
(2008) 07 AHC CK 0060
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Kansal Iron Store

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 12A

Citation : (2009) 24 VST 378

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—Questioning the legality and validity of the order passed by the Trade Tax Tribunal, Meerut, in Second Appeal No. 86 of 1996, dated May 31, 2000, the present revision has been filed by the Commissioner of Trade Tax.

2. The dispute relates to the assessment year 1984-85. The dealer-opposite party was carrying on the business of manufacture and sale of oil. It disclosed its turnover at Rs. 36,94,477 but admitted no tax liability. In spite of opportunity granted to the dealer-opposite party, it failed to participate in the assessment proceedings. Consequently, the assessing authority by the order dated October 21, 1995, after rejecting the contentions of the dealer that the said turnover is not taxable, levied the tax to the tune of Rs. 2,57,900. The case set out by the dealer-opposite party was that it had made purchases within the State of U.P. and since the oil is taxable at the point of "manufacture" or "import", no liability can be fastened on it. The assessment order was challenged before the Assistant Commissioner (Appeals) in Appeal No. 535 of 1995. The appellate authority reduced the turnover, but upheld the rejection of the account books. The matter was carried to the Tribunal by the applicant as well as by the Department. The appeal filed by the Department was rejected while that of the dealer-opposite party was accepted by the Tribunal by the order under revision.

3. In the memo of revision, the following questions of law have been sought to be raised:

(1) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified in knocking off the State revision and allowing fully dealer's revision without considering the fully adverse facts which were available on the records?

(2) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal was legally justified to quash the assessment order by accepting the dealer's version despite the fact that purchases of oil at Rs. 26,36,523 were not verifiable and most sellers of these purchases were found not in existence?

4. The learned Standing Counsel contends that the Tribunal was not justified in accepting the disclosed turnover for the reason that the dealer admittedly did not produce its account books for verification before any of the authorities below. The case set out by the dealer-opposite party was that the account books have been burnt in fire. The Tribunal having accepted the finding recorded by the first appellate authority that the dealer-opposite party has not made the purchases from the disclosed selling dealers, it was not justified in holding that no tax can be levied on the turnover of the dealer.

5. The learned Counsel for the respondent, on the other hand, supports the order of the Tribunal and submits that the findings recorded by the Tribunal are basically findings of fact and as such, no interference is called for.

6. Considered the respective submissions of the learned Counsel for the parties and perused the record.

7. It is an admitted case of the dealer that it did not produce any account books for verification in the assessment proceedings. Earlier the assessment order was framed ex parte which was set aside by the first appellate authority with the direction to give opportunity to the dealer. Again when the matter was taken up after remand, the dealer-opposite party failed to participate in the assessment proceedings. The assessing officer found that on the earlier occasion, a list of purchases was filed by the dealer wherein names and addresses of the selling dealers were disclosed. On verification, it was found that such selling dealers do not exist. It has been found that M/s. Amar Oil Mill, Bulandshar, Nand Kishore Pradeep Kumar, Jahangirabad; Jaibhagwan Narendra Kumar, Jahangirabad; Gauri Oil Mill, Hardoi and Baijnath Munnalal, Chandausi from whom the dealer allegedly purchased oil do not exist, necessary information was collected by the assessing authority from the respective assessing authorities of the aforesaid selling dealers, who informed that these firms do not exist and no attempt was made by the dealer-opposite party to contradict or dispute the information thus gathered by the Department. As a matter of fact there is no material in rebuttal to contradict the aforesaid information.

8. The assessing authority also sought further information with regard to the existence of those firms from the dealer-opposite party and asked it to supply complete names and addresses but the dealer-opposite party failed to do so. From the assessment order, it is further clear that the dealer-opposite party

could not give any satisfactory reply with regard to the existence of those selling dealers. The matter was considered by the assessing authority in great deal and it has noted all the contentions point-wise from point Nos. 1 to 8. In the absence of any specific reply, it reached the conclusion that the alleged selling dealers are fictitious and to avoid the payment of tax, the dealer-opposite party has come up with the case that it purchased the oil from those firms. The plea of the dealer, thus, was found bogus.

9. The matter was again re-examined in detail by the first appellate authority. The first appellate authority, on fresh consideration of the material, reached the conclusion that five selling dealers from whom the dealer-opposite party alleged to have made the purchases worth Rs. 26,36,523 do not exist and as such, the purchases could not be verified. However, it granted some relief with respect to the purchases which were verified and allowed the appeal in part.

