
(2010) 08 AHC CK 0473

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 366 of 2007

Jania Sons

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5), 9(5)
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 3D, 4B

Citation : (2011) 41 VST 53

Hon'ble Judges : Rajes Kumar, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, the petitioner is challenging the order dated March 6, 2007 passed by the Additional Commissioner, Grade I, Trade Tax, Moradabad Zone, Moradabad, for the assessment years 2000-01 2001-02 and 2002-03, all under the Central Sales Tax Act, by which he has granted the approval to initiate the proceedings u/s 21 of the U. P. Trade Tax Act (hereinafter referred to as, "the Act") beyond the normal period of limitation and the initiation of reassessment proceedings by the Deputy Commissioner (Assessment), Grade II, Trade Tax, Moradabad for the aforesaid assessment years vide notice dated March 8, 2007.

2. The petitioner is a partnership firm, carrying on the business of manufacture and sale of wooden pallets and plywood and fitments. The Uttarakhand had been formed on November 9, 2000 after carving out some of the area of State of Uttar Pradesh. Prior to the formation of Uttarakhand, the provisions of the U. P. Trade Tax Act were applicable to the area of Uttarakhand. The sales to the manufacturers holding recognized certificate u/s 4B of the Act were, either partially exempted or fully exempted under the notification issued in this regard. However, this benefit was not available on the sale to the manufacturers of Uttarakhand after its formation. It appears that to provide same benefits on the

sales made by the dealer of the State of U. P. to the manufacturer of Uttarakhand, a Notification No. KA.NI-2-3915/XI-9(129)/2000-Act-74-56-Order(49)-2000, dated November 23, 2000 had been issued in exercise of powers u/s 8(5) of Central Sales Tax Act, 1956. The aforesaid notification provides that the sales in the course of inter-State, trade or commerce to the dealer holding recognition certificate issued u/s 4B of the Act whose validity commences prior to November 9, 2000, for the use in the manufacture of goods or in the packing of goods manufactured by him, shall be calculated at such rate as would have been leviable on such sales against form IIIB prescribed under the said U. P. Act No. 15 of 1948, subject to the condition that the dealer selling the goods furnishes the declaration in form C or, as the case may be, the certificate in form D in accordance with the provisions of sub-section (4) of section 8 of the Central Sales Tax Act. For the calculation of rate, which would be leviable under the aforesaid notification, the notifications issued u/s 4B of the Act were relevant. Under the Notification No. K.A.NI.-2-530/XI-9(231)/94-U. P. Act-15-48-Order-2000, dated February 17, 2000 sales of all the goods other than the goods mentioned at serial Nos. 1 and 2 were liable to tax at 2.5 per cent other than the declared goods. Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 issued in exercise of powers u/s 4B of the Act provides that no tax shall be payable on the sales to or as the case may be purchase by a dealer holding a valid recognition certificate under sub-section (2) of the said section of any raw materials, processing material, consumable stores, spare parts, accessories, components, fuel or lubricants and packing materials required by him for the use in the manufactures of goods or in the packing of goods manufactured by him and such manufactured goods shall be notified goods for the purpose of said section subject to certain conditions. One of the conditions was that the above facility will be available only when, the manufactured goods is exported outside the country.

3. During the years under consideration, the petitioner had sold the goods to the manufacturer/dealer of Uttarakhand. During the course of assessment proceedings for the assessment year 2000-01, in respect of some of the turnover the dealer admitted the liability of tax at 2.5 per cent but claimed full exemption on the turnover of Rs. 32,18,445. For the assessment year 2001-02, the petitioner admitted the liability of tax at 2.5 percent on the turnover of Rs. 21,62,162.50 and claimed full exemption on the sales of Rs. 32,18,445.48. Since form C in respect of the aforesaid turnover could not be filed, the assessing authority levied the tax at 10 per cent and allowed time to the petitioner to furnish form C. The petitioner furnished the form C subsequently. Therefore, Misc. Order has been passed by the assessing authority on December 26, 2002. The assessing authority levied the tax at 2.5 per cent on the turnover of Rs. 24,91,330 and had exempted the turnover of Rs. 34,39,927. Likewise, for the assessment year 2001-02 in the absence of form C the tax has been levied at 10 per cent and the time for filing the form C was allowed. The petitioner filed form C within the time allowed. The assessing authority passed the Misc order on April

