
(2004) 04 AHC CK 0229
In the Allahabad High Court

Commissioner of Trade Tax

APPELLANT

Vs

Manisha Export

RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 8(1)
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 11 VST 918

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The only question involved in the present revision at the instance of Commissioner of Sales Tax u/s 11 of the Uttar Pradesh Trade Tax Act, 1948, is about the liability of the dealer-opposite party to pay interest on the turnover of Rs. 1,54,790 alleged to have been made in the course of export to other country. The controversy lies in a narrow compass. The dealer-opposite party carries on the business of manufacture and sale of nut, bolt, etc. For the assessment year 1988-89 (Central) it failed to prove sale, that sale amounting to Rs. 1,54,790 was made in the course of export and it was treated by the authorities below as Central sales. The assessing authority accepted the books of account of the dealer-opposite party, but found that the sale of Rs. 1,54,790 was not made in the course of export sale in absence of any export order. The shipping bill produced by the dealer-opposite party did not tally with the aforesaid turnover either in weight or in value of the goods. The dealer could not produce form H also. Consequently, it levied interest on the aforesaid amount u/s 8(1) of the Uttar Pradesh Sales Tax Act. The first appellate authority upheld the rejection of claim of export sale, but deleted the levy of interest u/s 8(1) of the Act vide order dated November 27, 1991. The said order has been confirmed in second appeal No.122 of 1992 by the Tribunal vide its order dated June 14, 1994. Aggrieved against the aforesaid order present revision has been filed.

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

Learned Standing Counsel submitted that the turnover of Rs. 1,54,790 is admitted turnover of the dealer-opposite party and, therefore it is liable to pay interest u/s 8(1) of the Act. Its books of account have been accepted and the dealer has failed to prove the aforesaid turnover as export sale and is liable to pay interest from the specified date u/s 8(1) of the Act.

3. In contra learned Counsel for the assessee submitted that the dealer is hundred per cent export oriented unit and is not authorised to sell its product in open market. It is authorised only to export the goods outside India or sell the goods to hundred per cent export oriented unit. M/s. Gopal Krishna Company (P) Limited is hundred per cent export oriented unit and the aforesaid goods were supplied to it. Similarly, M/s. Naithani Steels (P) Limited is also hundred per cent export oriented unit and, as such, there was no justification to levy interest u/s 8(1) of the Act.

4. The dealer did not file any appeal before the Tribunal against the order of the first appellate authority treating the aforesaid transaction as the Central sale. The only controversy involved in the present revision is about the levy of interest on the above turnover and whether it can be said that the dealer opposite party has failed to deposit the amount of tax, admittedly payable within the meaning of Section 8(1) of the Act.

5. At this stage it is necessary to examine, when a sale can be considered as sale of goods in the course of export.

Sale or purchase of goods in the course of export:

Section- 5 of the Central Sales Tax Act reads as follows:

5. When is a sale or purchase of goods said to take place in the course of import or export.--(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods in to the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

6. The phrase "(in the course of export)" in fact has been borrowed from Article 286 of the Constitution. The Supreme Court has considered this matter in a number of cases including in Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others, It has laid down following principles of law on page 759:

...A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the

two cannot be voluntarily interrupted without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are a variety of transactions in which the sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India and the purchaser immediate or remote exports the goods out of India for foreign consumption. For instance, the foreign purchaser either by himself or through his agent purchases goods within the territory of India and exports the goods and even if the seller has the knowledge that the goods are intended by the purchaser to be exported, such a transaction is not in the course of export for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods. Such transaction without more cannot be regarded as one in the course of export because etymologically "in the course of export" contemplates an integral relation or bond between the sale and the export.

7. Recently in the case of *A.R. Associates v. Commissioner of Commercial Taxes* [2001] 122 STC 134 (Karn); [2002] 20 NTN 57 it has been held as follows (page 136 of STC):

We have carefully assessed the rival contentions and we do find on a perusal of the requirements of Section 5(3) of the Central Sales Tax Act read with Rule 12(10)(a) of the Central Sales Tax (Registration and Turnover) Rules that it is insufficient for the assessee to merely produce the form H and the bill of lading because the most important evidence that is required to be produced as per the requirements of law is the export agreement. The purpose behind the insistence on this provision is in order to ensure that there was not only in existence a valid agreement for export and an order but also to be able to identify the particular export goods and to establish a link or nexus between those goods and the export agreement. In this background there can be no question of either a waiver or a concession being, made in so far as the law postulates certain requirements and the non-fulfilment of those requirements will be fatal to the case of the assessee in question. It is not sufficient for an assessee to establish that some exports have taken place or that certain goods had been sold to the export house because the law goes a little further in ensuring that the

consignment had in fact left the territory of India, being part of an export consignment and it is only when this last ingredient is fulfilled that the privilege of exemption can be granted. We see no ground on which the revisional order can therefore be interfered with.

8. From the above it is fully established that the aforesaid turnover is central sales and liable to be taxed accordingly and it by no stretch of imagination could possibly be treated as sale in the course of export.

Interest:

9. Section 7 of the Act cast a duty on every dealer, who is liable to pay tax, to submit such return or returns of his turnover at such intervals within such period, in such form and verified in such manner, as may be prescribed. u/s 7(1A) of the Act the dealer shall deposit in the prescribed manner the amount of tax due on the turnover shown in such return. Section 8(1) of the Act provides that the tax admittedly payable shall be deposited within the time prescribed, failing which simple interest at the rate of two per cent per mensem shall become due and be payable on the unpaid amount with effect from the specified date mentioned therein. Explanation to Section 8(1) of the Act defines the phrase "tax payable" means "the tax which is payable under this Act on the turnover of sales or purchase or both" as disclosed in the accounts maintained by the dealer or admitted by him in any return or proceeding under this Act, whichever is greater.

