
(1986) 08 AHC CK 0030
In the Allahabad High Court
Case No : S.T.R. No. 96 of 1982

Sunil Kumar Benchey Lal

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 16

Citation : (1987) 65 STC 264

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : V.N. Tandon, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.R. Misra, J.—This revision is directed against an order passed by the Sales Tax Tribunal on 23rd February, 1982, relating to the assessment year 1976-77. Although in the revision filed in this Court a number of questions have been referred to in paragraph 5 of the revision application, but, Sri V.N. Tandon, learned counsel appearing for the applicant, has pressed before me only two points which are as follows :

(1) Whether under the facts of the case the applicant was liable to tax on stock of foodgrains in hand worth Rs. 14,287.69 as on 2nd September, 1976?

(2) Whether the benefit of form 3-Ka in regard to the paddy sales of Rs. 6,967.14 has been correctly disallowed by the Tribunal ?

2. The facts with regard to the first point of sales of foodgrains amounting to Rs. 14,287.69 and the controversy arising in connection therewith are as under :

The applicant is a dealer in foodgrains. Under a notification dated 1st September, 1976, foodgrain was declared as an essential commodity u/s 14 of the Central Sales Tax Act and consequently thereafter tax could be levied only at the point of sale to the consumer. The argument of Mr. V.N. Tandon, learned counsel for the

assessee, is that prior to 1st September, 1976, the stocks which were held to the tune of Rs. 14,287.69 on the said commodity suffered tax and in that view of the matter since the said stocks had already suffered tax, the same cannot be subjected to tax over again under the U.P. Sales Tax Act

3. In support of this contention learned counsel for the applicant has relied upon the case of Commissioner of Sales Tax, U.P. v. Chokhani Company, Nautanwa, Gorakhpur, reported in 1982 UPTC 45, in which it has been held that in case sales or purchase tax has been levied on a commodity at one point, it cannot be levied at any other subsequent stage. Emphasis laid by the Division Bench in the case of Chokhani Company 1982 UPTC 45 was that the said commodity must have suffered purchase tax earlier.

4. The learned standing counsel appearing on behalf of the opposite party, however, strongly contended that since the foodgrains in question were not a declared commodity before 1st September, 1976, it cannot be said that the said commodity suffered tax within the meaning of Section 15(a) of the Central Sales Tax Act and hence it cannot be said that the said commodity has been taxed twice over. In support of his submission he has placed reliance in the case of Commissioner of Sales Tax v. Mathura Das Ram Saran Das reported in 1976 UPTC 518.

5. Under the circumstances, it has become necessary to examine the two Division Bench decisions of this Court. In Commissioner of Sales Tax v. Mathura Das Ram Saran Das 1976 UPTC 518 the facts are these. The assessee was a dealer holding stocks of yarn on 1st August, 1958. Admittedly yarn was taxable at single point before 1st August, 1958. It was taxable either in the hands of the importer or the manufacturer. The State Government issued a notification on 1st August, 1958, as a result of which the turnover in respect of cotton yarn became taxable at the point of sale by the dealer to consumer. The Judge (Revisions) had recorded a finding in that case that the stock of cotton yarn which was with the assessee was sold by it to the consumer. He was further of the view that the said yarn was not taxable and the notification dated 1st August, 1958, did not alter the position as rights had accrued to the assessee prior to the issue of the notification. After discussion, the said Division Bench held that cotton became taxable with effect from 1st August, 1958, as a fresh charge had been created by Section 3-AA and the point on which the tax was leviable was different from Section 3-A. In this view of the matter the court answered the question in favour of the department by saying that the turnover of yarn was taxable under the notification dated 1st August, 1958.

