
(2016) 07 SC CK 0074

In the Supreme Court Of India

Case No : Civil Appeal Nos. 3161-3162 of 2008

M/s ITC Limited

APPELLANT

Vs

State of U.P. & Ors.

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4B(1)(a1)
Uttar Pradesh Trade Tax Rules, 1948 — Rule 41(6)

Citation : (2016) 7 Scale 501

Hon'ble Judges : Mr. A.K. Sikri and Mr. Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Mr. Arvind P. Dattar, Sr. Advocate, Mr. Ajay Aggarwal, Ms. Mallika Joshi, Ms. Ruchika and Mr. Rajan Narain, Advocates, for the Appellant; Mr. Ravi Prakash Mehrotra, Mr. Vibhu Tiwari, Mr. Abhinav K. Malik and Mr. Vinay Garg, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. These appeals are preferred by the appellant/assessee questioning the validity and/or propriety of the judgment dated 16.01.2007 passed by the High Court of Judicature at Allahabad whereby the writ petitions preferred by the appellant have been dismissed. The said writ petitions were filed by the appellant challenging the order dated 17.11.2006 passed by the Deputy Commissioner, Trade Tax, Saharanpur under Rule 41(6) of the U.P. Trade Tax Rules by which purchase tax at the prescribed rate of 4% amounting to Rs. 2,33,00,663/- had been imposed upon the appellant along with interest @ 14% on the admitted purchase of wheat.

2. To state at the outset, the appellant herein wanted to avail the benefit of exemption Notification dated 29.08.2003 issued under Section 4B(1)(a-1) of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as "the Act") which plea of the appellant was rejected by the Deputy Commissioner, Trade Tax and the High Court has, as mentioned above, upheld the order of the Deputy

Commissioner, Trade Tax while dismissing the writ petitions filed by the appellant. Few relevant facts which need to be noticed to decide the controversy are as follows:

The appellant herein is the first purchaser of wheat from the farmers in the State of U.P. It supplies the wheat so purchased to certain Roller Flour Mills in the State of U.P. for conversion of the same to Atta and Maida. The period with which we are concerned is April, 2006 and May, 2006 during which the appellant had purchased wheat from those farmers and supplied the same for conversion into flour by grinding process to three flour mills. After conversion of wheat into flour it was taken back by the appellant from those flour mills for onward sale. It was the case of the appellant that it had been claiming exemption since 2004 for payment of purchase tax in respect of wheat in terms of Section 4B(1) (a-1) of the Act read with Notification dated 29.08.2003, both of which provide for such exemption in respect of goods that are "sold or supplied" by the first purchaser of the goods to such Roller Flour Mills. However, vide order dated 23.11.2006 passed by the Deputy Commissioner, this exemption was denied on the basis that the same was not available in case of supply of the wheat by the appellant to the Roller Flour Mills. Two show cause notices were issued by the Deputy Commissioner, Trade Tax and after considering reply thereupon and hearing the appellant, the demand of the show cause notices was confirmed. The orders passed by the Deputy Commissioner were challenged by filing two writ petitions which had been dismissed by the High Court by the impugned order.

3. Before advertng to the manner in which the High Court has decided the matter, we would like to reproduce the relevant provisions of the Act as well as exemption Notification dated 29.08.2003.

4. Section 3D of the Act, which is a charging section, prescribes the levy of trade tax on purchaser or sale of certain goods. These goods, admittedly, include wheat. Notwithstanding this provision contained in Section 3D of the Act, Section 4B(1)(a-1) contains a special provision providing special relief to such assesseees. The heading of the section is "special relief to certain manufacturers". Since the appellant is claiming the benefit of the special relief that is provided under the aforesaid provision, we would like to reproduce sub-Section(1) of Section 4B in its entirety:

"Sub-Section(1): Notwithstanding anything contained in Sections 3, 3-A, 3-AAAA and 3-D -

(a) Where any goods liable to tax under sub-section(1) of section 3-D are purchased by a dealer who is liable to tax on the turnover of first purchases under that sub-section, or where any goods are purchased by any dealer in circumstances in which such a dealer is liable to trade tax on purchase of such goods under section 3-AAAA and the dealer holds a recognition certificate issued under sub-section(2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate, or be wholly or partly exempt from tax,

whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf:

