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(2003) 04 AHC CK 0044

In the Allahabad High Court

Case No : Sales Tax Revision No. 312 of 1991

Commissioner, Sales Tax — APPELLANT

Vs

Unity Chains Nai Mandi — RESPONDENT

Date of Decision : 07-04-2003

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 15A, 15A(1), 15A(1)(1), 4B

Citation : (2006) 143 STC 351

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Vipin Pandey, for the Appellant; Piyush Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The Commissioner of Sales Tax has challenged the order dated November 30, 1990 passed by the Sales Tax Tribunal in Second Appeals No. 871 of 1985 and 572 of 1985 for the assessment years 1979-80. The said appeal arose out of proceedings u/s 15-A(1) of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act").

2. The assessee, who is a manufacturer of iron chain, applied for grant of recognition certificate u/s 4-B of the Act for the purchase of raw material on concessional rate of tax/total exemption. The recognition certificate was initially granted although the assessee was not entitled for the same. Subsequently, penalty proceeding u/s 15-A(1)(1) of the Act was initiated and the assessing officer by means of an order dated October 14, 1983 imposed penalty to the tune of Rs. 17,000. The penalty order was set aside by the first appellate authority and the same has been confirmed by the Tribunal by the order under revision.

3. I have heard Sri Vipin Pandey learned Standing Counsel for the department and Sri Piyush Agrawal for the assessee. The relevant portion of Section 15-A(1)(1) of the Act is quoted below :

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Section 15-A.--Penalties in certain cases--(1) If the assessing authority is satisfied that any dealer or other person,--

(a) has without reasonable cause, failed to furnish the return of his turnover or to furnish it within the time allowed and in the manner prescribed, or to deposit the tax due under this Act before furnishing the return or along with the return, as required under the provisions of this Act ; or

(1) issues or furnishes a false certificate or declaration by reason of which tax on sale or purchase ceases to be leviable under this Act or the Rules made thereunder ; or.

4. The Tribunal has recorded a finding that the assessee has not made any false declaration nor there is any loss of revenue. As a matter of fact the Tribunal has found that the fault, if any, lies with the department in issuing the said recognition certificate for which the assessee was not otherwise entitled. Sri Vipin Pandey submitted that exemption is granted under the relevant provisions of the Act and not by certificate issued by the department and in this way he has sought to justify the action of the department. He has submitted that if any wrong was committed by the department in issuing the recognition certificate to which the assessee was not entitled, the assessee is liable to be penalised for making purchases against the said recognition certificate. I am not at all impressed by this argument. Under Clause (1) of Section 15-A(1) penalty is attracted only when the assessee has issued or furnished a false certificate or declaration. In the present case it is not the case of the department that the assessee had issued or furnished a false certificate or declaration. The assessee applied for grant of the recognition certificate and it was for the department to reject the said application had he not been entitled for the same. In my view, on the facts of the present case Clause (1) of the aforementioned Section 15-A(1) is not at all attracted.

5. There is no force in this revision. It is accordingly dismissed.

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