(2010) 05 AHC CK 0036

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 555 of 2002

Commissioner Trade Tax APPELLANT

Vs

Shri Mahaveer Rolling Mills (P) Ltd. RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11(1), 4A, 4BB

Citation : (2011) 36 VST 473

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The Revenue has preferred this revision u/s 11(1) of the U. P. Trade Tax Act, 1948 (hereinafter for short, "the Act") against the order of the Trade Tax Tribunal, Kanpur, dated June 28, 2002, whereunder the Assessee/ opposite party has been allowed the benefit of set-off u/s 4BB of the Act.

2. The dispute in this revision relates to the assessment year 1998-99.

3. The Assessee/opposite party is a registered dealer under the Act and is engaged in the business of manufacture and sale of the iron and steel goods and for the aforesaid purposes it purchases raw material from the other dealers specially M/s. Mahaveer Rolling Mills (P) Ltd. The said dealer has been granted full exemption from the tax u/s 4A of the Act. The Assessee/opposite party having purchased raw material from the aforesaid dealer was allowed the benefit of set-off on its finished goods.

4. It has been contended by the learned standing counsel that until and unless all the conditions enumerated u/s 4BB of the Act are fulfilled, the Assessee/ opposite party is not entitle to any benefit of set-off and as there is no actual payment of any tax on the raw material purchased, the Tribunal was not justified in granting the benefit of set-off to the Assessee/opposite party.

5. Section 4A of the Act permits exemption to new dealers/manufacturers from payment of tax for a particular period and to a particular limit on the establishment of new units or investment for the purposes of expansion, diversification and modernization of any of them, if the State Government is of the opinion that it is necessary so to do in granting protection to any goods or for permitting the development of any industry in the State in general or any district or part of the district in particular.

6. Section 4BB of the Act provides that where any tax has been paid on purchase or sale of raw material or packing material within the State of U.P. and such material is used in manufacturing or packing of any finished goods as notified, the amount of tax paid on purchase of such raw material or packing material shall be deducted from the tax payable on sale of such finished goods.

7. There is no dispute that the dealer, M/s. Mahaveer Rolling Mills (P) Limited, from whom the Assessee has purchased raw material/packing material is fully exempt from the payment of tax u/s 4A of the Act and has been issued an eligibility certificate in that regard. The raw material/packing material so sold to the Assessee is within the permissible limits of the eligibility certificate. The material so sold has been used by the Assessee in manufacture of the finished goods. Therefore, the Assessee claimed set-off of the value of tax assessable on the purchase of said raw material/packing material from the above dealer from the tax payable by the Assessee on the sale of the finished goods. However, the said deduction/set-off was refused to the Assessee by the assessing authority on the ground that there is no actual payment of tax on sale/purchase of the raw material. The Tribunal, however, has reversed the same and has allowed the said deduction/set-off to the Assessee.

8. In the backdrop of the above facts and circumstances the following question of law has been raised for determination in this revision.

Whether under the facts and circumstances the Assessee is entitle to set-off u/s 4BB of the Act from the gross turnover of the purchase value of the raw material which the Assessee has purchased from the dealer who is exempt from payment of tax u/s 4A of the Act ?

9. For considering the above question of law it would be beneficial to refer to Section 4BB of the U. P. Trade Tax Act, which read as under:

4BB. Set-off of tax paid on raw material and packing material in certain cases.-- Where tax has been paid on the purchase or sale of raw material or packing material inside the State and such raw material or packing material has been used in manufacture or packing of such goods as are notified by the State Government in this behalf and such goods are sold in the State or in the course of inter-State trade or commerce, the amount of tax paid on the purchase or sale of the raw material or packing material shall, subject to such conditions and restrictions as may be specified in the said notification, be deducted from the tax payable on the sale of such goods--

(a) inside the State, to the extent the tax has been paid on the purchase or sale of raw material or packing material from which the goods sold inside the State were manufactured or packed ;

(b) in the course of inter State trade or commerce, to the extent the tax has been paid on the purchase or sale of raw material or packing material, from which the goods sold in the course of inter State trade or commerce were manufactured or packed:

Provided that the amount of tax to be deducted under Clause (a) or Clause (b) shall not exceed the amount of tax payable separately under this Act or the Central Sales Tax Act, 1956.

10. The submission of the learned standing counsel is that Section 4BB stipulates actual payment of tax for the purposes of grant of set-off/ deduction and as there is no actual payment, the Tribunal erred in allowing the said benefit to the Assessee.

11. In rebutting the above argument Sri Praveen Kumar, learned Counsel appearing for the Assessee, has submitted that for the purposes of benefit of Section 4BB of the Act the mode and manner of payment of tax is immaterial. What is relevant is the assessment and payment of tax on the purchase/sale of raw material or packing material.

12. The scheme of the Act envisages issuance of eligibility certificate to the dealer granting exemption u/s 4A of the Act. The said eligibility certificate discloses the amount to the extent of which exemption is permissible to the dealer and the time-limit during which said exemption can be availed of. The sale and purchase of the goods of the dealer are accounted for and the tax liability on the same on being determined is periodically adjusted from the limit of the exemption provided in the eligibility certificate. In this way there is assessment of tax on the sale and purchase of the dealer and corresponding adjustment of the tax payable by him from the eligibility certificate. Accordingly, there is payment of tax in the books by way of adjustment without actual payment of tax.

13. The provision of Section 4BB stipulates payment of tax. The manner in which the said tax is payable is not described. The payment of tax can be by tendering the amount physically by cash, cheque or draft or it can also be by some adjustment. There is no prohibition in the Act from making payment of tax by way of an adjustment. When the amount of tax determined and payable by the dealer is accounted for and is given due adjustment in the eligibility amount, it amounts to payment of tax or receipt of tax by the Revenue. Thus, non-grant of the set-off/deduction to the Assessee u/s 4BB of the Act of the amount of tax payable by him on the purchase of raw material/packing material from the dealer, Mahaveer Rolling Mills (P) Ltd., which is fully exempt from payment of tax u/s 4A of the Act was not legally justified and as such the Tribunal committed no error of law in allowing the said benefit to the Assessee by the order impugned.

14. The apex court in the case of State of Punjab and Others Vs. Perfect Synthetics etc. etc., while dealing, with a similar situation in connection with the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, has observed that the exemption is given to the dealers and not to the goods and that the assessment of tax of the dealer and deduction of the same from the eligibility amount, amounts to payment of tax. Similar is the situation in the present case. The dealer, M/s. Mahaveer Iron Industry Pvt. Ltd., who has been given full exemption u/s 4A of the Act was assessed to tax on the material sold to the Assessee/revisionist and the tax so assessed on the sale of the said goods was deducted from his eligibility amount. Accordingly, it amounts to the payment of tax by way of adjustment. Section 4BB has not prescribed the manner of payment of tax and manner of payment cannot be confined to payment by actual tender but it would include payment of tax by adjustment also.

15. In view of the above discussion, the question raised in this revision is answered against the Revenue and in favour of the Assessee as above.

16. The Tribunal has recorded a finding that the aforesaid dealer was assessed to tax at two per cent and the some was adjusted by way of mode of payment from the eligibility amount available to the said dealer and therefore, it would be presumed that the said payment of tax has been made.

17. In view of the aforesaid facts and circumstances of the case, as there is payment of tax though by adjustment the submission that the benefit of set-off would not be available, is misconceived.

18. In view of the above the revision has no merits and is accordingly dismissed.