(1978) 09 AHC CK 0046

In the Allahabad High Court

Case No : S.T.R. No. 8 of 1978

Commissioner, Sales Tax APPELLANT

Vs

Dhanna Mal Pursottam Das RESPONDENT

Date of Decision : 14-09-1978

Acts Referred:

Citation : (1979) 43 STC 285

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : R.V. Gupta, for the Respondent

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The assessee acted as a purchasing agent of oil-seeds for certain mills. The mills used to manufacture oil from the oil-seeds purchased through the agency of the assessee and held certificate granted u/s 4-B(2) of the Act entitling them to payment of a concessional rate of tax. In the assessment, the assessee claimed that as he had made purchases on behalf of the mills, who held certificate u/s 4-B(2), the turnover of purchases made by the assessee on their behalf should be taxed at a concessional rate. This contention was rejected by the Sales Tax Officer as also by the appellate authority. It has found favour with the revising authority.

2. Sri V. D. Singh, the standing counsel appearing for the department, has urged that as the assessment was made on the assessee, who was not holding a certificate u/s 4-B(2) in his own name, he was not entitled to a concessional rate of tax.

3. The concession in tax being claimed by the assessee is in respect of purchase tax, and is allowable in case the assessee is able to fulfill the requirements of Section 4-B(1)(a) of the Act. In order to resolve the dispute a reference to Section 3-D and Section 4-B is necessary. The relevant part of the provisions in the assessment year ran as under :

Section 3-D. Except as provided in Sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover...of first purchases made by a dealer or through a dealer, acting as a purchasing agent....

Explanation I.-In the case of a purchase made by a registered dealer through the agency of a licensed dealer, the registered dealer shall be deemed to be the first purchaser, and in every other case of a first purchase made through the agency of a dealer, the dealer who is the agent shall be deemed to be the first purchaser.

4. Section 4-B. Special relief to certain manufacturers."-(1) Notwithstanding anything contained in Sections 3, 3-A, 3-AA and 3-D,-

(a) where any goods liable to tax u/s 3-D are purchased by a dealer who is liable to tax on the turnover of his first purchases under that section and the dealer holds a recognition certificate issued under Sub-section (2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate, or be exempt from tax, as may be notified in the Gazette by the State Government in that behalf ;

(b) where any goods liable to tax under any other section are sold by a dealer to another dealer and such other dealer furnishes to the selling dealer in the prescribed form and manner a certificate to the effect that he holds a recognition certificate issued under Sub-section (2) in respect thereof, the selling dealer shall be liable in respect of these goods to tax at such concessional rate, or be exempt from tax, as may be notified in the Gazette by the State Government in that behalf.

(2) A dealer who requires any goods referred to in Sub-section (1) for use as raw material for the purposes of manufacture in the State of Uttar Pradesh of any notified goods, and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, may apply within such period, and in such form and manner, as may be prescribed, to the assessing authority for the grant of a recognition certificate in respect thereof and if the applicant satisfies such requirements and conditions as may be prescribed, the assessing authority shall grant to the dealer in respect of such goods a recognition certificate in such form and subject to such conditions as may be prescribed.

5. It will be seen that Section 3-D levies a tax on the turnover of first purchase made by a dealer either by himself or through a purchasing agent acting on his behalf. Explanation I by a fiction makes the purchasing agent, the first purchaser of the goods in case the purchasing agent is not a licensed dealer. In the present case, the assessee was not a licensed dealer. Thus, by virtue of the operation of the fiction contained in explanation I, he was to be treated as the first purchaser, and thus became liable to pay the purchase tax u/s 3-D(1). The fact that he may or may not have been able to reimburse himself for the tax paid on these purchases from the principals is immaterial for the purposes of this controversy. When we come to Section 4-B it is evident that the concessional rate can be

claimed only by a person who has a recognition certificate issued to him u/s 4-B(2). The assessee did not have such a certificate. This being so, he was not entitled to any concessional tax, as the conditions necessary for obtaining relief u/s 4-B were not fulfilled, by the assessee. Section 4-B confers a particular benefit on the assessee who would otherwise be liable to pay tax at the full rates specified u/s 3-D(1). This being the nature of this provision, it could be availed of only in case the assessee satisfied the entire requirements of Section 4-B. Counsel for the assessee urged that as the intention of the legislature was to grant special relief to certain manufacturers, such an interpretation would be contrary to the legislative purpose.

6. The purpose of Section 4-B undoubtedly is to grant special relief in tax, but the provision has got to be read in its entirety, and the nebulous concept of legislative intent cannot be used to curtail the explicit provisions of Section 4-B(1). This apart the legislative intent of a statute has, apart from other things, to be gathered from its provisions. Inasmuch as Section 4-B permits a concessional rate only to dealers who have recognition certificate, it can safely be assumed that the legislative intent was to grant relief only to such persons, who have obtained a recognition certificate u/s 4-B(2). Thus, neither the explicit language of Section 4-B nor the legislative intent deductible from this provision sustains the contention that the advantage of the certificate granted to the manufacturer can be availed of by the purchasing agent.

7. The revision is accordingly allowed and the decision of the Judge (Revisions) is reversed. A copy of this order will be sent down to the revising authority in accordance with Section 11(8) of the Act. The department is entitled to its costs, which is assessed at Rs. 200.