
(2005) 07 UK CK 0029

In the Uttarakhand High Court

Case No : Sales Tax Revision No. 69 of 2001 (Old No. 221 of 1993)

Commissioner of Sales Tax

APPELLANT

Vs

Mahabir Industries

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 15, 15A(1), 4A, 4B

Citation : (2006) 145 STC 384 : (2006) 1 UC 218 : (2005) 2 UD 637

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Sayeed Nadeem, for the Appellant;

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This revision, preferred u/s 11(1) of the U.P. Sales Tax Act, 1948, was originally filed by the Commissioner of Sales Tax, Uttar Pradesh, before the Allahabad High Court in the year 1993 and received by this Court on transfer u/s 35 of the U.P. Reorganization Act, 2000, for its disposal.

2. The revision is directed against the order dated September 30, 1992 passed by the Sales Tax Tribunal, Haldwani, in second appeal Nos. 78 of 1991 and 77 of 1991. The revision involves following question of law :

Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was justified in setting aside the penalty order passed u/s 15A(1)(1) of the U.P. Sales Tax Act, 1948, despite the fact that the dealer had deliberately issued false form III-C(2) to the purchasers

3. Heard learned Standing Counsel appearing on behalf of the revisionist. No one turned up on behalf of the assessee, even after service of notice.

4. The assessee is a dealer of paddy, who does the business of manufacturing and sale of rice, after purchasing paddy. In the process of manufacturing of rice,

he also manufactures rice polish and chaff. This revision pertains to the assessment year 1985-86. The assessee has been issued by the department exemption certificate under Sections 4-A and 4-B of the aforesaid Act. As such, he was exempted from the payment of tax being the new unit in the State. However, the assessee, being an exempted unit was not competent to issue form III-C(2) to the purchasers, as issuance of such form would have further exempted the purchasers from the liability of the tax. Had the assessee been the unit, who had made payment of sales tax, such form III-C(2) could have been issued. But the action on the part of the assessee detected by the department attracted the penalty u/s 15A(1)(1). Learned Tribunal in the discussion in the impugned judgment has mentioned that act on the part of the assessee does attract the penalty u/s 15. Still the Tribunal has opined that the penalty imposed is not justified. The view taken by the Tribunal is against the law. When it is clear that the assessee did issue false form III-C(2) and consequently he did invite penalty u/s 15A(1)(1), the Tribunal cannot hold that the penalty imposed by the department was wrong merely on the ground that the Department did not actually incur the loss after the issuance of false form 111-C(2) was detected. Had the illegal act on the part of the assessee not detected, he would have been successful in getting evaded sales tax, payment of which was liable to be made by the purchasers in second sale.

5. For the reasons as discussed above, this Court is not hesitant in holding that the learned Tribunal has erred in law in allowing the appeal of the assessee. Therefore, the question mentioned above is answered in favour of the Revenue, and, the revision is allowed. The impugned order dated September 30, 1992 passed by the Tribunal is set aside.