
(2008) 07 AHC CK 0017
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Laxman Das Krishna Murari

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Citation : (2010) 28 VST 276

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The present revision is directed against the order dated March 8, 1995 passed by the Trade Tax Tribunal, Bareilly in Second Appeal No. 88 of 1991 for the assessment year 1984-85.

2. The dealer-opposite party carried on the business of purchase and sale of foodgrains and oil seeds, etc. The original assessment order under rule 41(7) of the Rules framed under the U. P. Sales Tax Act for the assessment year 1984-85 was framed on March 17, 1988. The claim of exemption as set out by the dealer-opposite party on the ground that it had made tax-paid purchases against forms IIIC(2) and IIIC(5) was allowed. Subsequently, on verification it was found by the Department that certain forms IIIC allegedly issued by M/s. Yadav Traders, Mandi Samiti Konch, Jalaun were found to be fabricated and forged. It was found that these forms were never issued by the assessing authority to M/s. Yadav Traders, Jalaun and, therefore, the said party never issued these forms to the dealer-opposite party. On this basis, the assessing authority had reason to believe that the exemption on the basis of the forged forms was allowed wrongly. Proceeding u/s 21 of the Act to determine the escaped turnover was initiated. The assessing officer, after serving a show-cause notice and affording the opportunity to the dealer-opposite party, passed an order dated August 29, 1989 u/s 21 of the Act creating a liability of Rs. 16,692.68 paise. It also demanded the interest at the rate of two per cent per month on it. The said order was challenged unsuccessfully before the first appellate authority. In further appeal, the Tribunal by the order under revision, has upheld the levy of tax. The said

part of the order has attained finality as it has not been challenged any further by the dealer-opposite party. The Tribunal has further deleted the levy of interest relying upon a Division Bench judgment of this Court in Annapurna Biscuit Manufacturing Co. and Others Vs. The State of Uttar Pradesh and Another, This part of the order is under challenge in the present revision.

3. The following question of law has been framed in the memo of revision:

Whether the Trade Tax Tribunal was legally justified to set aside the demand of interest imposed by the assessing authority despite the fact that the dealer had failed to deposit the tax due under the Act within the prescribed time ?

4. The contention of the learned Standing Counsel for the Department is that the Tribunal was not justified in deleting the interest component from the liability of the dealer-opposite party. The submission is that forms IIIC(2) having been found to be forged and fictitious documents, consequently the liability of tax on such purchases is the admitted liability of dealer-opposite party who is under statutory liability to pay the interest on the said turnover covered by form IIIC(2). The learned Counsel for the assessee, on the other hand, submits that in view of the judgment of this Court in the case of Annapurna Biscuit Manufacturing Co. [1982] 50 STC 56 : [1980] UPTC 1320, the Tribunal has committed no illegality in holding that the dealer-opposite party is under no legal obligation to pay the interest.

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

6. The controversy in the present case centers round the understanding of the judgment of the Division Bench in Annapurna Biscuit Manufacturing Co. and Others Vs. The State of Uttar Pradesh and Another, wherein it has been held that interest is payable both before and after assessment. For the former the liability accrues under Sub-section (1) if the dealer fails to deposit the tax admittedly payable within the time specified. What is the tax admittedly payable has been explained in the Explanation and it means the tax payable under the Act on turnover of sales or purchases.

7. Coming to the facts of the present case, the exemption claimed by the dealer-opposite party on certain purchases on the basis of form IIIC(2) having been rejected, the liability to pay tax on such purchases is nothing but an admitted liability to pay the tax under the Act, the purchases being undisputed. In this view of the matter, the dealer-opposite party is liable to pay the interest on the said turnover in view of the statutory provision as contained in section 8(1) of the Act.

8. A close reading of paragraphs 12 and 13 of the judgment of Annapurna Biscuit Manufacturing Co. and Others Vs. The State of Uttar Pradesh and Another, would show that the Division Bench has held specifically that if a dealer who is claiming exemption from payment of tax on sales or purchases on the basis of certain

forms, fails to furnish the forms, the liability of such dealer to pay the tax is admitted tax liability and consequently the dealer is liable to pay the interest u/s 8(1) of the Act at the rate of two per cent per month or part thereof on the unpaid amount. The contention of the learned Counsel for the dealer-opposite party that the dealer is not in any manner liable if forged forms were given to it by the selling dealer has got no substance. It is the dealer-opposite party who was claiming exemption on the basis of certain forms and if ultimately the said forms are rejected, the liability to pay tax on such purchases is the admitted tax liability as held therein. Consequently, the dealer herein is also liable to pay the interest u/s 8(1) of the Act. Forged or fictitious document has no legal sanctity. No benefit on such document, specially by a person who relied upon it, can be derived.

9. Viewed as above, I find sufficient force in the revision. The revision is on terra firma and the Tribunal has obviously committed a legal error in holding that the dealer-opposite party is not liable to pay the interest as it had filed forms IIC(2) which were subsequently found to be forged one.

10. The revision, therefore, succeeds and is allowed. The order of the Tribunal dated March 8, 1995 to the extent stated above, is set aside and question of law raised in the revision is decided in favour of the Department and against the dealer-opposite party.

11. No order as to costs.