(2008) 08 AHC CK 0075

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Om Trading Company — RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 2(e1), 3AAAA

Citation : (2009) 23 VST 416

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Challenging the legality and validity of the order dated April 7, 2000, the present revision u/s 11 of the U.P. Trade Tax Act, 1948, has been filed relevant to the assessment year 1997-98.

2. The opposite party (hereinafter called as, "the dealer") carries on the business of balli, firewood, pulpwood, etc. The dealer though disclosed a sale of wood, etc., at Rs. 60,99,456.70, but did not accept any tax liability. It is also admitted by the dealer that he made the purchases of timber from unregistered dealer without paying any tax. Part of such purchase was disposed of by the dealer by cutting the timber in small sizes and making pulpwood. The pulpwood was sold to M/s. Star Paper Mills, Saharanpur. The remaining timber was sold to unregistered dealer. The assessing officer by the order dated August, 23, 1999, taxed the purchase of timber from unregistered dealer for the period October, 1, 1997 to March, 31, 1998, on the turnover of Rs. 33,51,508. He also taxed the pulpwood as timber product at the rate of 15 per cent on the turnover of Rs. 4,23,086. The appeal against the said order was allowed by the Deputy Commissioner (Appeals) by the order dated November 4, 1999, in part. The view taken by the first appellate authority was that by cutting the timber in small sizes and selling them, the liability of tax u/s 3AAAA is not attracted and the said part of the assessment order was set aside. In further appeal, the Tribunal set aside the entire assessment order by allowing the appeal preferred by the dealer and

dismissing the appeal filed by the Department, by the order under revision. In the memo of revision the following three questions of law have been sought to be raised:

(i) Whether the Trade Tax Tribunal is legally justified to hold the dealer is exempt from tax despite the dealer having sold pulpwood manufactured from timber purchased from unregistered dealer?

(ii) Whether the Trade Tax Tribunal is legally justified to hold that the dealer is not a manufacturer?

(iii) Whether the Trade Tax Tribunal is legally justified in confirming the view of the first appellate authority that the tax is not leviable under the provisions of Section 3AAAA of the U.P. Trade Tax Act despite the dealer having purchased timber from unregistered dealer and not selling it in the same form and condition?

3. Shri B.K. Pandey, the learned Standing Counsel for the Department, submits that it is an admitted fact that the dealer has purchased the timber from unregistered dealer without paying any purchase tax and sold them either to M/s. Star Paper Mills by cutting the timber into small pieces and making it pulpwood or to unregistered dealers. He submits that since the timber has not been sold in the same form and condition in which it was purchased, in view of Section 3AAAA the liability of tax on such sale shall remain on the dealer whether the sale was effected to a registered dealer, namely, M/s. Star Paper Mills or to unregistered dealers. Shri Rakesh Ranjan Agrawal, the learned Counsel for the dealer, on the other hand, supports the impugned order of the Tribunal. The crux of the controversy is the applicability of Section 3AAAA of the Act. The said Section was introduced by way of amendment with effect from October, 1, 1997. It provides tax on purchases of goods in certain circumstances. The present case falls u/s 3AAAA(b) wherein it has been provided that every dealer is liable to tax under this Act on purchases of any goods from any person other than the registered dealer whether or not tax is payable by such person on the purchase price of such goods at the same rate at which tax is payable on the sale of such goods. It is not in dispute that the purchase of the timber is taxable under the Act. The submission of the learned Counsel for the dealer is that the case falls in proviso (iii) to this section. For the sake of convenience the said Clause is reproduced below:

Provided that no tax shall be leviable on the purchase price of such goods in the circumstances mentioned in Clauses (a) and (b), if-

(i) & (ii)....

(iii) The purchasing dealer resells such goods within the State or in the course of inter-State trade or commerce or exports out of the territory of India, in the same form and condition in which he had purchased them;....

4. The first appellate authority and the Tribunal were of the view that converting

the timber into pulpwood does not amount manufacturing activity and as such in view of proviso (iii), the sale of pulpwood to M/s. Star Paper Mills will not attract the tax u/s 3AAAA of the Act. The learned Counsel for the dealer reiterates the above view and submits that the manufacture of pulpwood out of the wood does not amount to manufacturing and as such the view taken by the Tribunal is legally justified. The said argument is not tenable. Section 3AAAA of the Act does not talk about "manufacture". On the contrary, it provides that no tax shall be payable besides the other things if the purchasing dealer resells such "things...in the same form and condition" in which he had purchased them. The learned Counsel for the dealer could not give any reply with regard to the fulfilment of the above statutory ingredient. On the admitted facts, the timber was reduced in size by cutting them. Not only this it was thereafter converted into pulpwood. Necessarily, it follows that the purchased timber or wood was not sold by the dealer to M/s. Star Paper Mills in the same form or condition. This being so, the proviso as provided u/s 3AAAA is not attracted. In other words, the liability of the dealer on such purchases of timber which was converted into pulpwood in view of Section 3AAAA(b), is established.