7, 2003 and levied the tax at 2.5 per cent on the turnover of Rs. 49,13,786 and granted exemption on the turnover of Rs. 1,09,25,489. For the assessment year 2002-03 in the original assessment proceeding, in the absence of form C the tax was levied at 10 per cent. Out of the aforesaid turnover, form C in respect of Rs. 99,55,684 was furnished. The assessing authority has granted the exemption on the aforesaid turnover.

4. Later on the assessing authority had sent proposals to the Additional Commissioner for approval to initiate the proceeding u/s 21 of the Act beyond the normal period of limitation on the ground that under the Notification No. KA.NI-2-3915/XI-9(129)/2000-Act-74-56-Order(49) 2000, dated November 23, 2000 the tax on the sales to the manufacturer of Uttarakhand holding recognition certificate u/s 4B of the Act and against form C was at 2.5 per cent while the total exemption had been allowed without any basis and without giving any reason and, therefore there was escaped assessment. In pursuance of the proposal sent by the assessing authority, the Additional Commissioner, Grade I, Trade Tax Moradabad Zone, Moradabad issued the notices dated September 9, 2005 to the petitioner, before granting the approval. The petitioner filed reply. In reply the case of the petitioner was that under the Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999, the sales to the manufacturer/dealer of Uttarakhand were not taxable. The Additional Commissioner had not accepted the plea of the petitioner and had granted the approval by the impugned orders and in pursuance thereof, the impugned notices have been issued by the assessing authority u/s 21 of the Act to reassess the petitioner.

5. Heard Sri S. D. Singh, learned counsel for the petitioner and Sri U. K. Pandey, learned standing counsel.

6. The learned counsel for the petitioner submitted that under Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 issued u/s 4B of the Act, the sales to the manufacturer holding recognition certificate u/s 4B of the Act was totally exempted to tax in case, if the manufactured goods were exported outside India. He submitted that the sales on which the exemption was claimed relates to the sales made to the exporters of Uttarakhand, who had exported the manufactured goods outside the country and, therefore, under the Notification No. KA.NI-2-3915/XI-9(129)/2000-Act-74-56-Order (49)-2000, dated November 23, 2000 read with Notification No. TIF-2-289/ XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999, the sales to the manufacturer/dealer of Uttarakhand against form C were not liable to tax and the assessing authority had rightly exempted such turnover. He submitted that other sales to the manufacturer/dealer of Uttarakhand against form C, who were holding recognition certificate u/s 4B of the Act and had not exported the manufactured goods outside the country were liable to tax at 2.5 per cent under Notification No. K.A.NI.-2-530/ XI-9(231)/94-U. P. Act-15-48-Order-2000, dated February 17, 2000 and had been rightly assessed to tax

accordingly. He submitted that the Additional Commissioner has illegally held that Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 cannot be read along with Notification No. NI-2-3915/XI-9(129)/2000-Act-74-56-Order(49)-2000, dated November 23, 2000. He, however very fairly submitted that for the period November 9, 2000 to November 23, 2000, the petitioner is not entitled for any exemption on the turnover of the aforesaid period and would be liable to tax at four per cent against form C and at 10 per cent without form C. He further submitted that it is true that Notification No. TIF- 2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 has not been referred in the assessment order but by granting the exemption on the turnover it is implied that the exemption had been granted under the aforesaid notifications.

