(2009) 04 AHC CK 0784

In the Allahabad High Court

K.C.P. Limited APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 25 VST 92

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Heard Sri Bharat Ji Agarwal, learned Senior Counsel assisted by Sri Piyush Agrawal learned Counsel for the revisionist and Sri Namai Das, learned Standing Counsel for the Department.

2. As the controversy involved in both these revisions is identical, the same is being decided by a common order treating the Trade Tax Revision No. 150 of 2001 as common case.

3. The revision No. 150 of 2001 has been filed u/s 11 of the U.P. Trade Tax Act, 1948, in proceedings arising out of penalty proceedings initiated against the assessee u/s 15A(1)(o) of the Act for the assessment year 1989-90.

4. The assessee is engaged in the manufacture of parts and accessories for sugar and cement plants and has a factory at Thiruvotiyur, Madras. It is registered as a dealer under the Tamil Nadu General Sales Tax Act, 1959 and under the Central Sales Tax Act, 1956.

5. The assessee, in the course of its business, entered into a contract with the U.P. State Sugar Corporation Ltd., which has its registered office at 5 Meera Bai Marg, Lucknow for designing and preparing engineering layout and for procuring and supplying machineries and equipment of sugar plants in a scheme planned by the U.P. State Sugar Corporation for its project at Saharanpur.

6. The agreement was entered into between two parties on August 2,1989 and the contract was to provide machinery and equipment worth Rs. 17,55,000.

8. In pursuance of the works contract, the assessee manufactured and supplied plant and machineries to the U.P. State Sugar Corporation Ltd., and the goods were transported by lorries against form XXXI. Form No. XXXI was provided by the U.P. Sugar Corporation Ltd., and three forms were also issued by the Sugar Corporation situated at Saharanpur.

9. In order to make supplies, the assessee also entered into sub-contract with third parties and sub-contractors transported goods showing themselves as the consignor and the U.P. State Sugar Corporation Ltd., as consignee. During inter-State movement, the consignee copies of the lorry receipts were endorsed in favour of the assessee and the assessee made a further endorsement in favour of the purchaser-U.P. Sugar Corporation Ltd.

10. In respect of sales, the purchaser also issued C forms to the assessee in respect of the second sales in the course of inter-State movement.

Thus the transactions between the assessee and the U.P. State Sugar Corporation Ltd., carried on in this manner and the goods were received by the Sugar Corporation at Saharanpur by way of form XXXI issued by the Sugar Corporation at U.P. itself.

11. This system carried on until the goods were detained at entry check-post at Sarsawan. The authority at check-posf detained the goods and demanded a security for Rs. 1,04,00,000.

12. The assessee filed Writ Petition No. 3691 of 1990 before the Lucknow Bench at Allahabad High Court and the goods were released under the orders of the court upon furnishing a bank guarantee for a sum of Rs. 1,05,000.

13. Subsequently penalty proceedings were initiated against the assessee u/s 15A(1)(o) of the U.P. Trade Tax Act, by way of an order dated August 20, 1990 by which penalty to the tune of Rs. 1,04,000 was imposed upon the assessee.

14. Being aggrieved by the said order, the assessee filed an appeal u/s 9 of the U P. Trade Tax Act and the first appellate authority quashed the imposition of the penalty by its order dated September 24, 1991 relying upon decisions of this Court in the case of Aster Technologies Pvt. Ltd. v. State of U.P. reported in [1990] 21 STI 348 as well as on the case of Hindustan Steel Ltd. v. State of Orissa reported in Hindustan Steel Ltd. Vs. State of Orissa,

15. The first appeal was allowed by the first appellate authority holding that the goods in dispute had moved into U.P. in pursuance of the agreement between the U.P. State Sugar Corporation and the assessee which was situated at Tamil Nadu.

16. Being aggrieved by this order, the Revenue filed a second appeal u/s 10 of the Act and the Tribunal by its order dated December 23,1997 allowed the appeal of the Revenue upholding the order of penalty passed by the assessing authority.

