
(2000) 02 AHC CK 0158
In the Allahabad High Court
Case No : Trade Tax Revision No. 209 of 1996

Commissioner, Trade Tax

APPELLANT

Vs

Malti Devi

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Uttar Pradesh Trade Tax Act, 1948 — Section 3D, 4B, 4B(1)

Citation : (2000) 120 STC 537

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; Bharat Ji Agrawal, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—This revision is directed against the order of the Trade Tax Tribunal, Gorakhpur, allowing Second Appeal No. 493 of 1994 for the assessment year 1988-89 filed by S/s. Malti Devi.

2. The dispute relates to a turnover of Rs. 6,90,351.97 paise in respect of purchase of rice bran which was sold by the dealer to a dealer holding recognition certificate u/s 4-B of the U.P. Trade Tax Act, 1948. The rice bran is taxable at the time of first purchase. The dealer claimed that it was purchased for and on behalf of recognition certificate holder u/s 4-B and he was exempt from payment of tax u/s 4-B(I)(a-1). The assessing authority did not accept this claim of the assessee on the ground that the dealer was himself not a recognition certificate holder and rice bran was not a declared commodity u/s 14 of the Central Sales Tax Act, 1956. The assessing authority also held that the dealer was first purchaser of the rice bran.

3. First appeal filed by the dealer was dismissed by the Deputy Commissioner (Appeals). In second appeal, however, the Tribunal accepted the claim of the dealer relying upon the decision of a division Bench of this Court in Hari Om

Gupta, Shanjahanpur v. State of U.P. reported in 1995 UPTC 368.

4. Sri B.K. Pandey, learned Standing Counsel, has argued that the order of the Tribunal is not sustainable for two grounds, i.e., rice bran is not a declared commodity u/s 14 of the Central Sales Tax Act and Section 4-B(I)(a-1) provides for exemption only in case of declared commodities when a notification is made by the State Government in this behalf. It is also submitted that there is no notification of the State Government granting exemption in respect of rice bran.

5. Sri Bharat Ji Agrawal, learned Senior Counsel appearing for the dealer, has contended that the notification dated September 7, 1981 issued u/s 3-D of the then existing U.P. Sales Tax Act provided that with effect from September 7, 1981 the turnover of first purchase in respect of goods mentioned in column 2 of the list given in the notification shall be liable to tax at the rate specified in column 3 of the notification ; rice bran is mentioned at serial No. 18 of the said notification ; rice bran was thus a notified goods under the said notification. It is also submitted that factually, the Deputy Commissioner (Appeals) had found that the sample produced before it contained small pieces of rice. Rice is a declared commodity u/s 14 of the Central Sales Tax Act. It is also submitted that in Hari Om Gupta v. State of U.P. 1995 UPTC 368, a division Bench of the court had held that with effect from September 1, 1987, the dealers, who were carrying on business of purchase and sale of oil seed and mustard khali and also acted as commission agent and who were purchasing on behalf of the recognised dealers were exempt from payment of tax. Therefore, the order of the Tribunal was justified.

6. Admittedly, the present dealer is not a recognition certificate holder u/s 4-B of the U.P. Sales Tax Act. The finding of the authorities below is that it was first purchased by the dealer on his own behalf and the sale was made against form 3-C(b) to the dealers holding recognition certificate u/s 4-B of the U.P. Sales Tax Act. Section 4-B(I)(a-1) provides that, "notwithstanding anything contained in sections.....3-D.

.....

(a-1) Where any declared goods liable to tax under Sub-section (1) of Section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer, holding a valid recognition certificate under subsection (2) in respect thereof, the State Government may, subject to such conditions and restrictions as may be specified by a notification in that behalf, grant the same relief as mentioned in clause (a) to such first purchaser :

Provided that any notification under this clause or clause (a) in respect of paddy may be made effective from a date not earlier than the first day of May, 1977 :

Provided further that the rules to carry out the objects of this clause or clause (a) may be also made effective from a date not earlier than the first day of May, 1977."

