
(1999) 11 AHC CK 0025

In the Allahabad High Court

Case No : Trade Tax Revisions No's. 275, 276 and 277 of 1999

Commissioner of Trade Tax

APPELLANT

Vs

Sterling Machine Tools

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 29A

Citation : (2000) 119 STC 90

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; Bharatji Agarwal and Piyush Agarwal, for the Respondent

Judgement

P.K. Jain, J.—These three revisions arise out of the common order passed by the Trade Tax Tribunal in Second Appeals Nos. 215 of 1992 (A.Y. 1979-80), 216 of 1992 (A.Y. 1980-81) and 217 of 1992 (A.Y. 1981-82) allowing the three appeals of the assessee and directing the assessing authority to refund or adjust with interest the excess amount of tax deposited by the assessee as ordered by the Trade Tax Tribunal vide order dated July 27, 1990.

2. The factual position of the case appears to be that for the aforesaid assessment years the assessee had taken the matter of assessment to the Tribunal in second appeals. The second appeals filed by the assessee were allowed by the Tribunal against the assessment orders for the years under consideration and after fixing liability for tax the Tribunal had directed that the excess amount deposited by the assessee shall be refunded to him in accordance with the rules. The said order of the Tribunal had become final as the department did not feel aggrieved by the said order and it did not file any revision before the High Court. Thereafter the assessee claimed that he had deposited tax of amount of Rs. 10,79,918.90 paise for the assessment year 1979-80, Rs. 12,59,601.86 paise for the assessment year 1980-81 and Rs. 12,94,719.82 paise for the assessment year 1981-82 whereas by the order dated July 27, 1990 passed by

the Tribunal the tax liability finally imposed upon him was Rs. 8,09,939.33 paise, Rs. 9,44,878.18 paise and Rs. 11,94,138.52 paise respectively for the aforesaid assessment years. He was entitled to refund of the excess amount deposited by him. The assessing authority, however, rejected the applications vide order dated December 6, 1990 on the ground that the excess amount was deposited after he realizing the same from the customers and in view of the provisions contained in Section 29-A of the Trade Tax Act, 1948, he was not entitled to refund of the amount. Aggrieved by the orders of the assessing authority, the assessee filed first appeals which were dismissed by the first appellate authority [Deputy Commissioner (Appeals)]. Thereafter the second appeals were filed before the Tribunal which were allowed by the impugned orders passed by the Tribunal. The department feeling aggrieved has filed these three revisions u/s 11 of the U.P. Trade Tax Act.

3. I have heard Sri B.K. Pandey, learned Standing Counsel appearing for the revisionist and Sri Bharatji Agarwal, learned Senior Counsel appearing for the dealer/opposite party.

4. Sri Pandey has filed supplementary affidavits in all the three revisions supporting the stand of the department that the excess amount was deposited by the assessee after realising the same from the customers. His submission is that the Tribunal's order in the appeals against the assessment orders was that the excess amount of tax deposited by the assessee shall be refunded to him in accordance with the rules. His next submission is that Section 29-A(3) of the U.P. Trade Tax Act provides that the excess amount realised in contravention of the provisions of Sub-section (2) of Section 8-A of the Act, on a claim being made in that behalf may be refunded to the person from whom the said dealer had actually realised the said amount or part or to his legal representative and to no other person. His submission is that the claim for refund can be made only by the person from whom the dealer had actually realised the amount or by the heir and legal representative of the said person from whom the excess amount of tax is realised by the assessee. Shri Bharatji Agarwal, learned Senior Counsel, has submitted that so far as the assessment years 1980-81 and 1981-82 are concerned the submission of Sri Pandey that the excess amount was deposited after realising from the customers is factually wrong. He submits that only copies of one or two monthly returns have been filed by the Revenue in support of the claim that the excess amount was realised from the customers. His next submission is that one or two monthly returns cannot be sufficient to hold that the entire excess amount was deposited after realising from the customers. He has drawn attention of this Court to the assessment orders passed by the assessing authority. In the assessment years 1980-81 and 1981-82 according to Sri Bharatji Agarwal the assessment order disclosed that the total amount realised by the assessee from the customers was Rs. 9,52,886.31 paise and Rs. 11,94,125.50 paise respectively whereas the amount deposited was Rs. 12,59,601.86 paise and Rs. 12,94,719.82 paise respectively, His submission is that the contention of the department that the entire excess amount deposited

