

(2008) 08 AHC CK 0072
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Prakash Dal Mill

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Citation : (2010) 28 VST 296

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—These two revisions have been filed against the order delivered on April 7, 2000 passed by the Trade Tax Tribunal in Second Appeal Nos. 517 of 1993 and 516 of 1993 relating to the assessment years 1987-88 and 1988-89, respectively.

2. The dealer-opposite party carries on the business of foodgrains, oilseeds, pulses, chooni, etc. The only dispute raised in these two revisions is with regard to the taxability of transactions worth Rs. 1,02,944 for the assessment year 1987-88 and Rs. 2,87,494 relating to the assessment year 1988-89.

3. The contention of the dealer-opposite party was that these purchases were made on behalf of ex-U. P. principals in the course of inter-State purchase. It was not found so by the assessing authority and the first appellate authority as well. The Tribunal, however, by the orders under revision has accepted the aforesaid plea of the dealer. The following questions of law have been sought to be raised in these revisions:

1. Whether the Tribunal was legally justified in holding that the transaction relating to 1,02,944 was a purchase for and on behalf of ex-U. P. principals despite the fact that evidence on record does not indicate that the purchases in question have been made in compliance with the orders from ex-U. P. principals and the despatches of such goods had occasioned the said purchases ?

2. Whether the Tribunal was legally justified in holding that "tangoon" is a cattle feed ?

4. No argument was advanced by the learned standing counsel with regard to question No. 2, therefore, it is left undecided.

5. Heard the learned Counsel for the parties and perused the record. The Tribunal has proceeded to hold that the transaction in question relates to purchases on behalf of ex-U. P. principals in the course of inter-State purchases on the following factors:

1. The article in question was purchased within the State of U. P., from farmers and the names of the ex-U. P. traders have been mentioned in 6R.

2. The goods were supplied at the same price at which they were purchased from the farmers and only commission was charged by the dealer.

6. The contention of the learned standing counsel for the Department is that on these facts inference of inter-State purchases on behalf of ex-U. P. principals cannot be drawn and the Tribunal was not right in doing so. The Tribunal has not examined the transactions in question in detail but by making a general observation that the goods were dispatched without much delay from the date of purchase, which is not sufficient, allowed the appeals.

7. The learned Counsel for the dealer-opposite party, on the other hand, supports the impugned order of the Tribunal.

8. Considered the respective submissions of the learned Counsel for the parties and perused the record. While rejecting the case as set out by the dealer the assessing officer noted that the dealer could not produce the purchase order. He has not maintained any record of the orders allegedly given by the ex-U. P. principal for making the purchases. The dealer is also not maintaining any account as to on whose behalf the particular goods were purchased and when they were sent to the person concerned outside the State of U. P. The dealer has not filed the list of farmers from whom the purchases were made and the copies of 6R do not contain the complete names and addresses of the purchasing dealers. It was concluded by the assessing authority that the dealer was not aware at the time of making the purchases as to when the goods will move outside the State of U. P. and where it will go. The said findings of the assessing officer were confirmed by the first appellate authority. The Tribunal without addressing the said findings has reversed the assessment "order. It was obligatory for the Tribunal to have examined the findings recorded by the authorities below to it before reversing them. Mere mention of names and addresses of the purchasing dealer in form 6R or the movement of goods outside the State of U. P., after some time is not sufficient to hold that the transaction in question is inter-State transaction of purchase. What is the nature of inter-State purchases has been explained by the apex court in Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., In this case it was laid down by the Supreme Court that the very nature of inter-State purchases is that the purchases of the goods and their dispatch to ex-State principals are part of the same transaction. The movement of goods

from the State of U. P. to a principal of another State was occasioned by and was a result-or the incident of-the purchase. Paragraph 11 from the judgment of Commercial of Sales Tax, Uttar Pradesh and others, Vs. M/s. Bakhtawar Lal Kailash Chand Areti and others, etc. etc., is reproduced below (at page 201 of STC):

11. If we examine the facts of this case in the light of the above principles, it would be clear that the purchases effected by the respondent-dealer were inter-State purchases. The purchases were made by the respondent as a commission agent on behalf of the ex-U. P., principals and the goods purchased under each of the purchases were duly despatched to such principals. It is found that such despatch took place not later than three days from the date of purchase, as soon as the railway wagon was available. The purchase of goods and their despatch to ex-State principal were parts of the same transaction. The movement of goods from Uttar Pradesh to another State was occasioned by and was the result-or the incident of -the purchase. It was the consequence of the purchase. Such movement of goods, though not proved to have been expressly stated in the contract of sale, was yet held to have been agreed upon between the parties. We must emphasise that the question whether a sale/purchase is an inter-State sale/purchase depends on the facts of each case. The principles are well-settled ; it is only a question of application of these principles to the facts found in each case.

9. The Tribunal in the case on hand without recording any finding that the dispatch of goods was occasioned by and was a result of the purchase has committed illegality in holding the said transaction as inter-State purchases on behalf of ex-U. P. principals. Mere charging of commission in the bills does not amount that the purchases were made in commission agency on behalf of ex-U. P. principals, nor the mentioning of name of the purchasing dealer situate outside the State of U. P., in 6R will be sufficient to draw an inference that the purchases were made in the course of inter-State purchases. In this very case, the Supreme Court has held that if there is a break between the purchase and dispatch of goods, it would not be an inter-State purchase vide para 17 of the report. It has been stated that an ex-State principal may first instruct his commission agent within the State of U. P. to purchase the goods on his behalf and to await his further instruction. Depending upon the market conditions and other circumstances, the ex-State principal may instruct his agent in the State either to sell the goods within the State or to dispatch the goods beyond the State. In such cases, the sale has taken place in the State of U. P. and the State of U. P. is competent to levy tax on the purchases by such agent.

10. Keeping in view the above principles in mind, coming to the facts of the present case, it would be clear that the Tribunal has committed an error of law in reaching the conclusion that the purchases by the dealer-opposite party were made on behalf of ex-U. P. principals in the course of inter-State purchases. The dealer-opposite party has failed to establish that the purchase of goods and dispatch outside State of U. P., were parts of the same transaction. In this

regard, the Tribunal has not set aside the contrary findings recorded by the two authorities below it. Purchase orders may be oral but nonetheless the dealer is required to maintain a record of such orders to establish that it made the purchases as agent on behalf of a particular principal and the purchased goods have been dispatched to the principal at the earliest opportunity.

11. In view of the above discussion, the order of the Tribunal is indefensible and is liable to be set aside. Both the revisions succeed and are allowed and the common order of the Tribunal is set aside.

12. No order as to costs.