

(1997) 09 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No. 2535 of 1991

State of U.P. and Another

APPELLANT

Vs

Universal Exporters and Another

RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3AAA
Uttar Pradesh Sales Tax Rules, 1948 — Rule 12A(5)

Citation : AIR 1998 SC 3 : (1997) 8 JT 70 : (1997) 6 SCALE 53 : (1997) 7 SCC 531 : (1997) 4 SCR 49 Supp : (1997) 107 STC 187

Hon'ble Judges : S. P. Bharucha, J;M. Jagannadha Rao, J

Bench : Division Bench

Advocate : R.C. Verma, C.D. Singh and R.B. Misra, for the Appellant; R.F. Nariman, for the Respondent

Final Decision : Dismissed

Judgement

1. Section 3AA and Section 3AAA of the Uttar Pradesh Sales Tax Act, 1948, at the relevant time read thus:

3-AA. Rate and point of tax in respect of certain goods - subject to the provisions of Section 3-D, the turnover in respect of goods declared u/s 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956) to be of special importance in inter-State trade or commerce shall not be liable to tax except at the point of sale by a dealer to the consumer and the rate of tax shall be such, not exceeding the maximum rate for the time being specified in Section 15 of the said Act, as the State Government may, by notification in the Gazette, declares.

3-AAA: Presumption regarding certain sales. Where goods are liable to tax under this Act only at the point of sale to the consumer, every sale by a dealer.

(a) to a registered dealer who does not purchase them for re-sale within the State or in the course of inter-State trade or commerce, in the same form and condition in which he has purchased them or,

(b) to any person other than a registered dealer,

shall be deemed to be a sale to the consumer, unless the dealer proves otherwise to the satisfaction of the assessing authority and, for the purpose, also furnishes to the assessing authority such declaration obtained from the purchasing dealer, in such form and manner and within such period, as may be prescribed.

2. Rule 12A(5) of the U.P. Sales Tax Rules read thus:

If the Sales Tax Officer is satisfied that the requisition of the dealer for blank forms is genuine and reasonable, he may issue the same in such manner as he deem fit. If the fee paid is more than the fee payable for the number of forms issued, the balance shall be credited to the account of the dealer to be adjusted against any future issue of the forms.

It appears that the assessee applied for a form to enable it to rebut the presumption u/s 3-AAA. The application in this behalf was not dealt with. The assessee thereupon filed a writ petition in the High Court at Allahabad. Pending the disposal of the writ petition, the Sales Tax Officer rejected the application as, in his opinion, the transactions entered into by the assessee were by way of export of leather. The writ petition was amended and the refusal was challenged.

3. Two learned Judges of the High Court having differed on the writ petition, it was referred to a third learned Judge. The third learned Judge agreed that the writ petition should be allowed. Hence, this appeal by special leave at the instance of the State.

4. The assessee not having appeared, we thought it necessary to appoint amicus curiae, and we are obliged to Mr. R.F. Nariman for having assisted the Court as such.

5. Section 3.-AAA provides for a presumption in respect of certain sales. It states that where goods are liable to tax under the Act only at the point of sale to a consumer, every sale by a dealer to a registered dealer who does not purchase the goods for re-sale within the State or in the course of inter-State trade or commerce, in the form and condition in which he has purchased them, or to any person other than a registered dealer shall be deemed to be a sale to the consumer. The Section, however, goes on to provide that the aforesaid presumption may be rebutted when it states that the dealer may prove otherwise to the satisfaction of the assessing authority. For such purpose the dealer is required to furnish to the assessing authorities a declaration from the purchasing dealer in such form and manner and within such period as may be prescribed. Rule 12-A(5) empowers the Sales Tax Officer to issue blank forms in this behalf (which are entitled Form III-A) if he is satisfied that the requisition in that behalf "is genuine and reasonable".

6. That the Sales Tax Officer may satisfy himself that the requisition for the blank Forms is genuine and reasonable does not empower him to prejudge the issue as to whether or not the presumption u/s 3-AAA can be rebutted. That is something

that the assessing authority must consider only after the blank form has been issued and it has been duly filled in and submitted, along with such other proof as the dealer adduced. It is only then that the assessing authority may consider whether such proof, along with the filled in form is sufficient to rebut the presumption drawn under the provision.

7. The arrogation of the authority to reject the assessee's application for blank Forms by the Sales Tax Officer on the ground that the concerned transactions entered into by the assessee were by way of export of leather was improper and must be quashed. After the blank forms are issued to the assessee and duly filled up and submitted along with such proof as the assessee may adduce, it shall, of course, be open to the assessing authority to satisfy itself as to whether or not the presumption u/s 3-AAA stands rebutted.

8. The appeal is dismissed. No order as to costs.