

(1986) 12 AHC CK 0009
In the Allahabad High Court
Case No : Sales Tax Revision No. 538 of 1986

Commissioner, Sales Tax

APPELLANT

Vs

Pravin Chemicals Industries

RESPONDENT

Date of Decision : 19-12-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A
Central Sales Tax Act, 1956 — Section 6A
Central Sales Tax Act, 1956 — Section 6A

Citation : (1987) 66 STC 138

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Misra, J.—The Commissioner, Sales Tax, U.P., Lucknow has filed this revision against the order dated 29th March, 1986 passed by the Sales Tax Tribunal, Ghaziabad Bench, Ghaziabad in respect of the liability of the assessee under the Central Sales Tax Act for the assessment year 1973-74.

2. During the assessment year 1973-74, the assessee manufactured chemicals. It had its head office at, Ghaziabad. It received orders on phone from its customers at Delhi. The goods in pursuance of the said orders were supplied to the parties by road directly by the head office. The assessee had maintained a depot at Delhi. The said depot used to place orders with the head office at Ghaziabad which were received from customers at Delhi. The supplies in respect of these orders were directly made from the head office to customers. Bills at Ghaziabad and Delhi were prepared by one and the same person. There was difference in transport charges in respect of the goods supplied by the assessee to various customers. On these facts, the Sales Tax Officer held that the assessee was liable to pay Central sales tax. On first appeal, the Assistant Commissioner (Judicial) allowed the appeal partly. On further appeals, both by the assessee as well as the Commissioner of Sales Tax, the Sales Tax Tribunal has under the

impugned order allowed the appeal of the assessee and dismissed the appeal of the department. The Tribunal has taken the view that the sales tax department has not placed any material to show that the goods were manufactured as per specifications and that the same goods were sent to the customers.

3. I have heard learned counsel for the parties. Learned standing counsel has invited my attention to Section 6-A of the Central Sales Tax Act regarding burden of proof in such a situation. His contention is that in view of the aforesaid provision the Sales Tax Tribunal has erred in placing a wrong burden of proof upon the department regarding which facts were specifically within the knowledge of the assessee. Because of the aforesaid wrong approach of law regarding the burden of proof, learned standing counsel submits that the findings recorded by the Sales Tax Tribunal under its impugned order are vitiated in law. I find there is force in the said submission of the learned standing counsel.

Section 6-A. (1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of despatch of such goods.

4. The scope of the section is borne out by the following Statement of Objects and Reasons, appended for the insertion of the said provision by the amending Act No. 61 of 1972 with effect from 1st April, 1973 :

Central sales tax is not leviable in respect of transactions of transfer of goods from a head office or a principal to a branch or an agent or vice versa as these do not amount to sales. This aids evasion in that dealers try to show even genuine sales to third parties as transactions of this type. Accordingly, it is proposed to provide that the burden of proving that the transfer of goods in such cases is otherwise than by way of sale shall lie on the dealer who claims exemption from tax on the ground that there was in fact no sale.

5. It is thus clear that to meet the mischief of evasion of tax through the medium of having despatched the goods in various States by a dealer in the manner aforesaid that the said provision was enacted by the legislature. In view of the aforesaid provision, in my opinion, it was not for the department, as held by the Tribunal, to place the necessary facts to show that the transactions were not inter-State. On the other hand, the burden lay squarely on the assessee to do so.

6. In a recent judgment delivered by the Supreme Court in the case of Sahney

Steel and Press Works Ltd. v. Commercial Tax Officer 1986 UPTC 105 the Supreme Court has taken the view that in case the depot or branch office situated outside the State receives orders from the customers and in pursuance of those orders goods are supplied by the head office either directly to the customers or through the depot or branch office, in such a case the liability of inter-State sale arises. The registered office and the branch office do not possess separate juridical personalities. The case is that if the goods had been despatched by the head office to the branch office outside the State for sale in open market without reference of any order placed by the buyer, in such a case if the goods are purchased from such a branch office, then it is not a sale under which goods commence their movement from the head office. It is a sale where goods moved merely from the branch office to the buyers. In my opinion, the facts of the present case are squarely covered by the aforesaid decision of the Supreme Court in the case of Sahney Steel and Press Works Ltd. 1986 UPTC 105.

7. In Commissioner of Sales Tax v. Swadeshi Metal Works 1986 UPTC 1091 the facts were that the goods moved out of the factory in which the consignee was the assessee itself and the name of the purchaser was not mentioned in the excise gate pass. This assessee had a branch office at Delhi. After the goods reached the branch office unloading was resorted to and an entry of the goods was made in the stock register. The octroi receipts bore the name of the branch office and the unloading expenses were also debited in the account books. After completion of all these formalities, the branch office effected sale of the goods on receipt of sale price in favour of the Delhi office. In that case there was not a single transaction in which the goods were directly sent to the buyers from the head office. Therefore, this decision, in my opinion, does not run counter to the case of Sahney Steel and Press Works Ltd. 1986 UPTC 105. In Commissioner of Sales Tax v. Delhi Steel Industries 1981 UPTC 154 there was no material to show that there was an agreement of sale, express or implied. In the present case it is the admitted case of the parties that orders were received at the head office at Ghaziabad on phone from the customers at Delhi. In Commissioner of Sales Tax v. Ram Chandra (S. T. R. No. 434 of 1980 decided on 24th November, 1980-Allahabad High Court), it was found that the assessee acted both as the purchaser as well as an agent. That situation is not present in the present case. In Commissioner of Sales Tax v. Kunwar Ayurvedic Pharmacy 1981 STR 355 (All.) the ratio of the decision runs counter to the decision of the Supreme Court in the case of Sahney Steel and Press Works Ltd. 1986 UPTC 105. Thus the authorities cited on behalf of the assessee are of no help to the assessee.

8. In my judgment, after taking into consideration the provisions of Section 6-A of the Central Sales Tax Act and in view of the principles laid down by the Supreme Court in the case of Sahney Steel and Press Works Ltd 1986 UPTC 105 the impugned order of the Sales Tax Tribunal suffers from an erroneous approach of law regarding burden of proof inasmuch as it has on the facts of this case placed a wrong burden of proof on the department. Consequently, the findings recorded by the Sales Tax Tribunal also becomes manifestly erroneous in law and

are liable to be set aside.

9. In the result, the revision succeeds and is allowed with costs. The impugned order passed by the Sales Tax Tribunal dated 29th March, 1986 is set aside and the Tribunal is directed to rehear the case on merits in the light of the observations made above.