(a-1) Where any declared goods liable to tax under sub-section (1) of section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer, holding a valid recognition certificate under sub-section (2) in respect thereof, the State Government may, subject to such conditions and restrictions as may be specified by a notification in that behalf, grant the same relief as mentioned in clause (a) to such first purchaser;"

5. It is a common case of the parties that the provisions of Section 4B(1)(a-1) are attracted in the present case, benefit whereof has been sought by the appellant. It mentions ? where any declared goods liable to tax under sub-section (1) of Section 3-D are "sold or supplied" by a dealer, who is the first purchaser thereof, to another dealer and the said dealer holds a valid recognition certificate under sub-section(2) thereof, the State Government may, by a notification, grant the same relief as mentioned in clause(a) to such first purchaser. The conditions that are required to be satisfied for claiming the benefit under these provisions are: (1) the declared goods should otherwise be liable to tax under Section 3D(1) of the Act; (2) such declared goods are sold or supplied by a dealer; (3) such dealer who sells or supplies the goods should be the first purchaser thereof and (4) the supply or sale has to be made to another dealer and another dealer to whom the supply is made should be holding a valid recognition certificate under sub-Section(2) in respect thereof.

6. This was followed by a Notification dated 29.08.2003 issued by the State Government stipulating that no tax would be payable by a registered dealer who is the first purchaser of wheat within the State when such wheat is "sold or supplied" by such first purchaser to a Roller Flour Mill and Atta Chakki Plant holding a valid recognition certificate under sub-Section (2) of Section 4B(1)(a-1) of the Act and such manufactured goods shall be notified goods for the purposes of the said section. It is clear from the above that this Notification which was issued in exercise of powers conferred under Section 4B(1)(a-1) prescribed that no tax shall be payable by the said registered dealer who is the first purchaser and the conditions which are mentioned therein are the same which are provided under Section 4B(1)(a-1), as noticed above. Of course, this Notification mentions certain conditions and restrictions as well which are as follows:

- "1. The wheat is purchased from the first purchaser by a Roller Flour Mill and Atta Chakki Plant situated within the State of Uttar Pradesh;
2. The Roller Flour Mill and Atta Chakki Plant has been granted benefit of composition of tax liability under Section 7D during the relevant period;
3. The first purchaser of wheat within the State furnishes a declaration in Form 3B as provided under the Act, obtained from the purchasing Roller Flour Mill and Atta Chakki Plant along with following endorsement on the back from such Roller

Flour Mill and Atta Chakki Plant."

7. It is not in dispute that the appellant herein had supplied the goods to three flour mills which are other dealers. It is also not in dispute that the appellant/ assessee is the first purchaser of the wheat which was supplied to the said three dealers. Two dealers were having valid recognition certificate issued to them under sub-Section(2) and there was some dispute as far as third dealer is concerned. In appeal, the said third dealer also succeeded, as a result of which, it was also issued a valid recognition certificate. Thus, this condition also stood satisfied.