5. The authorities below were not justified in holding otherwise.

6. So far as the sale made by the dealer to unregistered dealer, is concerned; such transaction is clearly taxable u/s 3AAAA(1)(b) of the Act. The relevant Notification No. 6071 dated September 30, 1983, issued u/s 3A of the Act is reproduced below:

Notification No. ST.-2-6071/X-6-(73)-76-U.P. Act 15/48-Order 83, dated September 30, 1983.

Amendment

In the Schedule to the aforesaid notification, for the existing entries in columns 2, 3 and 4 against item No. 75, the following corresponding entries shall be substituted in the columns as aforesaid-

--- Sl. No. Description of goods Point of tax Rate of tax --- 1 2 3 4 --- 75 Wood and timber of all kinds Sale by the Forest Depart- 12 per cent and of all trees, of whatever ment, Uttar Pradesh Forest species, including bailies and Corporation or by private bamboos, whether growing owner of forest or by or cut or sawn, but excluding importer: their products and firewood. Provided that where the sale is by the Forest Department to the Uttar Pradesh Forest Corporation, the tax shall be levied on the point of sale by the said Corporation, and not on the point of sale by the Forest Department. ---

7. The apex court in Hotel Balaji v. State of Andhra Pradesh [1993] 88 STC 98 :

[1993] UPTC 318 while examining the constitutional validity of the said provision has made the following observations with regard to the scheme of the Section which is reproduced below: (at page 127 of STC)

The scheme of Section 3AAAA of the U.P. Sales Tax Act, 1948, as it stands after amendment of 1992 is this: (1) If a dealer purchases the goods liable to tax at the point of sale to the consumer from any registered dealer who is not liable to pay tax on such sale, the purchasing dealer shall pay such tax. If, however, the purchasing dealer establishes that the goods purchased by him have already been subjected to or may be subjected to tax under the U.P. Act or the Central Sales Tax Act, he will get an exemption to that extent. (2) If the said goods are purchased from a person other than a registered dealer the purchasing dealer shall pay the tax payable on sale of such goods. If, however, he proves that tax payable has been paid, either wholly or partly, by the seller the tax payable by the purchasing dealer shall be exempted to that extent. (3) Similar exemption will be available to the purchasing dealer in case he establishes any of the facts mentioned in Clauses (c) and (d) of Sub-section (2). The central idea is that no transaction of sale (of goods taxable at the point of sale to consumer) should go untaxed. Either the seller or the purchaser pays the tax. It is for achieving this central purpose that Section 3AAAA has been enacted providing for several situations.

It would be immediately evident that Section 3AAAA does not speak of and does not refer in any manner to the user of the goods purchased. It is immaterial whether the goods purchased are used in the manufacture of other goods or dealt with otherwise. Much less does it speak of the manner in which the goods manufactured out of such purchased goods, if any, are dealt with....

8. As observed in the above quoted paragraph the central idea is that no transaction of sale of goods taxable at the point of sale to the consumer should go untaxed. Either the seller or the purchaser pays the tax. Keeping this background in mind, Section 3AAAA has been enacted. It has been further pointed out that it is immaterial whether the goods purchased or used in the manufacture of other goods are dealt with otherwise. Sub-section (1) is clear and simple. The tax becomes payable by the purchasing dealer in the two circumstances contemplated by Clauses (a) and (b) of subsection. Exemption can be granted if a dealer can establish any of the facts mentioned in the proviso therein, otherwise not.

9. In Kumar Motors, Bareilly v. Commissioner of Sales Tax, U.P., Lucknow [2007] 5 VST 646 : [2007] UPTC 389 , the apex court has examined the definition of "manufacture" as has been defined in Section 2(e1) of the Act. The said definition has been held to be a very wide one. In this very case the apex court has noticed its earlier judgment in Kores India Ltd., Chennai Vs. Commissioner of Central Excise, Chennai, It has reproduced a paragraph from the said judgment wherein it has been held that by cutting jumbo rolls into smaller sizes, they completely lose their earlier identity and cannot be used for the same purpose as

was done before cutting. Thereafter, it has noted its other judgments including one delivered in Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, and held that the definition of "manufacture" in Section 2(e1) of the U.P. Trade Tax Act is very wide and includes processing, treating or adapting any goods. The expression "manufacture" covers within its sweep not only such activities which bring into existence a new commercial commodity different from the Articles on which that activity was carried on, but also such activities which do not necessarily result in bringing into existence an Article different from the Articles on which such activity was carried on. For example, the activity of ornamenting of goods does not result in manufacturing any goods which are commercially different from the goods which had been subjected to ornamentation, but yet it will amount to manufacture within the meaning of Section 2(e1) of the U.P. Trade Tax Act since an artificial meaning of "manufacture" is given in Section 2(e1).

10. Having regard to the definition of Section 2(e1) as explained above, the order of the authorities below that the dealer-opposite party has not carried on any manufacturing activity by cutting the wood in small pieces by converting it into pulpwood, is not correct.

11. Respectfully following the dictum as laid down by the apex court, the orders of the Tribunal and the first appellate authority are indefensible.

12. In the result, the revision succeeds and is allowed. The order of the Tribunal and that of the first appellate authority are hereby set aside and the assessment order is restored.

13. No order as ta costs.