
(2000) 01 AHC CK 0156

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 394 and 395 of 1989

J.P. Steels

APPELLANT

Vs

Sales Tax Officer and Another

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 3B, 4B

Citation : (2000) 119 STC 470

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, for the Appellant; C.S. Singh, for the Respondent

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—In these two petitions by the same petitioner, notices dated January 6, 1989 and November 30, 1988 issued for the levy of tax u/s 3-B of the U.P. Sales Tax Act, 1948 for the assessment years 1985-86 and 1983-84, respectively, were challenged.

2. We have heard Sri Bharat Ji Agrawal, learned Senior Advocate, for the petitioner and Sri C.S. Singh, learned Standing Counsel.

3. The petitioner is an iron and steel merchant. Its case is that it purchased old and discarded railway wagons from the railways which are taxable on sale to consumer under entry No. 32 of a notification dated September 7, 1981. The said entry provides for tax in respect of old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products except cinder, coal ash and such items as are included in any other notification issued under the Act. If a registered dealer purchases such goods not for consumption but for resale in the same form and condition, he can postpone the tax liability till the goods are sold to a consumer by furnishing to the selling dealer a declaration in form III-A which requires the registered dealer to certify that the goods have been purchased for sale in the same form and condition. The petitioner furnished to

the railways the declarations in form III-A and thus the railways did not charge any tax on the sale of the condemned railway wagons to the petitioner, Under the terms of the auction by which the railways sell the goods to the petitioner and others, certain items which are part of the wagons and are 35 in number, have to be removed and detached from the railway wagons and returned to the railway authorities and it is only the remaining things that stands sold. The petitioner's case is that in order to remove and detach some of the items, the old wagons have to be dismantled and to remove some times they have to be cut with the aid of gas flame. Out of the goods so purchased from the railways, the assessee sold some of the goods to registered dealers against form III-A and the rest of the goods were sold to consumer who were holding recognition certificates issued u/s 4-B of the Act and who issued declarations in his form III-B, as a result of which the sales made by the petitioner were not liable to any tax.

4. By the impugned notices, the assessing officer stated that a perusal of the bills by which the assessee sold the goods indicated that the petitioner-dealer had issued form III-A in respect of the purchase of iron scrap which is taxable at the point of sale by the manufacturer or importer and, therefore, the purchase of the iron and steel scrap by the assessee was taxable which tax has been avoided by the issue of form III-A. The assessing officer, therefore, required the assessee to explain why a sum of Rs. 26,944 for the assessment year 1985-86 and of Rs. 1,40,000 for the assessment year 1983-84 be not levied u/s 3-B of the Act. The case of the petitioner is that what is purchased from the railways were old and discarded railway wagons and they were sold in the same condition in which they were purchased and, therefore, it rightly issued form III-A and no amount can be levied u/s 3-B of the Act. It is also claimed that earlier the Commissioner had issued a circular stating that purchase of old railway wagons from the railways is liable to tax under the aforesaid entry at the point of sale to the consumer and the Revenue cannot take a different stand now.

5. In the counter-affidavit it is stated that the commodity purchased by the petitioner is scrap and is liable to be taxed at the point of sale by the manufacturer or importer and the provisions of Section 3-AAA are not applicable and form III-A could not have been issued to the railways and, therefore, by virtue of Section 3-B, the amount can be levied on the assessee-petitioner.

6. Section 3-B provides that a person, who issues a false or wrong certificate or declaration, prescribed under any provision of this Act or the Rules framed thereunder, to another person by reason of which a tax leviable under this Act on the transaction of purchase or sale made with or by such other person ceases to be leviable or becomes leviable at a concessional rate, shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued. A perusal of form III-A would show that it can be issued only in respect of goods, the sale of which is taxable when it is a sale made to a consumer and if a registered dealer certifies that he is purchasing the goods for sale in the same form and condition,

no tax is leviable on that point of sale. There is no averment in the notice that the petitioner changed the form and condition of the goods. According to the petitioner, he purchased old and discarded wagons which are admittedly taxable at the point of sale to a consumer. It is admitted that the petitioner is not a consumer and has not consumed the goods. It has, on the other hand, admittedly sold the goods to other parties. It is also not alleged that after the purchase of the goods, the petitioner in any way changed their condition. What is alleged is that what was purchased was iron scraps and what was sold was also iron scraps and, therefore, form III-A was wrongly issued. If what the Revenue says is correct, then by mere issue of form III-A, tax could not cease to be levied on the railways when they sold the alleged iron scrap to the petitioner because iron and steel scrap is taxable on sale by a manufacturer or importer and the railway is admittedly to be the manufacturer of the alleged scraps. If tax has not been levied on the railways, it is not because of the issue of form III-A by the assessee but because of the acceptance of the fact by the assessing officer that what was sold was old and discarded railway wagons on which tax was leviable only if the sale was to a consumer. Therefore, one of the conditions laid in Section 3-B was not applicable.

7. Then the declaration has to be false or wrong. In this case the question is whether the wagons sold to the petitioner fall in the category of old and discarded or obsolete machinery in the category of iron and steel scrap. This would depend on the condition of the goods at the time of finalisation of sale by the railways in favour of an auction purchaser and will differ from case to case. There has been a change of opinion from time to time in this regard. Earlier the Commissioner issued a circular dated January 24, 1978 after consultation with the law department of the Government of U.P. This circular states that the law department is of the opinion that if the purchaser dismantles the discarded items, so as to removal from them the excluded items, then this activity should not be construed as changing the condition of the goods. The circular also states that ferrous scrap sold by the railways would be taxed under the heading "iron and steel" while non-ferrous scrap, wagon, coach, etc., will be taxable under the item "old, discarded, unserviceable, obsolete machinery, etc.". It is by a subsequent circular dated September 26, 1988 that the Commissioner, again after consultation with the law department, instructed that for removing the excluded items, the coaches are dismantled and, therefore, the sale of the resultant goods would in fact be treated as a sale of scrap. Whether after the exclusion of the 35 items what remains is a discarded wagon or coach or is an iron and steel scrap depends on the condition of the wagon or coach that is brought about after the removal of the aforesaid items and is a question of fact that will have to be determined in each case. In the present case, the assessing officer merely refers to the bills which have been issued by the petitioner in which it is alleged that what was sold was iron and steel scrap. It does not refer to the bills issued by the railways and to the terms and conditions of the sale. The charge in the notices is that the declaration in form III-A was false and

wrong. There is no basis for such an allegation and, as stated above, if what the Revenue states is correct, the tax did not cease to be levied on the railways merely because the petitioner issued form III-A. It was contended by the learned counsel for the respondents that the dealer has avoided payment of tax on the purchases as well as on the sales which is not intended by the Act. This contention is not correct. Some of the sales have been made against form III-A and if the Revenue was right in its contention, it could have taxed such sales by ignoring form III-A, as according to it the same was not applicable. As regards the sales made against form III-B, the purchaser being holder of recognition certificate and purchasing the goods in question for use as raw material, the sales were exempt from sales tax. This would be so exempt even if they had made purchases right from the railways. Therefore, if tax has not been levied, it is not because of the issue of form III-A by the petitioner to the railways but by the Revenue's own inaction in other respects, as pointed out above.

8. For the above reasons, we find that the notices in question are without jurisdiction and justification and deserve to be quashed.

9. The writ petitions are, therefore, allowed and the aforesaid notices are hereby quashed.