

(2003) 04 AHC CK 0218

In the Allahabad High Court

Case No : Sales Tax Revision No's. 849 and 968 of 1991

Commissioner, Sales Tax

APPELLANT

Vs

Agrawal Rolling Mills

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 10B, 21
Uttar Pradesh Sales Tax Rules, 1948 — Rule 4(2)

Citation : (2006) 143 STC 258

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Krishna Mohan Sahai, for the Appellant; Rakesh Ranjan Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—These two revisions relate to assessment years 1979-80 and 1978-79 respectively. These revisions arise out of proceedings u/s 21 of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act").

2. The opposite-party is a dealer and deals in the manufacture and sale of sheets and circles made out of non-ferrous metal. The disclosed turnover was accepted by the assessing officer. Notices issued u/s 21 of the Act for taxing the turnover at higher rate with regard to sales made to certain customers was discharged by the assessing officer ; but the said order was set aside by the Deputy Commissioner (Executive) in exercise of power u/s 10-B of the Act on the finding that the dealer has not been able to show that the sales made by it to certain dealers were for the purposes of manufacture of brassware. The Deputy Commissioner (Executive) concluded that in respect of certain sales of sheets and circles, the dealer could not produce the certificate from the purchasing dealers that the goods were used in the manufacture of brassware. Consequently, treating the said items as unclassified one higher rate of tax was imposed. The Tribunal in Second Appeals Nos. 248 and 249 of 1987 vacated the

order passed u/s 10-B of the Act mainly on basis of a circular issued by the Commissioner of Sales Tax in consultation with the Law Department. Secondly, the Tribunal also placed reliance upon its earlier order passed in second Appeal No. 250 of 1987 inter-parties.

3. Heard Sri Krishna Mohan Sahai, learned Standing Counsel in support of the revision and Sri Rakesh Ranjan Agrawal for the dealer.

4. The learned Standing Counsel has placed reliance upon a judgment of this Court reported in [1982] 50 STC 175 (Union Carbide India Ltd. v. Commissioner of Sales Tax, U.P. Lucknow). In particular reference was made to the first paragraph at page 177. In that case zinc sheets were sold by the assessee to printing presses which used it for making blocks for printing purposes. Interpreting entry 2(b) of the notification which said that scrap meant for melting and sheets including circles meant for making brasswares, it was held that since zinc sold by that dealer was not meant for making brasswares, the dealer was not covered by the said notification. The second submission is that the circular being dated December 5, 1988 will not be relevant for the assessment years 1978-79 and 1979-80. In contra it was submitted by the counsel for the assessee that the instant revision is at the instance of the Commissioner of Sales Tax who had issued the circular dated December 5, 1988 and he cannot be permitted to say that he is not bound by that circular. The circular was issued in pursuance of Rule 4(2) of the Rules framed under the Act and the same is binding on the department so far as the circular is beneficial to the dealer. It was further submitted that by the said circular the rigour of proving that the goods were sold to manufacturers of brasswares was softened. He further submitted that the department is estopped from saying anything against the said circular.

5. I have given careful consideration to the respective submissions of the parties. In [2001] 122 STC 100 : 2000 UPTC 472 (Commissioner of Sales Tax, A.P. v. Indra Industries), the Supreme Court has held that the circular issued by the Commissioner of Sales Tax even if erroneous is binding on the sales tax authorities and not on dealers. Sales tax authorities cannot contend that the circular is contrary to law. The court in the aforesaid case has placed reliance upon its earlier judgment reported in [1993] 90 STC 47 (SC) ; 1993 UPTC 1312 (Bengal Iron Corporation v. Commercial Tax Officer). The aforesaid judgment of the Supreme Court has been followed in a division Bench judgment of our Court reported in 2003 UPTC 254 (Eskay Remedies v. State of U.P.) as well in 2000 UPTC 554 (Raghunath Laxminarain Spices Pvt. Ltd. v. State of U.P.). In view of these decisions it is held that the circular issued by the Commissioner is binding on him and it is not open to the department to contend contrary to the circular.

6. The circular dated December 5, 1988 was issued in consultation with the department of law. I have gone through a copy of the circular, which has been filed along with the affidavit by the assessee. In the said circular the Law Department has taken into consideration the ground realities of the fact. It was of the opinion that after sale, the selling dealer has no control over the goods in

question and it is not possible for him to show that the goods sold have been used in the manufacture of brass ware only. The selling dealer loses all control once the goods are sold and the purchasing dealer is free to utilise the goods thus purchased according to his sweetwill or convenience. Considering these ground realities, the Law Department opined that phrase used in the relevant notification may be read as generally used and no burden may be laid upon the selling dealer to produce any evidence to show how the goods were used after sale. The Law Department has taken into consideration the real difficulties faced by the selling dealers of the State and to smoothen the administration of trade tax law has issued the said circular and has given a plausible meaning to the words used. It cannot be said that the interpretation put by the Law Department is wholly absurd or arbitrary. On the other hand, by putting such interpretation as put by the Law Department it will encourage honesty amongst the traders inasmuch as to get the concessional rate of tax the dealer will not be required to obtain a certificate which may, in a number of cases be fabricated.

7. Another submission was made by Sri Sahai that the circular is dated December 5, 1988 and being an administrative order will apply prospectively and will have no application to the assessment year in question. This matter is also not *res integra*. Suits, appeals and second appeals are really steps in a series of proceedings and are regarded to be as one legal proceeding. Appeals and revisions are in the nature of rehearing proceedings. In *Mathew M. Thomas and Ors Vs. Commissioner of Income Tax*, it was held in similar circumstances that if a benevolent circular has come into existence during the pendency of an appeal the benefit of the same should not be denied to the assessee. As observed earlier the circular dated December 5, 1988 is a benevolent one. It takes away the burden which was initially placed upon the assessee under the notification to claim the concessional rate of tax. The circular has only done away with the necessity of discharging the burden placed upon the assessee under the notification.

8. Before parting with this case, there is one additional circumstance in favour of the assessee. My attention was invited towards the order of the Tribunal passed in respect of assessment year 1980-81 in the case of the assessee and to another order of the Tribunal passed in Second Appeals Nos. 608, 611 and 609 of 1988 for the assessment years 1982-83, 1984-85 and 1985-86 respectively. Further, attention was invited to paragraph 4 of the rejoinder-affidavit and it was contended that under the same facts and circumstances the Tribunal accepted the case of the dealer-opposite party for the previous assessment years as well for the subsequent assessment years against the department has not raised any grievance.

9. In view of the above discussion, the revisions have no force and they are accordingly dismissed.