(1995) 07 AHC CK 0125

In the Allahabad High Court

Case No : C.M.W.P. No. 1135 of 1994

Krishna Synthetics Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 17-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Trade Tax Act, 1948 — Section 13(2), 13A(1), 13A(4), 4A, 8A

Citation : (1995) 07 AHC CK 0125

Hon'ble Judges : K.L. Sharma, J

Bench : Single Bench

Advocate : Kunwar Saxsena, for the Appellant;

Final Decision : Allowed

Judgement

K.L. Sharma, J.—This writ petition Under Article 226 of the Constitution of India is directed against the judgment and Order dated 2.11.1993 passed by Sales Tax Tribunal, Ghaziabad Bench-I, Ghaziabad whereby the Second Appeal No. 770 of 1993 (A.Y. 1992-93) was partially allowed and the penalty u/s 13A(4) of the Uttar Pradesh Sales Tax Act (hereinafter referred to as the Act which includes Uttar Pradesh Trade Tax also) was reduced by the sum of Rs. 41,625.

2. The Petitioner is a public limited company and carries on the business of processing and manufacture of texturised synthetics yarn and the company was registered as Dealer u/s 8A of the Act as well as under the Central Sales Tax Act. The company was also granted an eligibility certificate u/s 4A of the Act on the ground of starting a new industrial Unit with effect from 2.11.1987 to 23.10.1993. The company purchased partially oriented Yarn (P.O.Y.) as raw material exclusively from Parasurampuria Synthetics Limited, Bhiwadi in the district of Alwar, Rajasthan, vide, invoice No. P.S.L./B.H.W.D./149, dated 15.5.1992 for Rs. 10, 05, 796. The yarn so purchased was of thickness of 125 deniers. According to the case of the company, the thickness of the yarn was reduced to 80 deniers and was transmitted by invoice No. 4144 dated 20.5.1992

for Rs. 1,22,166 and despatched by truck challan No. 8565/92, dated 20.5.1992 to Santosh Yarn, ChaJ Jarpur, Tanda in the district of Falzabad. The consignment transported from Noida to Tanda was intercepted and detained by Sales Tax Officer In charge, Checkpost Kolesara on 20.5.1992 and the goods were seized with a show cause notice. The company showed the cause and produced the documents but the Sales Tax Officer disbelieved the reply and imposed penalty u/s 13A(4) of the Act amounting to Rs. 50,000, vide, Order dated 14.12.1992.

3. In the appeal filed by the company, the Deputy Commissioner (Appeals) Sales Tax, Ghaziabad dismissed the appeal but the Tribunal partly allowed the second appeal and reduced the penalty amount to Rs. 9,375.

4. In the counter-affidavit filed by the Respondents, it has been disputed that the goods sold by the company were manufactured by it and were covered within the terms of the eligibility certificate u/s 4A of the Act. It has been pleaded that the goods in question were purchased from Parasurampuria Synthetics Ltd. and were sold Under their trade-mark to Santosh Yarn, Tanda, and as such they were not properly accounted for in the account books and, therefore, the penalty was legally and properly imposed u/s 13A(4) of the Act.

5. I have heard Sri Kunwar Saxena learned Counsel for the Petitioner as well as Mr. R.D. Gupta learned standing counsel for the Respondents and perused the material brought on record.

6. Mr. Kunwar Saxena has strongly contended that the impugned order of penalty purporting to have been passed u/s 13A(4) of the Act was legally not sustainable inasmuch the assessing authority was not legally Justified to impose penalty on the ground that the goods were not manufactured by the company and they were being sold after purchase under same trade mark which was not covered by the eligibility certificate.

7. The learned standing counsel for the Respondents has replied that since the goods in question were not properly accounted for in the account books and other documents of the company, the Assessing Officer was within his legal powers to impose the penalty.

8. The provisions of Section 13A(1) and 13A(4) which are relevant for being considered to answer the controversy are reproduced below for ready reference:

13A. Power to seize: (1) An officer authorised Under Sub-section (2) of Section 13 shall have the power to seize any goods

(i) Which are found in the dealer''s place of business or vehicle or any other building or place ; or (iii) Which such officer has reason to believe to belong to the dealer and which are found in any place of business or vehicle or building or place, but are not accounted for by the dealer in his accounts or registers or other documents maintained in course of his business:

Provided that a list of all the goods seized under this Sub-section shall be prepared by such officer and be signed by the officer and not less than two respectable witnesses.