10. Strangely enough, the Tribunal has confirmed the findings recorded by the authorities below to the effect that the allegations of the dealer-opposite party that it made the purchases from the aforestated firms, are incorrect and untrue, but granted the relief on the ground that the dealer-opposite party is not "manufacturer" of oil. In this connection, it may be noted that the Tribunal confirmed the findings of the first appellate authority and accepted the case of the Department that one of the selling dealers, M/s. Awgharnath Oil Mill, Meerut has stated in categorical terms that "it has not made any sale to the dealer-opposite party" is correct, but the Tribunal proceeded on the footing that since the dealer-opposite party has stated specifically that it has not done any "manufacturing work" and therefore, the dealer-opposite party cannot be treated as a "manufacturer". The said approach of the Tribunal cannot be justified in the eyes of law, specially on the facts of the present case. The view taken by the Tribunal is totally unwarranted and de hors the facts on record. It is the dealer-opposite party who was claiming that it is not liable to pay any tax on the turnover of oil as it is neither a "manufacturer" nor "importer" of oil. The dealer came out with the case that the oil was purchased by it within the State of U.P. In support of the said plea, it stated that it made the purchases from certain parties whose names have been mentioned hereinabove. On verification, it has been found that the said claim of the dealer-opposite party is totally unfounded and untenable as those firms do not exist. Opportunity was given by the assessing authority to the dealer-opposite party to establish its claim that it made the purchases from the aforestated firms, but it failed to avail of the said opportunity or establish it otherwise. It was in the special knowledge of the dealer-opposite party as to from whom it has made the purchases. The said fact, being in the special knowledge of the dealer, it was required to be proved by the dealer, as provided for by Section 12A of U.P. Trade Tax Act, 1948. Section 12A is in two parts. In the first part it provides that in any assessment proceedings, when any fact is in special knowledge of the assessee, he should prove it. Burden of proving the existence of circumstances bringing the case within any of the exceptions, exemptions or relief shall lie upon the assessee. Drawing of

presumption is confined to the absence of such circumstance which the assessee was required to prove.

11. In the given case, the assessee was required to prove that it made the purchases of oil locally, which it failed to prove. In the absence of any material to show that the dealer-opposite party has made local purchases of oil, it is not entitled for exemption on the ground that the oil was locally purchased.

12. It is settled law that if an assessee claims exemption, the burden of proof of facts which are necessary to entitle him to the exceptions, exemptions or any special relief is upon the assessee and if he fails to do so, he will not be entitled to those privileges. (See *Luxco Electronics v. Commissioner of Sales Tax* [1981] UPTC 36 and *Bulbul Prasad Amarnath v. Commissioner of Sales Tax* [1988] 7 STR 365.

13. The Tribunal has placed reliance upon certain decisions of this Court in *Mohd. Ishaq v. Commissioner of Sales Tax* [1982] UPTC 432, *Punjab Tyres v. Commissioner of Sales Tax* [1982] UPTC 408 and *Commissioner of Sales Tax v. Mala Ram* [1987] UPTC 471. In none of the aforesaid decisions, the attention of the court was drawn to the provisions of Section 12A of the U.P. Trade Tax Act. In the cases of *Mohd. Ishaq* [1982] UPTC 432 and *Punjab Tyres* [1982] UPTC 408, the court took the view that a positive finding has to be recorded by the Department that the dealer had made sale of the commodity after importing it. In both these cases the commodity was taxable at the hands of the "manufacturer" or at the point of "import". In absence of any such finding, the court took the view that burden did not lie on the assessee to establish that the commodity sold by him was not imported. The decisions rendered therein are on the facts of those cases. The other aspect of the case is that Section 12A was not brought to the notice of the court. For the same reason the decision given in the case of *Commissioner of Sales Tax v. Mala Ram* [1987] UPTC 471 is also not applicable to the facts of the present case.

14. The Tribunal was not justified in setting aside the order passed by the first appellate authority.

15. The Tribunal has committed another error as it has presumed that the purchases were made by the dealers-opposite party from unregistered dealer. Such was never the case before the authorities below including the first appellate authority. On the contrary, the case of the dealer-opposite party was otherwise that it has made the purchases from the registered dealers whose addresses were supplied by it during the course of assessment proceedings.

16. Another factor which has been lost sight of by the tribunal is that the dealer-opposite party did not produce the account books on the pretext that they have been lost due to fire. However, in the assessment "order, it is mentioned that the business premises of the dealer-opposite party was surveyed by Sri M. P. Singh, Sales Tax Officer on August 2, 1985, in the presence of one Vinod Kumar Kansal.

17. The fact that all the account books have been reduced to ashes in Ere on July 31, 1985 was not disclosed to the Surveying Officer, who visited the place immediately after two days, i.e., on August 2, 1985. The assessing officer opined that theory of fire is nothing but a cock and bull story and has been set up purposely. The said finding has not been reversed or ever touched by the Tribunal. The Tribunal was under legal obligation to have taken into consideration those aspects of the case also which were considered by the authorities below in negating the case of the dealer-opposite party, more so while reversing the order of the authority below to it.

18. Viewed as above, the order of the Tribunal is unsustainable and indefensible. The said order is hereby set aside and it is held that the Tribunal was not justified in allowing the appeal filed by the dealer-opposite party. The Tribunal has committed error while dismissing the appeal filed by the Department. It is further held that the Tribunal was not justified in accepting the dealer's version that on the purchase of oil amounting to Rs. 26,36,523 no tax could be levied.

19. In the result, the revision succeeds and is allowed. The order of the first appellate authority is restored.

20. No order as to costs.