
(2004) 05 AHC CK 0223
In the Allahabad High Court

Commissioner of Trade Tax	Vs	APPELLANT
Khaitan Industrial Complex		RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2008) 11 VST 219

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This revision is directed against the order dated February 6, 1995 passed by the Trade Tax Tribunal, Ghaziabad, in second appeal No. 17 of 1994 for the assessment year 1988-89 (U.P.).

The dealer-opposite party is a new unit within the meaning of Section 4A of the U.P. Trade Tax Act, 1948 and its sales were exempt from payment of sales tax in the relevant assessment year 1988-89 (U.P.). It is engaged in manufacture and sale of electric stamping, ceiling fans and scraps, etc. The account books were accepted by the assessing authority and on the turnover of sale of stamping and of manufactured ceiling fans were granted exemption. But the assessing officer levied tax on the sale of iron scraps, tin scrap and copper scrap. He was of the opinion that on the sale of such items the dealer-opposite party, holder of eligibility certificate, is not entitled to exemption u/s 4A of the Act.

2. The core question involved in the present revision is about the levy of tax on the sale of iron scrap, tin scrap and copper scrap, when the turnover of the manufactured electric stamping and ceiling fans have been granted exemption u/s 4A of the Act.

3. Heard, the counsel for the parties and perused the record. The assessing authority as well as the appellate authority refused to grant exemption on the sale of scraps of iron, steel and tin on the ground that the same are not covered

by the eligibility certificate. The Tribunal has granted exemption on these items also on the finding that the Full Bench of Tribunal, in the case of assessee has held that no trade tax is payable on such scrap. It has also placed reliance upon a circular dated April 24, 1992 issued by the Commissioner of Sales Tax.

4. The case of the dealer-opposite party is that in the manufacture of electric stamping and ceiling fans, tin scrap, aluminium scrap and copper scrap-are also produced. After cutting the sheets of these items the remaining portion of sheet is of no use for the dealer and they are waste product and scrap so far as the dealer is concerned. It was submitted that sale of these scraps are liable to be granted exemption as the exemption has been granted on the main item, i.e., the electric stamping and the fans.

5. In this connection the relevant notification is ST-II-604/X-9(208)-1981 dated January 29, 1985. The State Government in exercise of power u/s 4A of the Act issued the notification granting exemption in respect of "any goods" manufactured in an industrial unit, which is a new unit as defined in the said Act on the certain terms and conditions. Elaborating the argument the learned Counsel for the opposite party submitted that prior to April 1, 1990, i.e., for the period October 1, 1982 to March 31, 1990 there was no requirement to specify the goods to be manufactured by the manufacturer for the grant of eligibility certificate in the application u/s 4A of the Act. There was no prescribed application for grant of eligibility certificate during that period. For the first time the said requirement came into force through Rule 25 of the U.P. Sales Tax Rules, 1948. This position could not be disputed by the learned Standing Counsel. The learned Standing Counsel submitted that since main manufacturing activity of the dealer-opposite party was manufacturing of electric stamping and ceiling fan, he can claim exemption from the payment of trade tax upon these items only. He is not entitled to claim exemption on the sale of scrap of aluminium, copper and tin.

6. My attention was invited by the learned Counsel for the dealer towards the circular dated April 24, 1992 issued by the Commissioner of Sales Tax (U.P.). In para 2 of this circular there is reference of earlier circular issued by the Commissioner with the consultation of the State Government clarifying the position that new units which have been established in between October 1, 1982 to March 31, 1990 are entitled to avail the exemption from payment of sales tax in respect of all the goods manufactured by it. It provides that apart from the main products, by-products and waste products on account of manufacturing activities shall also be exempt from the payment of trade tax. It is also mentioned there that if new unit after some time starts manufacturing a different product, even then the unit will be entitled to avail exemption from payment of sales tax on such product. Although the period of exemption calculated from the date of initial date of production, for the specified period. In para 3 it is mentioned that new unit set up after March 31, 1999 would be entitled to claim exemption only on such products which are mentioned in the eligibility

certificate. The aforesaid circular of the Commissioner fully covers the question involved in the present case.

7. The learned Standing Counsel could not place any thing against the above circular.

8. The assessing authority as well as the appellate authority held that the scrap of copper, tin and iron are not waste or by-products. What is "waste product" is not defined in the Act. This Court in the case of *J & J Enterprises v. Commissioner, Trade Tax* [1996] 102 STC 51 : [1996] UPTC 471 has held in this regard. The relevant portion is quoted below:

The words "waste products" are not defined in the Act and, therefore, we have to take recourse to the dictionary meaning. In *Chambers Twentieth Century Dictionary*, reprint edition 1973 at pages 1535 and 1536 the term "waste products" means as follows:

"waste products"--means material produced in a process that is discarded on the completion of that process.

In *Webster's Third New International Dictionary*, Volume III, it means as follows:

"waste product"--debris resulting from a process (as of manufacture), i.e., of no further use to the system of producing it.

Further, in *New Lexicon Webster's Dictionary of the English language*, Deluxe Encyclopaedic Edition, 1987 at page 1111, it means as follows:

"waste product" means refuse produced during or left over from a manufacturing process.

From the meaning of the words "waste product" as given in the above dictionaries, it appears, that waste product is a product that has gone waste in the manufacturing process or in other words what becomes waste for the manufacturer during the manufacturing process.

9. From the above definition there can be a little doubt that after cutting the sheets in the desired shape and size, for the purpose of manufacturing fans and electric stamping, remainder is obviously left over from a manufacturing process and is a waste product, as defined above. The same conclusion can be reached from another angle also. The assessing authority has treated the remainder as scrap. The dealer-opposite party purchases sheets. After taking out portions from the sheets remainder is scrap. Scrap is taxable at the point of manufacturer or importer. The dealer would be manufacturer of the scrap. As such in view of the eligibility certificate the turnover of scrap shall also be exempted from the levy of sales tax as all the items manufactured by it in view of the notification referred to above are, exempt from the tax.

10. In the result I find no force in the revision. The revision is dismissed.