it is separately accounted in the ledger. From the said circumstances alone, we cannot find basis for proceeding under Section 4-B(5) as the issue is, whether the packing material which was purchased against Form 3-B and on the strength of declaration certificate under Section 4-B(2) was used or not used for the purpose for which it was granted. Under the terms, the recognition certificate, the material purchased against Form 3-B was to be used for packing. There was nothing to show that it was not so used. In such circumstances, we see no reason to interfere with the order of the Tribunal. The revision stands dismissed. No order as to costs.