(2007) 05 AHC CK 0390

In the Allahabad High Court

Shree Ram Dal Mill — APPELLANT

Vs

Commissioner, Trade Tax — RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4B(5)

Citation : (2008) 14 VST 66

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The applicant is a rice miller and is carrying on the business of manufacturing rice from paddy. The dispute relates to the assessment year 1988-89. It arises out of the proceedings initiated by the department u/s 4B(5) of the U.P. Trade Tax Act, 1948 against the applicant for levying penalty under aforesaid section.

2. The facts are not in dispute. The applicant is a recognition certificate holder and is authorised to purchase paddy at the concessional rate of tax or without paying any tax for the purpose of manufacture of rice u/s 4B of the Act. It was found by the department that the applicant, who has purchased the paddy against form 4B, has not utilised the same in the manufacture of rice and has sold the same to other rice millers. On such quantity of paddy, after affording an opportunity of being heard, by the order dated August 28, 1993, a sum of Rs. one lac was levied as penalty. However, this order was rectified u/s 22 of the Act and it was reduced to Rs. 20,000. The said order is dated October 5, 1993. Against the order levying penalty of Rs. 20,000, the applicant unsuccessfully filed first appeal before the Assistant Commissioner (Judicial) and thereafter second appeal before the Tribunal. The order of the Tribunal dated June 29, 2001 is under challenge in the present revision.

3. The contention of the learned Counsel for the applicant is that the authorities

below have committed illegality in levying the penalty of Rs. 20,000. Reliance has been placed upon a Notification No. 2604 dated March 19, 1979 as also on Notification No. 2601 dated February 28, 1994. It has been found by the Tribunal that benefit of the notification dated February 28, 1994 cannot be availed of by the applicant as the said notification relates to a dealer who is not holding a recognition certificate. The said notification was issued u/s 4(1)(A1) of the Act. The said finding of the Tribunal is perfectly justified as the applicant is not covered under the said notification.

4. The learned Standing Counsel has rightly pointed out that in view of the Notification No. 4519 dated August 29, 1987 the earlier notification issued under the relevant section stands superseded. This fact could not be disputed by the applicant''s counsel.

5. The learned Counsel for the applicants submits that the applicant being not a rice miller, could not have utilised the paddy purchased by it and as such, no penalty could have been levied. The said contention is devoid of any substance. The fact remains that the applicant purchased the paddy at concessional rate of tax or without payment of tax, being a recognition certificate holder. He was under a legal obligation to utilise the said paddy for the manufacture of the notified item, namely, rice, in the present case.

6. In Commissioner of Sales Tax v. B.S. Industries [2004] 25 NTN 812, this Court has held that on a plain reading of Sub-section (5) of Section 4B, the intention of the Legislature is clear that raw material purchased for notified goods can be utilised only for the purpose for which the recognition certificate was granted and not otherwise.

7. In Commissioner, Sales Tax U.P. v. faiswal Rice Mill, Hata Deoria [2004] 25 NTN 1290, it has been held that where a dealer has availed the benefit of exemption on paddy from the farmers and has not paid any tax, there is violation of Section 4B(2) of the Act.

8. In view of the above discussion, there is no merit in the revision. The revision is dismissed. No order as to costs.

