
(2008) 07 AHC CK 0230
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Harbans Lal Mehrotra and Sons

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 2(i)

Citation : (2009) 25 VST 239

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Prakash Krishna, J.—The present revision is directed against the order dated December 18, 1997 passed by the Trade Tax Tribunal, Ghaziabad in Second Appeal No. 403 of 1993 relevant to the assessment year 1986-87 whereby and whereunder the Tribunal has allowed the appeal preferred before it by the dealer-opposite party and held that the amount of security and insurance charges as realised from the customers by the dealer-opposite party is not a part of taxable turnover.

2. The dealer-opposite party is carrying on the business of purchase and sale of safety razors and blades. It has admitted its taxable turnover of Rs. 32,70,538.77 and realised a sum of Rs. 14,62,018.14 as insurance charges and security along with each bill issued for sale. The assessing officer, after affording an opportunity of hearing to the dealer-opposite party, took the view that the said insurance charges and the security amount charged along with each sale bill by the dealer-opposite party from the customers are part of turnover, vide order dated January 14, 1991. The said order was challenged unsuccessfully in appeal before the Deputy Commissioner (Appeals), Ghaziabad. The matter was carried in further appeal before the Tribunal and the Tribunal has allowed the appeal of the dealer-opposite party.

3. In the memo of revision, the following question of law has been sought to be

raised by the Department:

(i) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified in holding the amount of security and insurance charges as realised from the customer by the dealer is not the part of taxable turnover whereas the assessing authority after examination of the account books found that the securities and insurance charges as realised by the dealer from the customer are part of taxable turnover ?

4. The question as to whether the security amount will form part of the turnover or not is taken first. In this regard the assessing authority, on examination of the account books, has found that the dealer-opposite party has charged two per cent to four per cent as security in each bill. The stand taken by the dealer is that the security amount has been charged with a view to ensure timely payment by the purchasing dealer, the loss of interest for the late payment of the price thus set-off against the interest amount earned on such security. The assessing authority was of the view that the said amount formed part of turnover and has been separately shown in the bills just to avoid the payment of trade tax due on the part of the sale price. Without making much discussion in the order, the Tribunal took the view that since the account books of the dealer have been accepted and the disclosed turnover has not been disputed by the Department, it shows that there is no suppression of sales and as such, if the dealer has charged some amount by way of security and has separately shown the amount in the bills, it will not form part of the turnover.

5. Section 2(i) of the U. P. Trade Tax Act defines "turnover". It means "aggregate amount" for which goods are supplied or distributed by way of sale or are sold, by a dealer, either directly or through another, on his account or on account of others, whether for cash or deferred payment or other valuable consideration.

6. On a plain reading of the definition of "turnover", it is explicit that a comprehensive definition of "turnover" has been provided for. Use of words "aggregate amount" and "other valuable consideration" in the definition of "turnover" are very significant. It is not in dispute that the dealer-opposite party has charged certain percentage, i.e., two per cent to four per cent in the bills from the customers under the label "security amount". It has been found by the authorities below that although the dealer-opposite party has called the said charges "security amount" the said amount was never returned to the customers. Obviously, when a purchaser or customer has purchased goods he has paid two per cent to four per cent, may be under label of "security amount", which will fall within the phrase "aggregate amount" as occurring in Section 2(i) of the Act. The commission payable by a purchaser of the goods to the commission agent is included in the term of "purchases" as held by the apex court in *Anand Swarup Mahesh Kumar Vs. Commissioner of Sales Tax*, . Similar principle will apply in respect of the so-called "security charges". The learned Counsel for the dealer-opposite party could not place any material to take a different view from the above. He could submit only this much that the said

amount is lying with the dealer-opposite party and the dealer-opposite party is liable to refund the same to the customers on demand. There is nothing on record before this Court to substantiate the said plea that the so-called security amount has ever been refunded or its refund was claimed by the purchasers at any point of time.

7. Similar argument was advanced before the first appellate authority who took the view that the dealer-opposite party by manipulating the account books is trying to avoid its liability to pay the trade tax and charged the amount as a part of sale price under the head "security amount". It has also been noticed that from the account books it is clear that a period of more than five years has passed but none of the purchasing dealers has demanded the refund of the alleged security amount. This all shows that the security charge is nothing but part of sale consideration and is, therefore, included in the definition of "turnover" as provided u/s 2(i) of the U. P. Trade Tax Act.

8. In view of the above discussions, I find sufficient force in the argument of the learned Standing Counsel that the security amount is liable to be included in the "turnover" of the dealer-opposite party. The contrary view taken by the Tribunal is not legally tenable.

9. So far as the question of "insurance charge" is concerned, the learned Standing Counsel could not persuade this Court to take a different view of the matter. The Tribunal has held that the insurance charge, on the facts of the present case, was charged separately and goods were insured on the request of the customers. On these facts, the Tribunal was justified in holding that the insurance charge shall not form part of the turnover.

10. Viewed as above, the order of the Tribunal holding that the amount realised as security from the customers will not form part of turnover is not correct and it is held that such amount shall also form part of turnover. So far as the insurance charges are concerned, the view of the Tribunal is upheld.

11. The revision, therefore, succeeds and is allowed in part as indicated above.

12. No order as to costs.