10. The authorities below deleted the levy of interest u/s 8(1) of the Act holding that the dealer-opposite party was bonafidely disputing the transaction in question as central sales. They have placed reliance upon a Division Bench judgment of this Court given in the case of Annapurna Biscuit Manufacturing Co. and Others Vs. The State of Uttar Pradesh and Another,

11. Learned Counsel for the assessee in this Court also has placed strong reliance upon the aforesaid judgment and submitted that in each case the bona fide of the assessee shall have to be examined and "so long as calculation is honest and fair the dealer shall not incur any liability to interest". The said sentence in my view has been pressed in the present case totally out of context. In the case of Annapurna Biscuit Manufacturing Co. and Others Vs. The State of Uttar Pradesh and Another, the court was examining the question of levy of interest with reference to Section 8 of the Act when there is a change in rate of tax on account of subsequent judicial pronouncement or retrospective amendment in the rate of tax. However, in that very case in para 12 (page 66 of STC) it was held that if the dealer claims that it is not liable to pay tax or liable to pay tax at concessional rate in view of form C under Central Sales Tax Act or in view of form III-C(1) or u/s 3D of the U.P. Sales Tax Act and fails to file form "it cannot be said that calculation of tax payable was in accordance with the Act". In para 13 (page 66 of STC) of the aforesaid judgment it has been further observed as follows:

If a dealer determines or calculates tax on assumptions made by it and fails to

establish it then the determination or calculation is not only erroneous but not in accordance with the Act. As the petitioner's case is of second category the assessing authority was justified in demanding interest....

12. Therefore on a close reading of Division Bench judgment given in the case of Annapurna Biscuit Manufacturing Co. and Others Vs. The State of Uttar Pradesh and Another, the liability to pay interest by the dealer-opposite party is established.

13. In the case in hand the dealer-opposite party claimed that the turnover of Rs. 1,54,790 is not liable to be taxed being the sale in the course of export. It failed to substantiate the said claim. The only material, which could be placed by it, was that the aforesaid sales were made to hundred percent export oriented unit. This fact in itself is insignificant to hold that the sales were made in the course of export.

14. The point levy of interest can be examined from a different angle also. Explanation to Section 8(1) of the Act provides that tax admittedly payable means besides other things admitted by the dealer in any other return or proceedings under this Act. The dealer accepted the order of the first appellate authority by which his claim for export of sale was rejected. It will amount to admission of central sales by the dealer within the meaning of Explanation to Section 8(1) of the Act.

15. Learned Counsel for the dealer-opposite party has placed reliance upon the judgment of the Supreme court in the case of J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another, and submitted that it is difficult for an assessee to predicate the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do near impossible. The Supreme Court in that case has considered the provisions of the Rajasthan Sales Tax Act and interpreted the expression "tax payable" under Sub-sections (2), (2A) of Section 7 of the Rajasthan Sales Tax Act. The controversy involved before the Supreme Court in that case was that the dealer did not accept freight as part of the price of cement and did not deposit the tax. Subsequently the Supreme Court in another case came to the conclusion that freight is part of the turnover and, therefore, sales tax is payable on freight also. The assessee as soon as he came to know about it filed a revised return and deposited the tax due on freight. In that connection the Supreme Court examined the provision of Rajasthan Sales Tax Act and came to the conclusion that it would be difficult to hold that the dealer did not act bonafidely in depositing the tax due on that information before submission of the return. The said case on the facts is distinguishable. In the case in hand the assessee could not establish its claim to export sale or sale in the course of export. There was no dispute regarding rate of tax or classification of goods. The assessee claimed exemption on certain turnover, according to him, it was in the course of export and having failed to establish the same, it is part of turnover as disclosed in the books of account and

tax is admittedly payable thereon.

16. At this stage it is relevant to notice the observation of the Supreme Court made with reference to the provisions of U.P. Sales Tax Act in the case of The Commissioner of Sales Tax Vs. Qureshi Cruchible center, The Supreme Court has held that there is no relevance of malafides in such cases as Section 8(1) of the Act does not say that the non-payment should be malafide. That was not the case where the rate of tax applicable was disputed by the dealer. The dealer calculated the tax at inapplicable rates. He did not and cannot plead ignorance of the change in the rate of tax, effected two years earlier. In the case in hand there is also no dispute about the rate of tax or classification of goods. Therefore, on facts, the present is nearer to the facts of The Commissioner of Sales Tax Vs. Qureshi Cruchible center,

17. Learned Counsel for the dealer-opposite party has placed reliance upon another judgment of the Supreme Court given in the case of Commissioner of Sales Tax Vs. Hindustan Aluminium Corporation, The said judgment is distinguishable as there was classification dispute with regard to commodity which is ordinarily resolved in assessment proceeding and if resolved against the assessee he is to make payment of difference amount of tax as required by Section (1A) of Section 8 of the Act.

18. In view of the above I find sufficient force in the revision. The revision is allowed. The order of the Tribunal as well as of the first appellate authority so far as it relates to deletion of interest u/s 8(1) of the Act is concerned, is set aside.