(1997) 04 AHC CK 0022

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 625 and 626 of 1995

Commissioner, Trade Tax APPELLANT

Vs

Amba Prasad Jain and Co. RESPONDENT

Date of Decision : 08-04-1997

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 3B, 3G, 3G(2)

Citation : (2003) 133 STC 437

Hon'ble Judges : M.R. Agarwal, J

Bench : Single Bench

Advocate : U.K. Pande, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Agarwal, J.—These two revision petitions by the Commissioner, Trade Tax, U.P., Lucknow u/s 11 of the U.P. Trade Tax Act are directed against a common order dated February 13, 1995 whereby dealer''s second appeal has been allowed arid it has been held that the dealer is liable to pay concessional rate of tax in respect of sales made to the U.P. State Sugar Corporation against the declaration in form III-D.

2. I have heard Sri U.K. Pande, learned counsel for the Commissioner.

3. u/s 3-G, a concessional rate of sales tax is payable on purchase made by a department of the Central or State Government or a Corporation, undertaking, etc., or by a Government company if the dealer furnishes to the assessing authority a certificate obtained from such department, corporation undertaking or company in such form, as may be prescribed. The relevant certificate/ declaration is contained in form III-D(1) under the U.P. Trade Tax Rules, 1948.

4. Sub-section (2) of Section 3-G, however, says that the said concession shall not apply to sale of any goods which are purchased by such department, corporation, undertaking or company for resale or for use in the manufacture or packing of any goods.

5. In the years 1984-85 and 1985-86, for which the controversy arises, the assessee-respondent sold certain goods, i.e., sugar mill machinery to the U.P. State Sugar Corporation, which admittedly issued declaration in form III-D to avail the concessional rate of tax. The assessing officer of the dealer took the view that the U.P. State Sugar Corporation is manufacturer of sugar and used the machinery for the manufacture of sugar ; and, therefore, the sale to it was not liable to concessional rate of tax. He, therefore, charged the selling dealer-respondent to the normal rate of tax. An appeal to the Deputy Commissioner (Appeals) failed. On second appeal, the Tribunal held that the dealer having furnished form III-D and selling dealer having bona fide accepted the same, the selling dealer cannot be subjected to the normal rate of tax.

6. In U.P. State Sugar Corporation Ltd. v. Commissioner of Sales Tax 1992 UPTC 1344 and Chandpur Sugar Company Ltd. v. Commissioner of Sales Tax 1992 UPTC 1326, it has been held by a learned single Judge of this Court that the department having issued a circular dated August 3, 1977, stating that machinery and plant do not come within the purview of Section 3-G(2) of the Act, the purchase thereof cannot be subjected to full rate of tax and the purchasing dealer was not liable to pay the difference u/s 3-G of the Act. In those cases, U.P. State Sugar Corporation had come to this Court against the orders u/s 3-D.

7. In the present case, however, the tax was levied on selling dealer who is now respondent. That, however, makes no difference in law. The purchasing dealer, i.e., U.P, State Sugar Corporation having furnished the requisite declaration to the selling dealer, the liability, if any is shifted to the purchasing dealer in terms of Section 3-B of the Act if a false declaration of certificate unless it is shown that he colluded with the purchasing dealer and deliberately acted upon a false certificate, the exemption cannot be denied.(sic).

8. For the above reasons, there is no illegality in the order passed by the Tribunal. The revision petitions are accordingly dismissed.