7. From the perusal of the above provisions contained in Section 4-B, a dealer claiming exemption from payment of tax and first purchase made by him, is required to fulfil two conditions ;

8. The first condition is that the commodity must be a declared goods liable to tax under Sub-section (1) of Section 3-D and the second condition is that there must be a notification by the State Government granting the relief of exemption to such first purchaser. Submission of Sri Pandey is that both these conditions are not fulfilled in the instant case. There is no doubt that rice bran has been notified u/s 3-D by notification dated September 7, 1981 being Notification No. ST-2-5787/X-10(1)-80-U.P. Act 15/ 48-Order-81. Entry 18 of this notification includes rice polish, rice bran and rice husk and the rate of tax is 4 per cent. However, notification u/s 3-D providing rate of tax on the commodities or goods described in the notification does not make such goods declared commodities. The term declared commodity has been defined u/s 2(d-1) of the U.P. Sales Tax Act which reads as follows :

"Section 2(d-1): "declared goods" means goods declared by Section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce."

9. Therefore, the term declared goods employed in Section 4-B(I)(a-1) would mean goods declared u/s 14 of the Central Sales Tax Act. An exhaustive list of goods declared has been given u/s 14 of the Central Sales Tax Act. The list includes paddy and rice but it does not include rice bran. There cannot be denial of the fact that rice bran is a different commercial commodity. Therefore, the submission that rice bran has been notified u/s 3-D and should be deemed to be a declared goods cannot be accepted.

10. The decision in Hari Om Gupta's case 1995 UPTC 368 is distinguishable on facts. That was a case in which there was no dispute that the dealer was a commission agent and had purchased the goods on behalf of the dealers holding recognition certificate. In the instant case, categorical finding of the authorities below is that the dealer was first purchaser and the purchases were made by him for self. Besides this, it may be pointed out that honourable Supreme Court had an occasion to deal with the question whether the list of declared goods u/s 14 of the Central Sales Tax Act was exhaustive or not. In the case of State of Tamil Nadu v. Pyare Lal Malhotra reported in [1976] 37 STC 319; 1976 UPTC 282, the question before the Supreme Court was whether the iron and steel at entry No. 4 which was divided into various categories could be taxed as iron and steel alone or each category was a different commercial commodity liable to be taxed separately.

11. The court held that the decision of the cases depends on a interpretation of Section 14 of the Central Sales Tax Act. It held as follows :

"The heading (iv) in Section 14 prior to its amendment by Act No. 61 of 1972 was meant to enumerate separately taxable goods and not just to illustrate what

is just one taxable substance, namely iron and steel" "The object was not to lay down that all the categories or sub-items of goods, as specified separately even before the amendment of 1972, were to be viewed as a single salable commodity called "iron and steel" for purposes of determining a starting point for a series of sales. On the other hand, the note against the brackets in front of the five smaller sub-divisions of (d) makes it clear that even each sub-category of a sub-item retains its identity as a commercially separate item for purposes of sales tax so long as it retains the sub-division. The more natural and normal meaning of such a mode of listing special or declared kinds of goods seems to us to be that the object of specification was to enumerate only those categories of items, each of which was to serve as a new starting point for a series of sales, which were to be classed as "declared" goods. If one were to state the meaning in different words, it would seem to us to be: "iron and steel goods of various types enumerated below"."

In para 10 (page 325 in STC), the honourable Supreme Court held as follows :

"As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the same goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type."

12. It cannot be disputed that rice bran is a different commercial commodity than rice. It has separate identity and is separately taxed under the provisions of the Sales Tax Act and notifications issued thereunder. The authorities below have found it as a fact that whatever was sold by the dealer was rice bran and not rice even though the Deputy Commissioner (Appeals) observed that the sample produced before him contains the same particles of rice. The submission of Sri Agrawal, therefore, cannot be accepted. As already pointed out above, before exemption could be claimed by a dealer he shall have to establish that the goods were declared goods u/s 14 of the Central Sales Tax Act. Section 14 of the Central Sales Tax Act declares paddy and rice as "declared goods" but it does not declare rice bran as declared goods. The first condition for availing exemption u/s 4-B(I)(a-1) is, therefore, not satisfied.

13. Sri Pandey has rightly pointed out that in the instant case, the second condition that there should be a notification issued by the State Government granting benefit of exemption is also not satisfied. Notification dated February 28, 1994 being Notification No. ST-II-60/XI-9(60)/92, U.P. Act 15/48, Order 94 which is effective from September 1, 1987 is in respect of paddy and not in respect of rice bran. Therefore, the second condition is also not satisfied. The division Bench decision relied upon by the Tribunal does not apply to the facts of

the present case.

14. In view of the discussions made above, the revision is allowed. Order passed by the Tribunal is set aside and that of the Deputy Commissioner (Appeals) is restored.