
(2004) 04 AHC CK 0227
In the Allahabad High Court

Commissioner of Sales Tax	Vs	APPELLANT
Chandra Rice Mill		RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4B, 4B(6)

Citation : (2007) 9 VST 647

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This revision is directed against the order dated December 24, 1991 passed by the Trade Tax Tribunal, Bench II, Moradabad in Appeal No. 935 of 1991.

2. The dealer-opposite party is a rice miller and is registered both under the U. P. Sales Tax Act, 1948 as well as the Central Sales Tax Act, 1956. They are also holding recognition certificate granted u/s 4-B of the U. P. Sales Tax Act for the purposes of manufacturing rice out of paddy. The present revision arises out of penalty proceeding u/s 4-B(6) of the U. P. Sales Tax Act. The dealer-opposite party has sent the notified goods, i.e., rice, after manufacturing it on consignment basis at Rs. 3,50,192.50. The department took an objection that the dealer-opposite party has violated the terms of Section 4-B of the Act and initiated penalty proceedings on this transaction. The case of the dealer-opposite party in the penalty proceeding was that it has deposited tax on the corresponding paddy for the manufacture of aforesaid rice. The assessing authority by order dated June 29, 1991 imposed penalty amounting to Rs. 28,015. The order was confirmed by the first appellate authority by its order dated November 30, 1991. The Tribunal has set aside this order of penalty and remanded the case to the first appellate authority on the ground that appeal against the assessment order has already been remanded by the Tribunal for decision to the first appellate authority. Therefore, the penalty matter should also

be remanded. Prima facie the Tribunal was of the view that since the dealer-opposite party has paid tax on the paddy consumed in the manufacture of rice proportionately, the question of levy of penalty does not arise. Feeling aggrieved against the aforesaid order the Commissioner of Sales Tax has filed the present revision u/s 11 of the U. P. Trade Tax Act.

3. Heard learned Counsel for the parties and perused the record.

4. u/s 4-B(2) of the Act recognition certificate is issued to the dealer which entitled it to purchase the raw material or the packing material on concessional rate of tax and enjoins upon the dealer to use such goods in the manufacture of notified goods in the State. The notified goods should be sold by the dealer holding recognition certificate either in the State or in the course of inter-State trade or commerce or in the course of export out of India. To put it differently, the manufacturer who has obtained recognition certificate u/s 4B of the Act is not entitled to sell the notified goods (in the present case rice) on consignment basis.

5. Section 4-B(6) of the Act as it stood at the relevant time in the assessment year 1985-86 reads as under:

Where a dealer, in contravention of the terms and conditions laid down in Sub-section (2) for the grant of a recognition certificate, sells or otherwise disposes of the notified goods, for the raw material of which he has been granted such certificate, he shall be liable to pay as penalty such amount, as the assessing authority may fix, which shall be not less than the amount of tax that would have been payable under the provisions of this Act on the sale of such notified goods in the State and not more than three times the amount of such tax.

6. It may be noticed that this section was subsequently amended by U.P. Act No. 17 of 1987 and Sub-section (6) was substituted.

7. A plain reading of the aforesaid Sub-section (6) of Section 4-B of the Act clearly shows that the dealer who contravenes the terms and conditions of Sub-section (2) or of grant of recognition certificate shall be liable to pay penalty under the aforesaid section. Sri Rakesh Ranjan Agarwal, learned Counsel for the dealer-opposite party, strenuously contended that since the dealer has paid the tax on the purchase of corresponding paddy no penalty should be imposed. He also contended that although the dealer-opposite party was holding of recognition certificate but the corresponding paddy was purchased by it directly from the farmers without issuing them form III-B and no benefit of Section 4-B being the recognition certificate holder was availed of. However, I find that none of the authorities below have proceeded with or recorded any such finding that the dealer-opposite party purchased the corresponding quantity of paddy without availing the benefit of Section 4-B or without issuing form III-B. From the penalty order it appears that the dealer-opposite party came forward with the case that since tax has been deposited on the corresponding quantity of paddy no penalty should be levied. It is not necessary for me at this stage to record any

finding on this issue as I am remanding the case for fresh consideration to the Tribunal. However, it is for the Tribunal to examine the plea which has been raised before this Court that corresponding quantity of paddy was purchased by the dealer without issuing form III-B from the agriculturists. The Tribunal shall examine this issue if it is raised before it and was raised in reply to the show cause notice, otherwise not. Learned Standing Counsel has rightly placed reliance upon the judgment of this Court given in the case of Hindustan Safety Glass Works Ltd. v. Commissioner of Sales Tax [1993] UPTC 1167. This Court in the aforesaid case has rejected the contention of the dealer that since in respect of such goods dealer has deposited tax before transferring the stock to the depots on the raw material no penalty is leviable. In the aforesaid case this Court has clarified the position that whether the goods have been purchased at concessional rate of tax or not has to be seen with reference to point of time when purchase was made. If later on the dealer deposits the tax because of the situation that it intended to make the consignment sale, it cannot be said that the purchase was not at the concessional rate. Sri. Rakesh Ranjan Agarwal, learned Counsel for the dealer-opposite party has asked me to see para 9 of the aforesaid judgment. I have already dealt with this point in the earlier part of the judgment.

8. In the result revision succeeds and is allowed. The order of the Tribunal is set aside. The case is remanded to the Trade Tax Tribunal for reconsideration in the light of observations made above.