

(1986) 08 AHC CK 0044
In the Allahabad High Court
Case No : Sales Tax Revision No. 520 of 1986

Dhampur Sugar Mills Ltd.

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 6

Citation : (1987) 67 STC 440

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Misra, J.—Heard counsel for the parties. The present revision arises out of an order dated 26th May, 1986, passed by the Sales Tax Tribunal by virtue of which the appeal of the present applicant was dismissed.

2. The applicant, in facts, deals with the manufacture and sale of sugar and molasses, etc. The present revision relates to the assessment year 1976-77. The assessing authority accepted the account of the applicant. However, he assessed the tax upon the applicant's sales of molasses for Rs. 13,434.60 under the Central Sales Tax Act. The assessee claimed exemption u/s 5(3) of the Central Sales Tax Act. The applicant feeling aggrieved, as against the said order, preferred an appeal before the learned Assistant Commissioner (Judicial), Sales Tax, and the same was also dismissed. Similarly the Sales Tax Tribunal also dismissed the appeal, hence the present revision. In fact, before the Tribunal, the only one point pressed was regarding non-grant of exemption on the aforesaid amount claimed by the applicant which was exported through M/s. State Trading Corporation of India. The case of the applicant was that he actually exported molasses outside India and, therefore, was entitled for exemption u/s 6(3) of the Central Sales Tax Act. The same argument has been repeated by the learned counsel for the applicant today before me. It has been urged by the counsel for the applicant that the assessing authority as well as the appellate authority have

decided the case merely on the basis of the absence of bill of lading and absence of form H and did not go into the question whether there existed or not the actual contract which resulted into the export of the aforesaid goods outside India. The Tribunal even though accepted that form H is not mandatory, still upheld the orders passed by the assessing authority and the appellate authority. The argument raised by the learned counsel for the applicant is that if the Tribunal was to decide the point, apart from non-filing the bill of lading or non-compliance of form H, it was incumbent upon it to have given opportunity to the applicant to prove that actually the export made through the State Trading Corporation was in pursuance to the preexisting contract and the goods moved outside India on account of that contract. The arguments raised by the learned counsel for the applicant have force. I have perused all the three orders. The very foundation of holding whether exemption could be granted or not u/s 6(3) of the Central Sales Tax Act, it was necessary to hear the applicant on that point, which has not been done in this case. I have heard the respondent also, and nothing to the contrary was pointed out by him. In the present case, none of the authorities has examined the question whether it was an export as contemplated u/s 6(3) of the Central Sales Tax Act. I am, therefore, of opinion that it is a fit case for remanding it to the Sales Tax Tribunal, Saharanpur Bench, Saharanpur, with a direction for deciding the question of exemption afresh, after giving opportunity to the applicant in the light of the observations made above.

3. In view of the aforesaid observations, I allow the present revision and quash the order passed by the Sales Tax Tribunal, Saharanpur Bench, Saharanpur, dated 26th May, 1986 and remand it back before it. The case shall now be decided afresh in the light of the aforesaid observations after giving opportunity to the applicant. On the facts and circumstances of this case costs, shall be on the parties.