7. Sri U. K. Pandey, learned standing counsel, submitted that Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 is applicable on certain conditions and unless those conditions are fulfilled, the exemption cannot be availed of. He submitted that in the relevant assessment years, the assessing authority had not at all considered the Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 and had not examined whether the conditions of aforesaid notification had been fulfilled or not and, therefore, it is wrong to say that the exemption had been granted under Notification No. TIF-2 289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999. He submitted that without referring to any notification, the exemption had wrongly been allowed. He submitted that under Notification No. KA.NI-2-3915/XI- 9(129)/2000-Act-74-56-Order(49)-2000, dated November 23, 2000 read with Notification No. TIF-2-289/XI-9(820)/92-U. P. Act- 15-48-Order-99, dated February 12, 1999, the sales to the manufacturer/dealer of Uttarakhand holding recognition certificate u/s 4B of the Act against form C were liable to tax at 2.5 per cent and since the tax had not been levied, there was escaped assessment. In the circumstances, the Additional Commissioner had rightly granted the approval to initiate the proceeding u/s 21 of the Act and the assessing authority had rightly issued notices u/s 21 of the Act to reassess the petitioner.

8. We have heard rival submissions and perused the record. It would be appropriate to refer section 21 of the Act and the relevant notifications

21. Assessment of tax on the turnover not assessed during the year.--(1) If the assessing authority has reason to believe that the whole or any part of the turnover of the dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under-assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer of tax according to law :

Provided that the tax shall be charged at the rate at which it would have been

charged, had the turnover not escaped assessment or full assessment as the case may be.

Explanation I:

Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment or full assessment to the best of its judgment.

Explanation II:

For the purpose of this section and of section 22, "assessing authority" means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

Explanation III:

Notwithstanding the issuance of notice under this sub-section, where an order of assessment or reassessment is in existence from before the issuance of such notice, it shall continue to be effective as such, until varied by an order of assessment or reassessment made under this section in pursuance of such notice.

9. Notification No. KA.NI-2-3915/XI-9(129)/2000-Act-74-56-Order (49)-2000, dated 23rd November, 2000 :

Notification No. KA.NI-2-3915/XI-9(129)/ 2000-Act-74-56-Order (49)-2000, dated November 23, 2000 published in the U. P. Gazette, Extra, Part 4, section (Kha), dated November 23, 2000.

Whereas, the State Government is satisfied that it is necessary so to do in public interest.

Now, therefore, in exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Governor is pleased to direct that with effect from the date of publication of this notification in the Official Gazette the tax payable under sub-section (1) of the said section by any dealer having his place of business in the State of Uttar Pradesh in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business, of any raw material, processing-material, consumable stores, spare-parts, accessories, components, fuel or lubricants and packing materials to the dealer having his place of business in the State of Uttaranchal and possessing recognition certificate issued u/s 4B of Uttar Pradesh Trade Tax Act, 1948 (Act No. 15 of 1948), whose validity commences prior to November 9, 2000, for the use in the manufacture of goods or in the packing of goods manufactured by him, shall be calculated at such rate as would have been leviable on such sales against form IIIB prescribed under the said U. P. Act No. 15 of 1948, subject to the condition that the dealer selling the goods furnishes the declaration in form C, or, as the case may be, the certificate in form D in accordance with the provisions of sub-section (4) of section 8 of the said Act No. 74 of 1956.

10. Notification No. K.A.NI.-2-530/XI-9(231)/94-U. P. Act-15-48-Order 2000, dated Lucknow : February 17, 2000 read as follows :

In exercise of the powers u/s 4-B of the Uttar Pradesh Trade Tax Act, 1948 (U. P. Act No. XV of 1948) read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U. P. Act No. 1 of 1904 and in supersession of Government Notification No. T.I.F.-2-2383/XI 9(251)/97-U. P. Act-15-48-Order-1998 dated November 23, 1998, the Governor is pleased to declare, that with effect from February 18, 2000 and subject to conditions and restrictions specified in the said section 4B, the tax shall be payable at the rate specified in column 4 of the annexure below on the sale to or as the case may be, purchase by a dealer holding a valid recognition certificate under sub-section (2) of the said section 4B, of the goods mentioned in column 3 of the said annexure for use in the manufacture or in the packing of the goods mentioned in column 2 of the said annexure manufactured or processed by him and that the goods mentioned in column 2 of the said annexure shall be notified goods for the purposes of the said section 4B.

