

(2010) 10 AHC CK 0060

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 199 of 2004

Dev Enterprises

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 9

Citation : (2011) 45 VST 247

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : Nikhil Agrawal, Bharat Ji Agrawal and Praveen Kumar Misra, for the Appellant;

Judgement

Bharati Sapru, J.—This revision has been filed by the assessee against an order passed by the Trade Tax Tribunal dated January 27, 2004, for the assessment year 1999-2000 by which the Tribunal has imposed the penalty on the assessee for violation of the provisions of section 4B(5) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act"). The facts of the case are that the assessee was granted a recognition certificate u/s 4B of the Act for manufacturing cycle and moped parts under the said recognition certificate. The assessee was entitled to purchase the raw materials and also furnace oil and LDOs. The assessee purchased the furnace oil and use the same for manufacture of cycle and moped parts.

2. A notice was issued against the assessee on October 22, 2001 asking the assessee to show cause why penalty u/s 4B(5) of the Act should not be imposed on it for the reasons that it had used the material purchased against the recognition certificate for the work done by the assessee on job-work basis.

3. An order of penalty was passed on November 29, 2001 against which the assessee filed an appeal u/s 9 of the Act. The appeal of the assessee has been allowed by the Deputy Commissioner (Appeals) by recording a finding that the material which was purchased against form IIIB was used for the manufacture of

cycle parts. The order of penalty was therefore, set aside. Being aggrieved by the order passed in the first appeal the Department went in second appeal and the Tribunal has allowed the second appeal of the Department and has upheld the order of penalty.

4. I have heard learned counsel for the assessee and learned standing counsel for the State at length, and perused the material on record.

5. Section 4B(5) of the Act reads as under:

4B. Special relief to certain manufacturers.--....

(5) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased the goods after payment of tax at concessional rate under this section or, as the case may be, without payment of tax and has used such goods for a purpose other than that for which the recognition certificate was granted or has otherwise disposed of the said goods, such dealer shall be liable to pay as penalty such amount as the assessing authority may fix which shall not be less than the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax payable under any other provisions of this Act but not exceeding three times the amount of such difference.

6. Upon an examination of the section it becomes clear that the requirement of section is that a person who is granted a recognition certificate u/s 4B should utilise the material of goods purchased by him under the said certificate for that purpose alone for which a recognition certificate has been granted. In this case the recognition certificate was granted for the purposes of manufacture of cycle and cycle parts. The findings recorded by the first appellate authority is that the assessee had used the material purchased by him for job-work done for the manufacture of cycle parts.

7. Thus, in my opinion, the requirement of section 4B(5) was not attracted in this case for imposition of penalty. It cannot be said that while the assessee was obtained a recognition certificate for manufacture of cycle and cycle parts was using the material for something different from altogether different. The learned counsel for the assessee has placed reliance on a decision of this court in the case of Commissioner, Trade Tax Vs. Rathi Ispat Ltd., , in which this court has held that no penalty can be imposed under the provisions of section 4B(5) of the Act for the use of material purchased against form IIIB for the manufacture of goods, if done on a job-work basis that is to say that this court had accepted that if the purpose remains the same intended in the recognition certificate then even manufacture on a job-work basis is acceptable.

8. The learned standing counsel has argued that the requirement of section 4B(5) contemplates that not only the goods should be manufactured but should also be sold by the assessee and if not, then penalty is attracted.

9. However, having heard learned counsel for both the sides, I am of the opinion,

that if the materials which are purchased against a recognition certificate and are used for the manufacture of the items inserted in the recognition certificate that in itself is sufficient and in view of the fact that a finding is being recorded by the Deputy Commissioner in the first appellate order, the goods were produced out of the raw material so purchased. The order passed by the Deputy Commissioner (Appeal) is justified and the penalty is deleted.

10. The order of the Tribunal imposing penalty is not justified. It is set aside. This revision is allowed.