
(2017) 05 AHC CK 0003

In the Allahabad High Court

Case No : Sales/trade Tax Revision No. - 357 of 2011

Gayadeen Kailashchandra

APPELLANT

Vs

Commissioner Commercial Tax

RESPONDENT

Date of Decision : 04-05-2017

Acts Referred:

Citation : (2017) 96 UPTC 604

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Kunwar Saksena and Shubham Agrawal, Advocates, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—The assessee is engaged in manufacturing of rice. It purchases paddy and issues Form 3 C (1) to the purchaser, which certifies that tax on such commodities stands paid. It transpired that the assessee although had not deposited tax, and was not entitled to issue Form 3 C (1), yet it was issued. In the assessment proceedings orders were passed against the assessee and the matter was brought to this Court at the instance of the assessee in Sales/Trade Tax Revision No. 906 of 2003, which was disposed off vide following orders on 4.10.2010:-

"This is an assessee's revision against an order dated 17.7.2003 passed by the Trade Tax Tribunal by which the Tribunal has taken a view that the facts of the present case are similar to the case of Bajrang Industries reported in 2001 UPTC page 156 and, therefore, is liable to pay the amount imposed on him as a penalty under Section 3B of the Act.

Learned Counsel for the assessee has argued that the case of Bajrang Industries was distinguishable because the Unit in that case had been established prior to 1.4.1990 i.e. it enjoyed total exemption whereas in the case of the applicant the Unit was established after 1.4.1990 and, therefore, the Unit of the revisionist

was not fully exempted from tax but the tax was leviable on the sale by the applicant though adjustable against the maximum monetary limit fixed in the eligibility certificate granted to the revisionist under Section 4A of the Act.

Learned Counsel for the revisionist has argued that the applicant/assessee had not violated the provisions of Section 3B by providing the Form-3-Ga-2 to its purchasers because the declaration made in it was that the assessee was accepting the responsibilities of paying the tax, which would become leviable. The other argument made by counsel is that the Forms had been issued by the department itself and the assessee had not made any false declaration in the Forms issued by it to its purchasers.

He further argued that no prejudice was caused to the department, because ultimately the tax, which was leviable on the assessee was ascertained and quantified and this is evident from the assessment made for the assessee for the year in question 1993-94.

Learned Counsel for the assessee has placed on record the assessment order dated 29.1.2000 for the assessment year 1993-94, which indicates that the amount of tax payable on rice has been quantified and thereafter adjusted in the total.

Learned Standing Counsel, however, states that this in itself is not sufficient to establish that the taxes were paid but simply that they were adjusted.

Having heard learned Counsels on both sides, I am of the opinion that the matter requires reconsideration by the Tribunal. The Tribunal may go into the question of liability of tax and its payment and examine whether it is properly reflected in the assessment order for the year 1993-94 and thereafter pass fresh orders as to whether the imposition of the penalty under Section 3B was justified or not. The Tribunal will reconsider the matter after examining the assessment order passed for the year in question. The matter on remand will be considered by the Tribunal within a period of three months" from the date a certified copy of this order is being placed before it. Certified copy of this order be placed before the Tribunal within three weeks" from the date of its issuance.

Till the matter is decided afresh, no penalty may be recovered from the revisionist.

In case, the revisionist has deposited any amount in pursuance of the impugned orders or in pursuance of the interim order of this Court, the same shall remain in deposit and shall be subject to the fresh orders passed by the Tribunal.

The Revision is disposed of as above."

2. Pursuant to remand, the issue that required consideration was that as to whether in respect of sale for which Form 3 C (1) was wrongly issued, the assessee has been assessed to tax and it has deposited it. The Trade Tax Officer vide its order dated 29.1.2000 has recorded that in respect of such sales, tax

was levied upon the assessee, and that it was subsequently adjusted from the monetary limit of the assessee. This Court in Commissioner, Trade Tax, U.P. Lucknow v. S/s Shri Mahaveer Rolling Mills (p) Ltd., Fazal Ganj, Kanpur, 2010 UPTC 977 has been pleased to hold that such adjustment allowed to dealer would amount to payment of tax. Para 13 of the judgement clearly records that once exemption is allowed and deducted from the monetary limit, it will amount to tax paid by way of adjustment. Since in the facts of the present case, the amount of tax in law, stands paid, as such, no liability could be imposed now upon the assessee for payment of tax under Section 3-B of the Act.

3. The question posed for consideration is answered accordingly.