
(2003) 09 AHC CK 0024
In the Allahabad High Court
Case No : Sales Tax Revision No. 11 of 1992

Kamla Trust

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 4B, 4B(2), 4B(6)

Citation : (2006) 146 STC 462

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal and Piyush Agrawal, for the Appellant; B.K. Pandey, for the Respondent

Judgement

Rajes Kumar, J.—This is a revision u/s 11 of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act") against the order of Tribunal dated September 27, 1991 for the assessment year 1982-83.

2. The applicant was manufacturer of rice. The paddy was raw material for the manufacturing of rice. Being the manufacturer, the applicant was holding recognition certificate u/s 4-B of the Act. During the year under consideration, applicant had purchased paddy from registered dealer to the extent of Rs. 27,96,201.94 and from unregistered dealer to the extent of Rs. 63,51,081.79 in all for Rs. 91,47,283.73. Applicant being the recognition certificate holder u/s 4-B of the Act has not paid any tax on the purchases of paddy. Out of paddy purchased in respect of which benefit of exemption was availed u/s 4-B, rice was manufactured, which was sold inside the State of U.P. and had also been despatched outside the State of U.P. for sale on consignment basis for Rs. 28,63,298.93. Section 4-B(2) of the Act contemplates that manufactured rice should be sold either in the State of U.P. or in the course of inter-State sales or export. Since the applicant had despatched rice outside the State of U.P. for sale on consignment basis to the extent of Rs. 28,63,298.93 there was violation of Section 4-B(2) of the Act. The assessing authority initiated the penalty

proceeding for the violation of Section 4-B(2) of the Act and after considering the reply of the applicant levied the penalty at Rs. 2,25,000. The assessing authority observed that the minimum penalty leviable was at Rs. 1,14,532.96 which was the tax on the amount of Rs. 28,63,298.93. The applicant filed the appeal before the Deputy Commissioner (Appeals) which was dismissed. The applicant filed second appeal before the Tribunal, which was also dismissed. Being aggrieved by the order of Tribunal, the present revision has been filed.

3. I have heard Sri Bharat Ji Agrawal, learned Senior Advocate assisted by Sri Piyush Agrawal, learned Counsel for the applicant and Sri B.K. Pandey, learned Standing Counsel.

4. Learned Counsel for the applicant contended that since the dealer had made the purchase from unregistered dealer also to that extent there was no default u/s 4-B(2) of the Act. He further contended that during the year under consideration the maximum penalty leviable was double the amount of tax while the Tribunal and the first appellate authority proceeded that it was three times of the tax. He submitted that in view of the fact that there was no intent to commit any default, the minimum penalty should be levied.

5. Having heard learned Counsel for the parties, in my view there is no force in the argument of the learned Counsel for the applicant that there was no default u/s 4-B(2) of the Act. Admittedly, the applicant was holding recognition certificate u/s 4-B of the Act and availed the benefit of exemption on the entire purchases of paddy including purchases made from unregistered dealer. The assessing authority has recorded a categorical finding to this effect that no tax was paid on the entire purchases. Therefore, this argument of learned Counsel for the applicant is not acceptable. So far as the quantum of penalty is concerned during assessment year 1982-83, the maximum penalty leviable was double the amount of tax. Section 4-B(6) as it existed during the relevant year is referred below:

Section 4-B(6), Where a dealer, in whose favour a recognition certificate has been granted under Sub-section (2), purchased any goods for use in the manufacture or packing of any notified goods without payment of tax or by paying tax at a concessional rate of less than four per cent and such notified goods are sold or disposed of by such dealer otherwise than by way of sale in the State or in the course of inter-State trade or commerce or in the course of export out of India, such dealer shall be liable to pay as penalty such amount as the assessing authority may fix, which shall not be less than the amount of tax that would have been payable under the provisions of this Act, on the sale or purchase of such goods and not more than double the amount of such tax, less any amount which he may have actually paid as tax on the purchase of such goods.

6. Tribunal has justified the amount of penalty levied at Rs. 2,25,000 keeping in view, that maximum penalty was three times of the tax.

7. In my opinion, the issue relating to the quantum requires reconsideration by the Tribunal. Tribunal may consider the relevant provisions which was in existence during the year under consideration and other factors while fixing the quantum of penalty.

8. In the result, the revision is allowed-ia-part and the order of the Tribunal dated September 27, 1991 so far as it relates to the assessment year 1982-83 is concerned is set aside and the matter is remanded back to the Tribunal to decide the quantum of penalty afresh.