8. Notwithstanding the same, the High Court has dismissed the writ petitions on the spacious ground that the Notification dated 29.08.2003 though uses the expression "sold or supplied", the words "or supplied" are redundant because they are mechanically borrowed from the wording of Section 4B(1)(a-1) of the Act. We fail to understand the aforesaid reason given by the High Court in arriving at the conclusion that the words "or supplied" should not have been in the first part of the Notification. The High Court ignored the fact that this Notification was, in fact, issued by the State Government in exercise of powers conferred under Section 4B(1)(a-1) of the Act and it was but natural to prescribe the same language and the conditions which are mentioned therein and there was nothing to feel surprised as to why the aforesaid expression was mechanically borrowed from the wording of Section 4B(1) (a-1) of the Act. It is stated at the cost of repetition that Section 4B(1)(a-1) of the Act, which is a statutory provision, itself provides for special relief not only in the case where the goods are sold but also supplied by a dealer. Excluding the goods which are supplied by a dealer, in fact, would be doing violence to the provisions of Section 4B(1)(a-1) of the Act. The Notification dated 29.08.2003 was, thus, rightly issued by the State Government giving the benefit to those goods which are supplied as well. It was not proper on the part of the High Court to tinker with the language of the Notification and exclude the benefit which is given to the dealer who supplies the goods to another dealer and confined the same only to the sale of goods. We may also note that the High Court presumed that if the words "or supplied" are not removed there would be a danger of misuse of the Notification. While making these observations, the High Court has given a hypothetical illustration by stating that in order to avail the benefit of the Notification and evade payment of purchase tax, a particular supplier may set up a middle man or an agent who will be the first purchaser and who will claim exemption under the said Notification and will supply wheat to flour mill beyond its assessed grinding capacity and the excess quantity of wheat which the flour mill will receive is only by way of supply and not by way of purchase. As mentioned above, this is not only a hypothetical situation, but even the illustration as given is not a correct illustration. If a dealer sets up any middle man or an agent who purchases the goods, then such middle man or agent becomes the first purchaser and in that event he would not be in a position to get the benefit of the special relief provided under Section 4B of the Act.

Therefore, we are of the opinion that the Notification dated 29.08.2003 should have been read as it is and on that basis the High Court was supposed to examine as to whether the appellant satisfied the conditions of Section 4B of the Act read with the aforesaid Notification dated 29.08.2003 or not. As mentioned above, the appellant satisfies all the conditions.

9. At this stage, we would like to deal with the arguments which were advanced before us by the learned counsel for the State Government. In the first instance, it was submitted that Section 3D of the Act, which is a charging section, should be read along with Section 4B of the Act and it is Section 3D which governs Section 4B of the Act. This argument is totally misconceived and needs to be outrightly rejected inasmuch as Section 4B of the Act, which starts with a non-obstante clause, clearly mentions that special relief which is provided under Section 4B would be available notwithstanding anything contained in certain provisions therein and Section 3D is specifically included. It would mean that the provisions of Section 3D have no relevance at all while considering whether a particular assessee is entitled to special relief under Section 4B of the Act or not. It was next contended that Section 4B of the Act gives the benefit only to "certain manufacturers" as is clear from the marginal note of the said section. We are afraid, even this argument is without any substance. No doubt, marginal note states that the special relief is to "certain manufacturers". However, in the body of the section and particularly, sub-section(1), manufacturer is not mentioned at all and as can be noticed from our discussion above, the benefit is extended to the dealer who is the first purchaser of the goods and sells or supplies the same to another dealer who holds a valid recognition certificate under sub-Section(2) of Section 4B of the Act. Thus, benefit is extended to a dealer and for availing this benefit it is not necessary that he has to be a manufacturer. This would answer the third argument of the learned counsel for the respondent/State which was predicated on the conditions and restrictions that are specified in the Notification dated 29.08.2003. It was sought to be argued that there are three conditions and restrictions (already re-produced above) and insofar as the appellant is concerned, it did not fulfil condition Nos. 1 and 3. Once we hold that the benefit is available to the dealer who sells or supplies the goods, the conditions and restrictions are to be read in that context. From the reading of the three conditions, it becomes clear that condition Nos. 1 and 3 are relatable to that dealer who sells the goods and condition No. 2 refers to the dealer who supplies the goods to another dealer. Obviously, a dealer who is a supplier of goods to another dealer would not be concerned with condition Nos. 1 and 3. Insofar as condition No. 2 is concerned, it was not disputed that the appellant satisfied this condition. Thus, we read these conditions and restrictions to mean that insofar as that dealer who supplies the goods is concerned, he is to satisfy condition No. 2 and the seller has to satisfy all three conditions. Thus, a dealer who is a supplier would not be concerned with condition Nos. 1 and 3.

10. In view of the above, we are of the opinion that the appellant was entitled to

the benefit of Section 4B(1)(a-1) as well as Notification dated 29.08.2003. The judgment of the High Court as well as order dated 17.11.2006 passed by the Deputy Commissioner, Trade Tax are set aside and the appeals are allowed with consequential relief.

11. No costs.