(2007) 09 AHC CK 0056

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Singrauli Super Thermal Power Project RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 14 VST 287

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of Tribunal dated January 22, 2003 relating to the assessment year 1985-86.

2. Brief facts of the case are that the opposite party is a Government under taking, purchased plant and machinery prior to September 13, 1985 and the same had been installed and used in the generation of electricity after September 13, 1985 and claimed that they were used in the year 1987. The aforesaid plant and machinery were purchased against form HID. The assessing authority raised the demand u/s 3G(3) of the Act on the ground that the plant and machinery had been purchased prior to September 13,1985 and had been used in the generation of the electricity and the provisions of Section 3G(1) of the Act were not applicable in view of Section 3G(2) of the Act, which says that the provisions of Sub-section (1) shall not apply to the sale of any goods which is purchased by such department, corporation, undertaking, company for resale or for use in the manufacture or packing of any goods, for sale, or if such department, corporation, undertaking or company has no office or establishment situated in Uttar Pradesh. Being aggrieved by the order, opposite party filed appeal before the Deputy Commissioner (Appeals), who vide order dated August 19, 1999 dismissed the appeal of the opposite party. The opposite party further filed appeal before the Tribunal.

3. The Tribunal by the impugned order, allowed the appeal and set aside the demand raised u/s 3G(3) of the Act. The Tribunal held that though the machinery was purchased prior to September 13, 1985 but used after September 13, 1985 in the generation of the electricity therefore, in view of Section 3G(2) as amended by Amending Act No. 25 of 1985 with effect from. September 13, 1985 the provisions of Section 3G(1) of the Act were applicable in case of generation of the electricity. The Tribunal further held that Section 3G(2) of the Act is not applicable to the plant and machinery and is applicable to raw material as plant and machinery cannot be said to be the goods used in the manufacturing.

4. Heard Sri B.K. Pandey, learned Standing Counsel and Sri Bharatji Agrawal, learned Senior Advocate, appearing on behalf of the opposite party

5. The learned Counsel for the opposite party submitted that the issue involved is squarely covered by the decision of this Court in the case of Kichha Sugar Co. Ltd., Nainital v. Commissioner of Sales Tax reported in [1995] UPTC 1028, Commissioner of Sales Tax, U.P., Lucknow v. National Thermal Power Corporation, Singrauli reported in [2008] 11 VST 667 (Ali)[App] : [2004] 24 NTN 417 and Commissioner of Sales Tax, U.P., Lucknow v. Central Finance Accounts & Budget Organisation, Sonebhadra reported in Commissioner, Sales Tax Vs. Central Finance Accounts and Budget Organisation,

6. Section 3G(2) as stood prior to September 13, 1985 and after the 5, amendment by U.P. Act No. 25 of 1985 reads as follows:

Prior to amendment

(2) The provisions of Sub-section (1) shall not apply to the sale of any goods which are purchased by such department, corporation, undertaking or company for re-sale or for use in the manufacture or packing of any goods for sale, or if such department, corporation, undertaking or company has no office or establishment situated in Uttar Pradesh.

After the amendment

Section 3G. Special rate of tax on certain sales.-(1) ...

(2) The provisions of Sub-section (1) shall not apply to the sale of any goods which are purchased by such department, corporation, undertaking or company for re-sale or for use in the manufacture or packing of any goods, other than electrical energy for sale, or if such department, corporation, undertaking or company has no office or establishment situated in Uttar Pradesh.

7. In the case of Kichha Sugar CO. Ltd., Nainital v. Commissioner of Sales Tax reported in [1995] UPTC 1028 this Court held as follows:

Learned Counsel for the assessee contended that the Government had considered the matter as to whether the concession u/s 3G(1) will be applicable on the purchase of plant and machinery by the IL P. State Sugar Corporation and by a letter No. ST-2-2706 (1) Das-9(88)/76 dated June 16, 1977 the Joint

Secretary to the Government of U.P. had informed the Commissioner of Sales Tax that the law department had advised the Government that plant and machinery purchased would not be treated as goods used in the manufacture of any goods and consequently plant and machinery purchased by a Government department/ corporation would be eligible to the benefit of Section 3G. A copy of this letter is annexure 1 on the record of S.T.R. No. 156 of 1989 which shows that a copy thereof was endorsed to the administrative officer, U.P. State Sugar Corporation Limited, Lucknow as well. Thereafter the Commissioner of Sales Tax also issued a circular dated August 3, 1987 for the same purpose, copy of which is placed as annexure TI'' in the aforesaid record. It was after the aforesaid letter and circular that the revisionist made the purchase of plant and machinery availing the benefit of Section 3G(1) of the Act. The aforesaid letter and the Commissioner''s circular remained in force till the Commissioner issued another circular dated October 13, 1987 reversing the view taken in the aforesaid documents.

