(2004) 09 AHC CK 0294

In the Allahabad High Court

Case No : Sales Tax Revision No. 1147 of 1993

The Commissioner, Sales Tax APPELLANT

Vs

S/S Jain Sons RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11, 14, 15A, 3B, 4B

Citation : (2004) 09 AHC CK 0294

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : B.R. Tripathi and S.C, for the Appellant; Bharat Ji Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—The present revision u/s 11 of U.P. Sales Tax Act (hereinafter referred as the Act is directed against the order of Tribunal dated 15 5.93 for the assessment year 1989-90

2. The admitted fact are that applicant had purchased some of lots in auction held by Executive Engineer Sleeper Upchar Sanyantra Bareilly held on 20-9-89 and 21.9.89. The recognition certificate u/s 4B was issued to the opp. party w.e.f. 24.10.89. The dealer issued Form 3B in respect of the purchases made in auction dated 20.9.89 and 21.9.89. Assessing authority initiated the proceeding u/s 3B on the ground that the Form 3B issued by dealer were false and wrong in as much as they were issued for the purchases made prior to date of recognition certificate. Dealer filed explanation and submitted that the sales were completed after 24.10.89 in as much as the delivery of the goods and payments were made after 24.10.89.It was also submitted that the auction sale was conditional and was subject to the approval by the competent authority and therefore, The date of auction would not, be taken as the date of sale Assessing authority has not accepted the plea of dealer and demanded a sum of Rs. 99528/- u/s 3B. First appeal filed by dealer was rejected. Dealer filed second appeal which was allowed

and the order passed u/s 3B was set aside

3. Heard learned Counsel for the parties

4. Learned Standing Counsel contended that Tribunal has illegally set aside the order u/s 3B . He submitted that the sale was completed on the fall of hammer in auction He submitted that even if the sale was subject to approval by the competent authority but the approval was given vide letter No. 2254 dated. 4.10.89, 2285 dated 6.10.89 and 2278 dt. 6.7.89 which is clearly mentioned in the order passed u/s 3B. He submitted that the date of delivery and payment are wholly irrelevant in as much as the Tribunal without any basis observed that "the delivery of the goods of lot no, A-2, A-9 and A-J1 has been obtained by the assesee from authority concerned, therefor, this auction sale after making full payment and getting approval and the permission of the authorities concerned regarding this auction sale w.e.f. 4.2.89 to 7.3.90". It is submitted that the approval and permission of the authorities referred in the order dated from 4.2.89 to 7.3.90 was for the purposes of payment and delivery and not for the approval of sale. He submitted that Tribunal has not at all considered the date of approval mentioned in the order us 3B referred herein above and therefore, the order of Tribunal is vitiated. Learned Counsel for the dealer submitted that the sale was subject to the condition of the approval and since as per the order of Tribunal the approval of sale was granted from 4.2.89 to 7.3.90. which falls after 24.10.89, the sale completed after 24.10.89 and therefore, the form issued was in accordance with law. Learned Counsel for the opposite party further submitted that in Form complete details were mentioned including the date of grant of recognition certificate, therefore, on the basis of alleged Form 3B the exemption should not be allowed to the selling party and if that is so it cannot be said that by the issue of Form 3B tax ceases to be leviable, thus, provision of Section 3B does not apply.

5. I do not find any force in the contention of learned Counsel for the opposite party Perusal of order of Tribunal shows that Tribunal has completely ignored the date of approval of auction sale vide letter dated 2254 dt. 4.10.89, 2278 dated 6.7.89 and 2285 dated 6.10.89 which is referred in the order passed u/s 3B The terms and condition of auction in para 7, 8 and 9 referred in the order are not the condition for sale They are referred as below.

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6. It is settled law that the auction sale of ascertained goods takes place by fall of hammer unless the terms and condition says otherwise See vide (AV. Thomas & Co. Ltd. v. Deputy Commissioner of Agriculture Income Tax 14 STC 363 SC. Consolidated Coffee Ltd. v. Coffee Board 46 STC 164 SC The terms and condition referred in para 7, 8 and 9 cannot be said to be condition for sale. Therefore, the sale was completed on the fall of hammer itself The entire terms and condition is not on record Learned Counsel for the dealer says that the sale was subject to approached. It it is so even in accordance to the assessing authority the auction sale was approved by letter No. 2254 dated 4.10.89, 2278 dated 6.7.89 and 2285 dated 6.10.89. These letters have not been considered by Tribunal and Tribunal appears to have been illegal taken the date of approval of auction sale from 4.10.89 to 7.3.90. In my view aforesaid dates relate to the approval of payment and deliver not the approval of auction sale However, since the Tribunal has not considered the letter of approval referred herein above, mentioned in the order u/s 3B, the matter requires reconsideration by Tribunal.

7. So far as the argument of learned Counsel for the assessee that on the basis of said Form-3B the exemption should not have been allowed to the selling dealer and hence the Form-3B issued could not be said to be false or wrong and by issuing the said form tax did not ceases to be leviable cannot be accepted.

8. Section 3B reads as follows:

3-B, Liability on issuing false certificates. etc.

Notwithstanding anything to the contrary contained elsewhere in this Act, and without prejudice to the provisions of Sections 14 and 15-A, a [person] who issue a false or wrong certificate or declaration, prescribed under any provision of this Act or the Rules trained thereunder, to another [person] by reason of which a tax leviable under this Act on the transaction of purchase or sale made with or by such other [person] ceases to be leviable or becomes leviable at a concessional rate shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued

Provided that before taking any action under this section, the [person] concerned shall be given an opportunity of being heard

Explanation.- Where a [person] issuing a certificate or declaration discloses therein his intention to use goods purchased by him for such purpose as will make the tax not leviable on leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong.

9. In case dealer issued the form in respect of the purchases prior to the date of grant of recognition certificate for which it was not entitled in law, the said form for all reasons would be treated as false and wrong. If any dealer issues the Form-3B and on the basis of the said form the selling dealer could not charge the tax from its and in the assessment proceeding claim exemption on the basis of said Form 3B. In my opinion by issue of Form 3B tax ceases to be leviable on such transaction in respect of which dealer opp. party issued Form-3-B. In the present case if it is held that the sale was completed prior to the date of grant of recognition certificate in my opinion the proceedings u/s 3B was justified

10. In the result the revision is allowed. The order of Tribunal is set aside and the matter is remanded back to the Tribunal to decide the appeal afresh in the light of the observations made above. Since the matter is quite old the Tribunal is directed to decide the case expeditiously