6. In Commissioner of Sales Tax v. Chokhani Company, Nautanwa, Gorakhpur 1982 UPTC 45, the assessee dealt in oil-seeds and claimed exemption in respect of the turnover of the oil-seeds on the ground that the sales were made on 2nd of October, 1975 and it had already been taxed on the point of sale to the consumer. The ground taken in support of this exemption was that the oil-seeds were a declared commodity u/s 14 of the Central Sales Tax Act and could not be

subjected to tax at more than one point in view of the restriction imposed by Section 15(a) of that very Act. This Court in the case of Chokhani and Company 1982 UPTC 45 after examination of the provisions of Sections 14 and 16 of the Central Sales Tax Act came to the conclusion that in case sales or purchase tax has been levied on oil-seeds at one point, it cannot be levied at any other subsequent stage. The case of Mathura Das Ram Saran Das 1976 UPTC 518 was distinguished by the said Division Bench on the ground that in that case there arose no occasion to consider either Section 14 or Section 15 of the Central Sales Tax Act.

7. Having regard to the facts of the present case, in my opinion, the present case is covered by the ratio decided in the case of Commissioner of Sales Tax v. Chokhani Company 1982 UPTC 45. In this view of the matter, it was not open to the Sales Tax Tribunal to hold that the assessee was not entitled to the benefit of Section 3-AAA of the U.P. Sales Tax Act.

8. I, therefore, held that the assessee was entitled to the benefit of exemption of Section 3-AAA of the U.P. Sales Tax Act in respect of the sales of foodgrains amounting to Rs. 14,287.69.

9. Coming to the second argument advanced in regard to paddy sales amounting to Rs. 6,967.14, the Tribunal has stated that the contention advanced on behalf of the dealer that a certificate was filed removing the defects in form No. 3-Ka before the Assistant Commissioner (Judicial) is not borne out from the record. To deal with the situation when defects in form No. 3-Ka are found, Rule 12-B(24) of the U.P. Sales Tax Rules lays down as under :

(24) If any minor omission or mistake is found in a certificate filed under Sub-rule (12), it shall be returned to the dealer who filed it and he shall be given an opportunity of having the omission or mistake rectified by the dealer who issued it within the period allowed by the Sales Tax Officer....

10. A similar rule contained under Rule 12-A(22) came up for consideration before this Court in the case of Shambhoo Nath Dalai v. Commissioner of Sales Tax 1980 UPTC 488. There the argument advanced was that for removing the minor defects an opportunity should have been afforded which the assessing authority failed to provide. In that case the learned standing counsel had raised a contention that the question regarding opportunity was not open to the dealer inasmuch as the same was not raised before the appellate or revisional authority and, therefore, the assessee was debarred from raising it in revision before this Court. In the present case, I, however, find that this question was specifically raised in ground No. 14(g) before the Assistant Commissioner (Judicial) and again in ground No. 6 before the Tribunal and the present case is better than the case of Sri Shambhoo Nath Dalai. However, in the aforesaid decision in the case of Shambhoo Nath Dalai 1980 UPTC 488 the court observed as follows :

The order of refusal is contrary to Sub-rule (22). The assessee is not raising any factual controversy. There is no reason to shut him out only because he failed to

raise it before the appellate authority. The failure on his part did not result in removing infirmity in the order being contrary to rule.... As pointed out above it was not for dealer to explain. He having filed the form, was absolved of the responsibility. If the forms were not in order it was the duty of the assessing authority to afford an opportunity to remove the defects. It was a statutory duty which the assessing authority failed to perform. The order therefore rejecting forms cannot be maintained.

11. In my opinion, the said statutory obligation of the assessing authority does not stand discharged by the mere finding of the Tribunal that a certificate removing the defects which was alleged to have been filed before the Assistant Commissioner (Judicial) is not available on the file of the Assistant Commissioner (Judicial). That is neither here nor there in so far as the statutory compliance is concerned. The assessing authority is bound to give an opportunity to the dealer as contemplated by Rule 12-B(24) of the U.P. Sales Tax Rules. In my opinion the order of the Tribunal in this regard deserves to be set aside.

12. In the result, the revision is allowed. It is held that the applicant is not liable to tax on stock of foodgrains in the sum of Rs. 14,287.69 so held by it on 2nd September, 1976. As regards the other claim of benefit of form 3-Ka in regard to the paddy sales of Rs. 6,967.14 the impugned order of the Tribunal in so far it negatives this claim of the applicant is set aside and this matter is remanded back to the assessing authority for affording an opportunity to the assessee to remove the defects as observed above. Under the circumstances, the parties shall bear their own costs.