Annexure

Sl. No.

Name of notified goods

Name of the goods

Rate of tax

1.

2.

3.

4.

1.

Chemical fertilizer and electrical energy

(a) Natural gas

(b) Declared goods

(c) All other raw material, processing material, consumable stores, machinery, plant, equipment, spare parts, accessories, components, fuel or lubricants for use in the manufacture of or any packing material for packing of notified goods manufactured by him.

5 per cent 2 per cent 2.5 per cent

2.

Goods manufactured by distilleries and breweries

Molasses

8 per cent

3.

All other goods

(a) Declared goods

(b) All other raw material, processing material, consumable stores, machinery, plant, equipment, spare parts, accessories, components, fuel or lubricants for use in the manufacture of or any packing material for packing of notified goods manufactured by him.

2 per cent. 2.5 per cent.

Provided that where any declared goods liable to tax under subsection (1) of section 3D of the said Act are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer holding a valid recognition certificate issued under sub-section (2) of the said section 4B, the dealer making such sale or supply shall, on furnishing to the assessing authority within the time prescribed a declaration in form IIIB obtained from the dealer to whom such goods were sold or supplied, liable to tax at the rate of two per cent on the turnover of first purchaser of such goods.

11. Notification No. TIF-2-289/XI-9 (820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999 read as follows :

In exercise of the powers u/s 4B of the Uttar Pradesh Trade Tax Act, 1948 (U. P. Act No. 15 of 1948), the Governor is pleased to declare that with effect from February 15, 1999 and subject to conditions and restrictions specified in the said section and in this notification, no tax shall be payable on the sale to or as the case may be purchase by a dealer holding a valid recognition certificate under sub-section (2) of the said section of any raw materials, processing material, consumable stores, spare parts, accessories, components, fuel or lubricants and packing materials required by him for the use in the manufacture of goods or in the packing of goods manufactured by him and such manufactured goods shall be notified goods for the purpose of said section :

Conditions

(i) the above facilities will be available only when, the manufactured goods is exported out of India;

(ii) the dealer claiming benefit of this notification, shall issue a declaration in form IIIB to selling dealer but before issuing the form, he will mention the number and date of this notification and words "for export" in it;

(iii) if the manufactured goods is not exported out of India, the dealer claiming the benefit of this notification, shall be liable to pay tax, according to the provisions of the aforesaid Act, on the purchase of such goods and also interest from the date of purchase of such goods and if such manufactured goods are exported out of India and also sold otherwise or disposed of otherwise than by way of sale then the purchase of such goods liable to tax shall be determined in accordance with the ratio of quantity of exported goods and goods otherwise sold or disposed of otherwise than by way of sale :

Provided that no concession under this notification shall be admissible in respect of sale to or purchase by distilleries and breweries.

12. Perusal of the assessment order reveals that there is no reference of Notification No. TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99, dated February 12, 1999. The perusal of the aforesaid notification reveals that full exemption was not unconditional and was subject to the certain conditions Unless those conditions could be fulfilled, the full exemption could not be granted. Perusal of the assessment order reveals that the assessing authority had not examined that those conditions had been fulfilled or not. No finding, had been recorded in this regard. No finding had been recorded that the manufacture/dealer of Uttarakhand had exported the manufactured goods outside the country. On the facts and circumstances, it cannot be believed that while granting the exemption the assessing authority had in his mind the notification dated TIF-2-289/XI-9(820)/92-U. P. Act-15-48-Order-99 dated February 12, 1999. In any view of the matter while granting the full exemption the assessing authority should have recorded the finding that the condition of the notification have been fulfilled. But no finding in this regard has been recorded. Therefore, on the facts and circumstances, we are of the view that there was material on record to form the belief that there was escaped assessment and, therefore, the initiation of proceeding u/s 21 of the Act was wholly justified. However, it will be open to the petitioner to make submission in support of claim of exemption.

13. On the facts and circumstances, we do not find any reason to interfere in the matter at this stage.

14. In the result, the writ petition fails and is accordingly, dismissed.