(2007) 12 AHC CK 0147

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Chemicals and Insecticides — RESPONDENT

Date of Decision : 11-12-2007

Acts Referred:

Citation : (2008) 17 VST 269

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Heard learned Standing Counsel for the revisionist-State Sri B.K. Pandey and Sri N.C. Gupta for the assessee.

2. This revision has been filed against the judgment and order of the Tribunal dated July 5, 1996 by which the Tribunal has granted exemptions on export sales to the assessee for the assessment year 1991-92.

3. The questions sought to be referred are as under:

1. Whether, on the facts and circumstances of the instant case, the Tribunal was legally justified to set aside the order of the assessing authority which was confirmed by a legal order of the first appellate authority ?

2. Whether, on the facts and circumstances of the instant case, the Trade Tax Tribunal was legally justified to allow the dealer''s claim for exemption of export sales of Rs. 1,26,935 as against law declared by the honourable Supreme Court in the case of State of Travancore-Cochin v. Bombay Company Ltd. [1952] 3 STC 434?

The facts of the case are that the dealer is a manufacturer and seller of insecticides. For the assessment year 1991-92, the assessing authority accepted the books of account of the dealer but disallowed the dealer''s claim for exemption of sale of insecticides of Rs. 1,26,935 which had been exported outside the territory of India to a dealer in Nepal, according to the assessee.

4. The assessing authority levied tax on the sales made by the dealer for Rs. 1,26,935 treating it to be intra-State sales in view of the fact that the dealer failed to produce before the assessing authority a copy of order or agreement made with the foreign buyer in Nepal. No other document was also produced by the dealer to establish that he had exported the goods to a dealer in Nepal. The goods were shown to have been transacted in cash. The dealer on his part produced before the assessing authority concerned three custom clearance certificates issued by the custom authorities of Nepal. The assessing authority however did not accept these custom clearance certificates to be sufficient to establish that the sales had been made by the assessee in the course of export to Nepal.

Aggrieved by the impugned order, the dealer filed a first appeal u/s 9 of the Act. The first appeal was disallowed and the order of the assessing authority was confirmed by the order of the first appellate authority dated August 5, 1993.

5. Being aggrieved by the order of the first appellate authority, the dealer filed a second appeal before the Tribunal u/s 10 of the Act. The Tribunal has accepted the version of the dealer and has granted relief of exemption on export sales of Rs. 1,26,935.

6. Learned Standing Counsel has argued that the order of the Tribunal is vitiated on account of the fact that the Tribunal has placed reliance on custom clearance certificates produced by the dealer from Nepal Government, solely on the ground that these certificates were not despatched by the department.

7. Learned Standing Counsel has argued that the stand of the department was that in fact the dealer did not produce any evidence recognised by the Indian Government or the Indian authority to establish that the goods had been exported out of India or had received any kind of clearance from India for exporting goods to Nepal.

8. Learned Standing Counsel has argued that the goods were actually transacted within the State in cash and had not been exported and the relief of exemptions was granted wrongly.

9. In contra, learned Counsel for the assessee has argued that the custom clearance certificates from Nepal were produced.

10. Having heard learned Counsel for the parties and having perused the materials on record, I am of the opinion that the arguments made by the learned Standing Counsel have substance and are liable to be accepted for the reason that there was indeed nothing before the Tribunal to come to the conclusion that goods had received any kind of clearance from Indian authorities to show that they were exported. In fact not even an order from Nepal or agreement between two parties were placed before the authorities concerned to show that the goods were being transacted in the course of export. In my opinion, the first appellate authority has rightly reached to the conclusion that there was no export sales in

this case but it was a case of intra-State sales and therefore the assessee was clearly not entitled to any exemption for export. As such the order of the Tribunal is liable to be set aside and it is accordingly set aside.

The questions called for are thus answered in favour of the Revenue and against the assessee.

11. The revision is allowed as above. There will be no order as to costs.