
(1995) 08 AHC CK 0037
In the Allahabad High Court
Case No : Sales Tax Revision No. 236 of 1994

Jwala Industries

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 15A(1), 3D, 4A
Uttar Pradesh Sales Tax Rules, 1948 — Rule 12B, 12B(2)

Citation : (1996) AWC 224 Supp

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—This revision petition u/s 11 of the U.P. Sales Tax Act is directed against an order dated 8th November, 1993 passed by the Sales Tax Tribunal, Haldwani whereby it dismissed the dealer's second appeal arising out of an order levying penalty u/s 15A(1)(I), of the U.P. Sales Tax Act for assessment year, 1985-86.

2. I have heard the learned Counsel for the Assessee-dealer and the learned standing counsel.

3. The dealer is a manufacturer of rice and holds an eligibility certificate in terms of Section 4A of the Act by virtue of which its turnover of sales of rice manufactured by it is exempt from sales tax. During the year under consideration, the revisionist sold goods to other parties within the State of U.P. in the sum of Rs. 2,86,397.53 paise and issued to the purchasers declaration in Form III-C-(2) declaring that in respect of the goods sold, the Assessee-firm is the first purchaser and accepts liability to pay purchase tax. The rice is taxable at the point of first purchase in terms of Section 3D of the Act, meaning thereby that the turnover of purchases of rice was taxable in the hands of the

purchasers. Since the dealer-revisionist issued Form III-C (2) to the purchasing dealers, they ceased to be liable to purchase tax because by virtue of the declaration it was the revisionist and not the purchaser from him that was the first purchaser and liable to pay purchase tax u/s 3D. The dealer, revisionist was the manufacturer of rice and was not the first purchaser thereof and cannot, therefore, legally issue Form III-C (2). The Assessing Officer therefore, initiated proceedings for levy of penalty u/s 15A(1)(i) under which penalty is leviable on a dealer who issues or furnishes a false certificate or declaration by reason of which tax on sale or purchase ceases to be leviable under this Act or the Rules made thereunder. The Assessing Officer levied a penalty of Rs. 11,456. The penalty order shows that the dealer had realised tax amounting to Rs. 11,456 from the said purchaser and had deposited the same as per rules. After making an adjustment, the Assessing Officer raised a demand of Rs. 84 only. The dealer's first appeal before the Assistant Commissioner (Judicial) and second appeal before the Sales Tax Tribunal failed.

4. The only controversy raised in this revision petition is whether Form III-C(2) issued by the dealer to its customer could be described as false. Learned Counsel pointed out that these forms were being issued to the dealer by the department and it was issuing the same to the purchasing dealers in the belief that it was entitled to do so and that it was for this reason that the said forms were issued to it by the department from time to time without any objection and this controversy was raised by the revenue at a very late stage although earlier the Assessing Officer was also of the view that the dealer had rightly issued Form III-C (2) and that is why. no objection was raised at the time of the assessment or at the time of issuing of the Forms III-C(2) to the dealer. Rule 12B makes detailed provisions regarding the issue of forms prescribed u/s 3D of the Act, Form III-C (2) being one of them. A dealer can apply for the issue of blank forms to the Sales Tax Officer under Rule 12B (2). The forms are supplied on payment of certain fees and under Sub-rule (4), a duty is cast on the Sales Tax Officer to examine that the requisition of the dealer for blank forms is genuine and reasonable and it is on such satisfaction that he can issue the forms. The dealer has to keep register in Form No. XXIX and has to keep their counterfoils. The officer who has issued those forms is also bound to keep a register in respect of forms issued in Form No. 36 and along with return of turnover in Form IV, a dealer has to give the required information in Annexures 1 and 2. Therefore, the issue of forms by the Sales Tax Officer to a dealer is a very serious business. He has to satisfy himself before the issues of form that the nature of the business of a dealer is such that the dealer genuinely and reasonably requires those forms and while issuing forms subsequently also, he has to satisfy himself about the genuineness and reasonableness of the demand. That by necessary implication means that he must satisfy that the dealer is properly using those forms. As is admitted in this case, the Assessing Officer was issuing the requisite Form III-C (2) to the dealer in the belief that the dealer genuinely and reasonably required them and was putting them to proper use and the dealer was under the

impression that he was authorised to issue those forms to the purchasing dealer because the revisionist's turnover of sales was exempt from sales tax by virtue of a recognition certificate u/s 4A of the Act. The said impression cannot be said to be unjustified because purchase and sale are two aspects of the same transaction. There cannot be a purchase without involving a sale and vice versa. Therefore, the Assessee was under the impression that the sale being exempt, the purchase too would also be exempt. It is quite anomalous that Section 3D taxes purchases even though the sale is exempt from tax, thereby the benefit given u/s 4A is completely taken away. Penalty u/s 15A(1)(I) is leviable only if a certificate issued is false. In The Law Lexicon Dictionary by P. Ramanatha Aiyar, 1987 "False" has been stated to mean "erroneous, untrue, the opposite of correct, or true. The term does not necessarily involve turpitude of mind. In the more important uses in Jurisprudence, the word implies something more than a mere untruth; it is an untruth coupled with a lying intent (Wood v. State 15 Am. Rep. 664), or an intent to deceive or to perpetrate some treachery or fraud." We are now dealing with a provision levying penalty for the issue of false declaration and, therefore, "false" in Section 15A(1) (I) would not merely mean untrue or incorrect and it is necessary that there should be lying intent. The circumstances of this case do not disclose any such intent and what is apparent is that the Assessee as well as the Assessing Officer were under a wrong impression that the dealer was authorised to issue the forms in question. In my view, therefore, the Tribunal was not right in upholding the levy of penalty and in the circumstances of the case, no penalty u/s 15A (1)(I) of the Act was justified.

5. For the above reasons, the revision petition is allowed and setting aside the Tribunal's order dated 8th November, 1993, it is ordered that the dealer's second appeal No. 313 of 1991 for assessment year, 1985-86 stands allowed and the penalty in question stands quashed.