
(2004) 05 AHC CK 0019
In the Allahabad High Court

Commissioner of Trade Tax	Vs	APPELLANT
New Universal Tannery		RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 3D

Citation : (2008) 11 VST 414

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present revision is directed against the order dated April 8, 1994 passed by the Sales Tax Tribunal in Second Appeal No. 729 of 1985 for the assessment year 1978-79. The facts of the present case lie in a narrow compass. The dealer-opposite party deals in raw hides and skins of animals. The assessing officer by the order dated May 29, 1982 for the assessment year 1978-79 accepted the account books of the dealer. But the assessing officer has rejected the claim of exemption on the turnover of sales of tanned skins on the ground that the same was not sold to U.P. dealers in the course of export and as such the turnover was not liable for exemption u/s 5(3) of the Central Sales Tax Act, 1956. Form H was produced by the dealer in support of the claim. This plea of the dealer was not accepted by the first appellate authority as well as by the Tribunal and the levy of tax has been confirmed u/s 3AAAA up to the Tribunal stage. However, the Tribunal has set aside the order of the assessing officer, demanding interest u/s 8(1) of the Act. The present revision is directed against this portion of the order of the Tribunal.

2. Heard the counsel for the parties and perused the record.

3. 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 admittedly 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.

4. The Tribunal deleted the levy of interest u/s 8(1) of the Act holding that the dealer-opposite party was bona fide disputing the transaction in question as Central sales. It has placed reliance upon a division Bench judgment of this Court given in the case of *Annapurna Biscuit Manufacturing Co. v. State of Uttar Pradesh* [1982] 50 STC 56 : [1980] UPTC 1320.

5. 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 the calculation is honest and fair the dealer shall not incur any liability to pay 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 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 the Central Sales Tax Act or in view of form IIIC(1) or u/s 3D of the U.P. Sales Tax Act and fails to file form "it cannot be said that the calculation of tax payable was in accordance with the Act". In para 13 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 on it.

6. 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.

7. The point of 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 thing admitted by the dealer in any other return or proceedings under this Act. The dealer accepted the order of the first Tribunal by

which his claim for export of sale was rejected. It will amount to admission of Central sales tax by the dealer within meaning of Explanation to Section 8(1) of the Act.

8. 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 predict 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-section (2), (2A) of Section 7 of the Rajasthan Sales Tax Act, 1954. 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 the Rajasthan Sales Tax Act and came to the conclusion that it would be difficult to hold that the dealer did not act bona fide 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.

9. At this stage it is relevant to notice the observation of the Supreme Court made with reference to the provisions of the U.P. Sales Tax Act, 1948 in the case of The Commissioner of Sales Tax Vs. Qureshi Crucible center, The Supreme Court has held that there is no relevance of mala fides in such cases as Section 8(1) of the Act does not say that non-payment should be mala fide. That was not the case where 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 case is nearer to the facts of The Commissioner of Sales Tax Vs. Qureshi Crucible center,

10. Learned Counsel for the dealer-opposite party has placed reliance upon another judgment of 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.

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