
(2006) 09 AHC CK 0211
In the Allahabad High Court

Pragya Traders

APPELLANT

Vs

The Commissioner of Trade Tax

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2006) 09 AHC CK 0211

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as the "ACT") is directed against the order of the Tribunal, dated 27th February, 2006 for the assessment year 1998-99.

2. Applicant is a registered dealer and is carrying on the business of Iron Steel. During the year under consideration, applicant claimed to have made purchases of Iron Steel for Rs. 30,03,772/-. During the course of assessment proceedings, applicant had produced bills relating to the aforesaid purchases made from M/S Pushpanjali Traders. The Assessing Authority vide assessment order dated 03.03.2001 held such purchases as forged purchases on the ground that on enquiry, it was found that M/S Pushpanjali Traders was not registered for Iron Steel and in the return, dealer had disclosed less sales. The Assessing Authority treated the applicant as a manufacturer in respect of such goods u/s 2-(ee) of the Act and levied tax accordingly. Applicant filed appeal before the Deputy Commissioner (Appeals), Trade Tax, Ghaziabad. The appeal was allowed and the matter was remanded back to the Assessing Officer with the direction to examine whether the tax has been imposed on M/S Pushpanjali Traders keeping in view the impugned purchases. In pursuance thereof, the Assessing Authority passed the assessment order on 28.10.2003. Before the Assessing Officer, dealer explained that M/S Pushpanjali Traders had been assessed to tax on the turnover of Rs. 10 Crores. The Assessing Officer, however, rejected the plea of the dealer

again on the ground that the purchases made by the applicant from M/S Pushpanjali Traders were not verifiable. The Assessing Officer also observed that it had not been explained that how the goods were transported and payments were made. The Assessing Officer held that the purchases made by the applicant from M/S Pushpanjali Traders, had not been established. Against the assessment order, applicant filed appeal before the Joint Commissioner (Appeals), Trade Tax, Ghaziabad. The Joint Commissioner (Appeals), Trade Tax, Ghaziabad vide order dated 18.3.2004, allowed the appeal and deleted the tax levied on the purchases made from M/S Pushpanjali Traders. The Appellate Authority held that M/S Pushpanjali Traders was registered since 8.4.1997 and its registration was cancelled on 14.5.1999 with effect from 01.01.1999, therefore, when the applicant had made purchases from M/S Pushpanjali Traders, it was the registered dealer. M/S Pushpanjali Traders was assessed to tax for the assessment year 1998-99 vide order dated 31.3.2001 on the turnover of Rs. 10 Crores. It has also been observed that most of the payments were made through Cheques. It has been held that since M/S Pushpanjali Traders from whom, the applicant claimed to have made purchases, was liable to tax, the applicant could not be treated as a manufacturer u/s 2 (ee) of the Act. Aggrieved by the order of the Joint Commissioner (Appeals), the Commissioner of Trade Tax filed appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal and set aside the order passed by the Joint Commissioner (Appeals) and restored the order of the Assessing Officer. The Tribunal held that (a) the dealer claimed to have made payments through Cheques, but it is not clear whether it was verifiable from the books of account or not. (b) dealer had not got verified the original bills from the books of account in the original assessment proceedings and even after remand of the case, and only given reply that M/S Pushpanjali Traders was registered and payments were made through Cheques (c) during the course of hearing of the appeal, the department had produced the record of M/S Pushpanjali Traders which reveals that in the proceeding u/s 30 of the Act, such dealer had filed a list of sales of Rs. 7,89,89,852.60 giving details of the bills and names of the parties to whom the sales were made and in the said details, names of M/S Pragya Traders was not mentioned (d) details of payments through Cheques were furnished, but no evidence were adduced to show that such amount were credited in the account of M/S Pushpanjali Traders. On the aforesaid reasoning, it has been held that the bills, which were produced by the applicant, were forged.

3. Heard learned Counsel for the parties.

4. I have perused the order of the Tribunal and the authorities below. In my view, order of the Tribunal is not sustainable. Section 2 (ee) of the Act reads as follows:

Section 2 (ee)

"Manufacturer" in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes:

- (i) a dealer who sells bicycles in completely knocked down form;
- (ii) a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act other than sales exempted u/s 4, 5-A and 5-AAA.

5. u/s 2 (ee) of the Act, an "artificial meaning of word "manufacturer" has been given which includes a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act, Section 2 (ee) of the Act does not apply in case if the dealer able to prove that the dealer from whom, the purchases were made, were liable to tax on the sales. Now the question is the purchases were made, were liable to tax on the sales. Now the question is how, the aforesaid burden is to be discharged. In my view, if the dealer produces the bills relating to the purchases giving complete details of the seller including registration number etc. Initial burden of the dealer, is deemed to have been discharged. If the Revenue authority is of a different view and alleges otherwise burden shifts on the Revenue authority to prove otherwise. If the Revenue authority alleges that such bills are forged, burden lies upon the Revenue authority to prove and for that, it is open to the authorities concerned to make necessary enquiries. In the present case, in respect of purchases, dealer had produced bills of M/S Pushpanjali Traders. In the bills, complete name, address and registration number of the seller and other particular of the goods were mentioned. On enquiry, it was found that M/S Pushpanjali Traders was registered dealer, thus, merely because M/S Pushpanjali Traders was not registered in respect of Iron Steel, the bills cannot be said to be forged. Till date, Revenue has not come up with the case that such sales have not been disclosed in the books of account of M/S Pushpanjali Traders. It is the claim of the dealer that the payments were made by Cheques. Necessary details were furnished in this regard. It was open to the Assessing Authority to make enquiry as to whether such payments have been credited in the account of M/S Pushpanjali Traders or not and to examine the genuineness of the transactions. If it is the case of the Revenue that the bills are forged and the transactions are not genuine transaction, applicant may be confronted with the records of M/S Pushpanjali Traders and if asked for the opportunity of cross-examination, should also be given. Unless a proper enquiry is made as stated above, Bills cannot said to be forged. If the bills are produced relating to the purchases, the presumption should be that they are genuine unless contrary is proved. In the present case, it appears that proper enquiry had not been made. The Tribunal has decided the appeal on wrong facts and only on presumptions. The Tribunal has wrongly observed that the original bills have not been got verified from the books of account during the proceedings prior to remand and after the remand of the case. This observation of the Tribunal appears to be wrong. Copies of the bills are on record as mentioned in the assessment orders. It is not the case of the Assessing Authority that the original bills have not been produced and have not been got verified from the books of account. The details of payments were given by the applicant. It was open to the authorities concerned to make enquiry in this regard. Without making any enquiry, payments through the Cheques, cannot be disputed. In my view, in case

if, payments were made through the Cheques to M/S Pushpanjali Traders and the amount was debited from the Bank account of the applicant and was credited in the account of M/S Pushpanjali Traders, it would be difficult to say that the transactions were not genuine. There may be a situation that M/S Pushpanjali Traders have obtained registration with intent to evade tax and had not disclosed the turnover of sales in the return or in the books of account, but for the illegal act of M/S Pushpanjali Traders, the purchasing dealer cannot be held responsible unless it is found that the purchases made by the dealer were not as a result of real transactions and a manipulation had been made on the part of the applicant. Thus, the case is being remanded back to the Assessing Officer with the direction to make proper enquiry to ascertain whether the transactions of the purchases were real and genuine transactions and if the transactions are found real and genuine, applicant cannot be held liable to tax.

6. In the result, revision is allowed. Orders of the Tribunal, First Appellate Authority and the authorities below are set aside and the matter is remanded back to the Assessing Officer to pass assessment order afresh in the light of the observations made above.