17. Aggrieved by this order, the present revision has been filed. The substantial questions of law referred are as under:

(i) Whether the goods having admittedly been imported within the State of U.P. at the instance of U.P. State Sugar Corporation whose form XXXI was accompanying the consignment, as contemplated u/s 28A(1) of the U.P. Trade Tax Act and in all the documents accompanying the consignment, the name of the purchaser was mentioned as the applicant-company and the destination as that of U.P. State Sugar Corporation, hence the use of form XXXI of U.P. State Sugar Corporation, was absolutely valid and no penalty could have been legally imposed, in view of the judgment of this honourable court in the case of Aster Technologies Pvt. Ltd. v. State of U.P. [1990] 21 STC 348 (All) and Sumac Inter National Limited v. Sales Tax Officer [1990] 21 STC 336, was the order passed by Trade Tax Tribunal upholding the imposition of penalty justified?

(ii) Whether during the penalty proceedings, wherein the consignee copy of the G.R. was produced clearly establishing that the G.R. was endorsed in favour of the applicant-company and subsequent sale was effected by transfer of document of title (G.R.) by endorsing the same in the name of U.P. State Sugar Corporation, and hence, in view of Section 6(2) read with Section 3(b), Explanation I of the Central Sales Tax Act it was a second inter-State sale as contemplated u/s 6(2) of the Central Act, the order of the Trade Tax Tribunal restoring the penalty by overlooking the aforesaid provisions is contrary to law and is liable to be set aside?

(iii) Whether in view of the judgment of this honourable court in the case of Jain Shudh Vanaspati [1983] 53 STC 54 as well as of the honourable apex court in the case of Hindustan Steel Ltd. v. State of Orissa [1970] 25 STC 211 the order passed by Trade Tax Tribunal is justified?

(iv) Whether the Trade Tax Tribunal has erred in law in restoring the penalty order without giving any reason for reversing the findings of the Deputy Commissioner (Appeals), as has been held by this honourable court in the case of Deepak Industries v. Commissioner Trade Tax [2001] UPTC 138?

(v) Whether the Trade Tax Tribunal was justified in upholding the penalty without reversing the findings/discussing the material held by Deputy Commissioner (Appeals) in view of the judgment of this honourable court in the case of Deepak Industries [2001] UPTC 138?.

(vi) Whether on the facts and circumstances of the case, the order passed by Trade Tax Tribunal is justified?

18. The learned Counsel for the assessee has argued at length on all substantial questions of law referred to and has sought to establish its case taking support from the decisions of this Court rendered in the cases of Hindustan Steel Ltd. Vs. State of Orissa,

19. Learned Counsel has argued that the Tribunal has erred in not taking into

consideration the two aforesaid decisions and has failed to consider the facts and circumstances of the case, in which admittedly the goods in question were being imported within the State of U.P. at the instance of the U.P. State Sugar Corporation Ltd., which have provided form XXXI for importing goods and the goods as described in form XXXI matched exactly with goods which had moved and there were no discrepancies whatsoever between the goods detailed in form XXXI and the goods which were apprehended at the check-post, Saharanpur and therefore it could not be said that any of the goods were being moved by escaping any tax.

20. Learned Counsel for the assessee has further argued that it was nowhere established in the facts and circumstances of the case that the provisions of Section 28A of the U.P. Trade Tax Act were violated in order to attract the imposition of penalty u/s 15A(1)(o) of the Act.

21. In order to further substantiate his argument, the learned Counsel has also placed on record a copy of the assessment order passed by the assessing authority on July 15, 2002 wherein the inter-State sale made by the assessee u/s 6(2) of the Act for the same goods has been accepted by the assessing authority in his assessment proceedings for the assessment year 1989-90.

22. This fact fully establishes that the transactions between the assessee and the U.P. State Sugar Corporation Ltd., were in the nature of inter-State sale and was also recognized as such by way of the order dated July 15, 2002.

23. Such being the case, it cannot be said that the provisions of Section 28A of the Act were violated or that any penalty could be imposed for violation of the said provision.

24. Having heard learned Counsel for both sides and having perused the material on record, I am of the opinion that the order of the Trade Tax Tribunal in second appeal is not justified. It is therefore set aside. The penalty imposed upon the assessee by the impugned order dated December 23, 1997 is hereby set aside.

25. The revision is allowed as above.