...

It was not disputed that the Government did issue the letter referred to above and thereafter the Commissioner also issued a circular and in accordance with those documents the revisionist was entitled to avail the concessional rate of tax u/s 3G(1) of the Act in respect of purchase of plant and machinery. The circular was relied upon by the revisionist before the Tribunal but it did not act thereon observing that so far as the legal position was concerned there was no error in the orders of the authorities below and so far as the circulars were concerned the dealer may approach the Government. This approach was legally erroneous because as repeatedly held by the honourable Supreme Court beneficial circulars explaining the legal position or the manner in which certain provisions are to be put to action are binding on the authorities administering the Act. In the present case the Government''s letter had been issued at the instance of the U.P. State Sugar Corporation Limited itself which referred the matter to the Government and of which the dealer-revisionist is a 100 per cent subsidiary.

8. In the case of Commissioner of Sales Tax, U.P., Lucknow v. National Thermal Power Corporation, Singrauli reported in [2008] 11 VST 667 (All)[App] : [2004] 24 NTN 417 the assessment year involved was 1984-85. In the aforesaid case machinery was purchased in the assessment year 1984-85 while the said machinery was used in the generation of the electricity in the assessment year 1987. Since the machinery was purchased in the assessment year 1984-85 and the amendment has been brought with effect from September 13, 1985 assessing authority raised the demand u/s 3G(3) of the Act with the view that the provisions of Section 3G(1) of the Act were not applicable to a case where the machinery was required in the generation of the electricity. Tribunal deleted the demand. Trade tax revision was filed before this Court at the instance of the Revenue. This Court dismissed the revision and held as follows (at page 668 of VST):

In the case in hand the Tribunal has placed reliance upon the aforesaid circulars issued by the department. It held that it is not a case of reassessment u/s 21 of the Act as the turnover has not escaped assessment. Section 21 could possibly be invoked if the turnover or any part thereof had escaped assessment and not otherwise, as observed by the Tribunal. The Tribunal has further interpreted the words ''used in the manufacture''. The Tribunal in my view has rightly interpreted the words ''use in manufacture'' for ''use in manufacture'' denotes the raw material which are used for manufacture of producing electrical energy and not for plant and machineries which are used for the ultimate purpose of the manufacture. Indisputably the plant and machineries were purchased in the year 1984-85. The plant was commissioned in 1987-88. Thereafter the electrical energy was started to be produced. The purchase of plant and machinery in 1984-85 through form HID was perfectly justified in the facts and circumstances of the case. The law was amended with effect from September 13, 1985. The restriction which was earlier with regard to the goods purchased u/s 3G at concessional rate was partially removed by the subsequent amendment, so far as it relates to the sale of electrical energy is concerned.

9. In the case of Commissioner of Sales Tax, U.P., Lucknow v. Central Finance Accounts & Budget Organisation, Sonebhadra reported in Commissioner, Sales Tax Vs. Central Finance Accounts and Budget Organisation, the assessment year involved was 1984-85 and machinery was purchased in the assessment year 1984-85 but such machinery have been used in the assessment year 1986-87 for producing the electrical energy. The assessing authority raised the demand u/s 3G(3) of the Act, which was deleted by the Tribunal. The Revenue filed the revision before this Court which was dismissed. This Court held as follows (at page 666 of VST):

Issue involved in the present revision is squarely covered by the judgment of this Court in Sales Tax Revision No. 1610 of 1991, Commissioner of Sales Tax, U.P., Lucknow v. National Thermal Power Corporation, Singrauli decided on August 19, 20031. In that case also in assessment year 1984-85 the purchases were made against form III-D and the plant was commissioned in the year 1987-88. On the consideration of the amendment made in Section 3G on September 13, 1985 by U.P. Sales Tax (Amendment and Validation) Act, 1985 by which in Sub-section (2) after the words ''packing of any goods'' the words ''other than electrical energy have been inserted and on consideration of the two circular dated August 3, 1977 and October 13, 1987 issued by the Government and decisions of this Court in the case of U.P. State Sugar Corporation Ltd. v. Commissioner of Sales Tax reported in [1983] 17 STR 74 and Kichha Sugar Co. Ltd. v. Commissioner of Sales Tax reported in [1995] UPTC 1028, it was held that the purchases made against form HID during the year 1984-85 against form HID and used in the commission of the plant in the year 1987-88 for the generation of the electrical energy was legal.

10. In the present case also similar question is involved as involved in the earlier cases referred hereinabove. In my view the issue involved in the present revision

is squarely covered by the aforesaid decisions of this court.

11. In the result, revision fails and is accordingly, dismissed.