(2006) 08 UK CK 0038

In the Uttarakhand High Court

Commissioner, Sales Tax APPELLANT

Vs

Agrawal Grain Agency RESPONDENT

Date of Decision : 19-08-2006

Acts Referred:

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

Citation : (2007) 8 VST 217

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This revision, preferred u/s 11(1) of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated August 7, 1991, passed in Second Appeal No. 16 of 1990 for the assessment year 1984-85 by the Sales Tax Tribunal, Bench-Haldwani.

2. The question of law involved in this revision is as under:

Whether, in the facts and circumstances of the case, the Sales Tax Tribunal has erred in law in dismissing the appeal filed by the revisionist holding that there was no liability on the part of the dealer to pay interest u/s 8(1) of the U.P. Sales Tax Act, 1948, in respect of tax for which no exemption was allowed ?

3. Heard learned Counsel for the parties.

4. Brief facts of the case are that the respondent is dealer in foodgrains and oil-seeds and was a purchasing commission agent of rice polish for the solvent plant. The matter relates to the assessment year 1984-85. The dealer disclosed his turnover to the tune of Rs. 15,35,003.95 and deposited the tax amounting to Rs. 80,968.58. The dealer claimed exemption on the purchase of rice polish amounting to Rs. 15,97,965 on the ground that the same was purchased for the principal dealers, having recognition certificate u/s 4B of the U.P. Sales Tax Act, 1948. The assessing authority, assessed the turnover of the dealer at Rs.

36,56,225 and imposed tax of Rs. 1,49,907.40. The assessing authority also demanded interest u/s 8(1) of the aforesaid Act. Section 8(1) of the U.P. Sales Tax Act, 1948, reads as under:

8. Payment and recovery of tax.-(1) The tax admittedly payable shall be deposited within the time prescribed or by thirty-first day of August 1975, whichever is later, 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 day immediately following the last date prescribed or till the date of payment of such amount, whichever is later, and nothing contained in Section 7 shall prevent or have the effect of postponing the liability to pay such interest.

Explanation.-For the purposes of this sub-section, the tax admittedly payable means the tax which is payable under this Act on the turnover of sales or, as the case may be, turnover of purchases, or of 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, or, if no accounts were maintained, then according to the estimate of the dealer and includes the amount payable u/s 3-B or Sub-section (6) of Section 4-B.

5. From the above provision, it is clear that the "tax admittedly payable" would be the one which is payable either on the turnover shown in the returns by the dealer himself or if such turnover is shown in the account or estimates by the dealer.

6. The dealer preferred appeal against the order of the assessing authority before the Assistant Commissioner, Sales Tax, u/s 9 of the aforesaid Act. The first appellate court confirmed imposition of tax but waived the interest on the ground that the liability to pay tax was not admitted on the part of the dealer. In the second appeal also the Tribunal took the same view.

7. From the facts and circumstances of the case, it is clear that the dealer was claiming exemption from the tax on the ground that the purchases were made under recognition certificate, issued u/s 4B of the Act in favour of the principal dealer. The said contention of the dealer was not accepted, as in the assessment year of 1984-85, the dealer was required to have recognition certificate in his name for making the purchases of rice polish. In the circumstances, the liability to pay tax cannot be said to be admitted liability on the part of the dealer. In the similar circumstances in Commissioner of Sales Tax v. Damodar Das, Kalyan Das [1996] UPTC 589 the Allahabad High Court has taken the view that for the mere reason that the exemption claimed by the dealer was refused to him would not make the amount of tax to be an admitted liability. And in such cases, interest u/s 8(1) of the aforesaid Act, cannot be levied.

8. For the reasons, as discussed above, this Court does not find any error on the part of the Tribunal in taking the view that the interest u/s 8(1) of the U.P. Sales Tax Act, 1948, was not payable on the tax imposed by the assessing authority, as the same was not the admitted liability. Accordingly, the revision is dismissed.