by the assessee was realised from the customers is not actually correct so far as the assessment years 1980-81 and 1981-82 are concerned. For the assessment years 1979-80 he admits that the amount deposited by the assessee was the amount realised from the customers. His further submission is that Section 29-A(3) provided that the excess amount shall be refunded to the dealer from whom such excess amount of tax or part thereof was actually realised provided a claim is made in that behalf by such person in the manner prescribed. He further submits that the refund relates to the year 1979-80. However, till 1993 there were no rules prescribing procedure for claiming of the refund. Therefore, the dealer was entitled to refund of the excess amount as he was liable to repay the amount of excess tax realised by him from the customers. He submits that the appeal was decided in the year 1990 though rules came in force in the year 1993. The period of making a claim by the person from whom the excess tax was realised had expired ; he could not have made a claim for refund. He submits that in a similar circumstances the court in the case of D.C.M. Limited, Daurala Sugar Works, Meerut v. Commissioner of Trade Tax, U.P. 2000 (117) STC 258 (All) : 1999 UPTC 1038 had held that the seller was entitled to refund of the amount from the department as he could refund the same to the dealers from whom it was realised.

5. From the perusal of the records the position that crystallises is that in the assessment years 1980-81 and 1981-82 the dealer realised from the customers and deposited the amount of tax and he was ultimately liable for payment of tax as disclosed in the following table.

Tax deposited

Tax realised

Tax liability fixed by Tribunal

1

2

3

Assessment year 1980-81

Rs. 12,59,601.86

Rs. 9,52,886.31

Rs. 9,44,878.18

Assessment year 1981-82

Rs. 12,94,719.82

Rs. 11,94,125.50

Rs. 11,94,138.52

6. In this view of the factual position the amount of tax deposited by the assessee in excess of the amount realised by him from his customers, the assessee is entitled to its refund. The remaining excess amount can be refunded to the dealers from whom the same was realised by the assessee.

7. In the assessment year 1979-80, the entire amount deposited by the assessee was the amount which was realised by the assessee from his customers. Therefore, the assessee was not entitled to its refund. Such excess amount can be refunded to the customers from whom it was realised by the dealer.

8. There is no dispute that Section 29-A of the Act provides that the excess amount deposited by the dealer under Sub-section (3) shall be refunded to persons from whom such dealer had actually realised the such amount or part thereof on a claim being made in that behalf by such person in the prescribed manner. The proviso to Sub-section (3) of Section 29-A of the Act provides that "no such claim shall be entertained after the expiry of three years from the date of the order of assessment or one year from the date of the final order on appeal, revision or reference, if any, in respect thereof, which is later". In the instant case final orders were passed by the Tribunal on July 27, 1990. The dealers/customers from whom the excess amount of tax was realised by the opposite party could make an application within one year from July 27, 1990. Admittedly, the procedure prescribing the manner in which the claim of refund could be made by such dealers/customers was provided for the first time in 1993 when Chapter 16 was introduced in the Rules. The customers from whom the excess tax was realised, therefore, could not apply for refund within the period of limitation. In the meantime, the opposite party had applied for refund on the ground that it will refund the same to the customers from whom the excess amount was realised. There is no provision u/s 29-A of the Act for refund of the amount to the dealers who had deposited the excess amount after realising it from its customers. The validity of the provisions of Section 29-A has been upheld by the honourable Supreme Court in the case of *Kasturi Lal Harilal Vs. State of U.P. and Others*, and provision of Section 29-A of the Act provides that the excess amount deposited by the dealer after realising from its customers can be refunded only to the customers from whom the excess amount of tax was realised. Learned counsel for the opposite party has referred to the decision of this Court in *D.C.M. Limited* [2000] 117 STC 258 SC : 1999 UPTC 1038. On the facts of this case the decision is not applicable. That was a case in which the finding of fact was that "the dealer has already refunded the amounts to the buyers from whom it had realised the tax. This has been done by issuing credit notes which is a valid method of refund and the factum of which has not been doubted by the authorities below". In these circumstances this Court has held that the manner had not been prescribed till 1993 while the proceedings relate to assessment year 1986-87 and the tax had already been refunded to the buyers in the manner aforesaid. As already stated, this Court has taken a view that in the absence of the prescribed procedure the dealer who had refunded the amounts to its customers could claim a refund. In the instant case there is no

claim that the excess amount deposited by the opposite party after realising from the customer has been refunded by it to its purchasing customers. The purchasing customers had not applied to the assessing authority for refund of the amount even after enforcement of the rules in the year 1993. In this view of the matter the excess amount deposited by the dealer after realising from the customers cannot be refunded to the opposite party or to the customers from whom it was realised.

9. In view of the discussions made above Trade Tax Revision No. 277 of 1999 (A.Y. 1979-80) is allowed and the order of the Tribunal is set aside. As regards Trade Tax Revision Nos. 275 of 1999 and 276 of 1999, the same are partly allowed and the order of the Tribunal is modified to the extent that only the amount deposited by the assessee in the assessment years 1980-81 and 1981-82 in excess of the amount realised by him from the customers shall be refunded to the assessee.