(1A) Where any officer empowered by the State Government in this behalf has reason to believe that the goods found in any vehicle, building or place are not traced to any bona fide dealer or that it is doubtful if such goods are properly accounted for by any dealer in his accounts, registers or other documents, maintained in the course of his business, he shall have power to seize such goods, and the remaining provisions of this section shall mutatis mutandis apply in relation to such seizure.

(4) If such authority, after taking into consideration the explanation, if any, of the dealer, or, as the case may be, the person in charge giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and other documents referred to in Sub-section (1), It shall pass an order imposing a penalty not exceeding forty percent of the value of such goods as he deems fit.

9. The learned standing counsel placed reliance on the words of ''bona fide dealer'' and ''properly accounted for''. It is, however, not in dispute that the company was a registered dealer u/s 8A of the Act as well as under the Central Sales Tax Act. The impugned orders passed by the assessing authority and the appellate authorities also make it clear that there was no wrong description of the goods and the documents consistently described the same goods and all the necessary documents were accompanying the truck which was intercepted by the . Sales Tax Officer, Check post, The company had? explained in the reply to the show cause notice that the goods purchased from Parasurampuria Synthetics Ltd. were of 125 deniers and after being processed, the yarn was reduced to 80 deniers and then sold under the trade-mark of Parasurampuria Syntwtlcs Ltd. to Santosh Yarn Chajjarpur Tanda in the district of Faizabad with proper documents. The sales tax authorities doubted this transaction on the ground that the goods were purchased and sold under the same trade mark of Parasurampuria Synthetics Ltd. and they were not manufactured by the industrial Unit of the company and as such the exemption from sales tax could not cover up the same goods. The learned Tribunal as well as other authorities has doubted the competence of the Senior Manager of Parasurampuria Synthetics Ltd. who had authorised the company to use the same trade-mark after reprocessing and reducing the yam to 80 deniers. The learned Tribunal and other authorities have, however, failed to give an opportunity to the Assessee to bring the letter of delegation of power by the company in favour of the Senior Manager who issued letter of authorisation to the Petitioner Company. Moreover, the question whether the goods sold by the company were manufactured or reprocessed by the industrial Unit of the company is totally Irrelevant for the purpose of the proceedings u/s 13A(4) of the Act. Such a question could be raised and inquired into in the assessment proceedings where the claim for exemption from payment of sales tax could be laid in respect of these goods. The learned Tribunal like

other authorities has committed an error of law by imposing penalty u/s 13A(4) of the Act on the ground that the goods having not been manufactured by the company industrial Unit were being sold under the trade mark of M/s. Parasurampuria Synthetics Ltd. after purchase.

10. The scope of the provision u/s 13A(1) read with Section 13A(4) of the Uttar Pradesh Sales Tax (now Trade Tax) Act Is strictly confined to the transactions of the goods which are not properly accounted for by a dealer in his accounts, registers or other documents maintained in the course of his business. If there is an omission of this legal requirement, only then, the officer empowered by the State Government can impose penally Under Sub-section (4).

11. In the present case the truck seized by the Sales Tax Officer, Check post, Kolesara was carrying all the necessary documents with proper description; and the judgments of the Tribunal and other authorities also do not find out any infirmity or shortcoming or any inconsistency in the entries of the documents either in themselves or with reference to the account books maintained by the company. Rather, the penalty has been imposed on a question which is not at all covered by Sub-section (1) or Sub-section (4) of Section 13A of the Act. Therefore, this order of penalty is prima facie illegal being beyond the purview of the provision of Section 13A(1) and (4) of the Acl as it was not a case of any omission. Consequent upon my judicial review Under Article 226 of the Constitution of India, the orders of penalty u/s 13A(1) and (4) of the Act are liable to be quashed.

12. For the aforesaid reasons, the petition is hereby allowed and the impugned judgment and Orders dated 14.12.1992 passed by the Assistant Commissioner (Assessment) Sales Tax Noida and the judgment and Order dated 24.7.1993 passed by the Deputy Commissioner (Appeals) Sales Tax Ghaziabad and judgment and Order dated 2.11.93 passed by the Sales Tax Tribunal Bench-I, Ghaziabad in Second Appeal No. 778/93 (A.Y. 92-93) are quashed.

13. If any amount of penalty has been deposited by the Petitioner it shall be refunded with interest according to law.