

(2004) 10 AHC CK 0207
In the Allahabad High Court

Case No : Trade Tax Revision No's. 791, 792, 817, 818, 824 and 918 of 1994

The Commissioner, Trade Tax

APPELLANT

Vs

Modi Xerox Ltd.

RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 15A(1), 21, 4A, 7
Uttar Pradesh Trade Tax Rules, 1948 — Rule 41, 41(1)

Citation : (2004) 10 AHC CK 0207

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C., for the Appellant; Bharat Ji Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These six revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 11.02.1994 relating to the assessment years 1984-85, 84-85 (Central), 84-85 (UP), 86-87 (UP), 85-86 (Central), 85-86 (UP) and 86-87 (Central) arising from the penalty proceeding u/s 15-A (1) (C) of the Act.

2. Dealer/opposite party (hereinafter referred to as "Dealer") was Private Limited Company incorporated under the Indian Companies Act 1956, having its registered office at Ratnpur. Dealer had established a new unit for the manufacture of Xerographic equipment and system. Dealer was granted eligibility certificate u/s 4-A of the Act being a new unit. The eligibility certificate was granted for Xerographic equipment and system for the period of six year? From 01.01.1985. Dealer was claiming the exemption from 26.05.1985 for "he period of six years. Review application was also rejected. Dealer filed Writ Petition No. 11936 of 1990, which was allowed vide order dated 19.12. 1990 and it has been, held that the dealer was entitled for exemption from 26.05.1985 for the period of six years. It is informed against the order of writ petition. Special Leace Petition has been dismissed. In pursuance of the order passed in the writ petition,

eligibility certificate was modified and the exemption was granted from 26.05.1985 for the period of six years. It appears that alongwith Xerographic equipment and system period had also provided one installation kit to the customers, which consisted of Photoreceptor, Toner, Developer and Fuser oil. Admittedly, dealer was not manufacturing Toner, Developer and, Fuser oil and they were purchased from outside the State of U.P. It is claimed that Toner Developer and Fuser oil, which were consumables when sold separately, separate turn over was shown and the tax was paid but when the Tonic, Developer and Fuser oil were sold in a kit though separate price was charged in the bill but their turn over was not separately shown in the original assessment proceeding and the tax not been admitted on such goods. It is Claimed that the installation kit was the part of the system and, therefore, not liable to tax. In the original assessment proceeding; under Rule 41 read with Section 7 assessing authority exempted the entire turn over of Xerographic equipment and system, which also included the price of installation kit. Tax was assessed only on (the turn over of Toner and Developer sold separately. However, a proceeding under, Section 21 was initiated and lax on the turn over of Toner, Developer and Fuser oil was assessed. Tribunal, however, deleted the levy vide order dated 22.12.1993.

3. Assessing authority had levied the penalty u/s 15-A (1)(c) on the ground that dealer had furnished inaccurate particulars, in a much as had not disclosed the amount of the installation kit, which included the value of Toner. Developer, Fuser oil and photo receptor, which was separately charged in the bill. According, to the assessing authority dealer had not manufactured Toner, Developer and Fuser oil and purchased from outside the State of U.P. and the separate price for these items were charged in the bill and they were in the nature of consumables and were not the part of the Xerographic Equipment and system and therefore, dealer should have disclosed the turn over of the aforesaid three items in the return and during the course of assessment proceedings. Since the inaccurate particulars wee furnished, penalty u/s 15-A (1) (c) of the act was levied. First appeals filed for all the assessment years have been dismissed. Dealer filed second appeals before the Tribunal, which were allowed. Tribunal allowed the appeals on the ground that tax assessed on the turn over of Toner. Developer and Fuser oil have been deleted by the Tribunal, and since these three items have been provided to the customers a\$ a part of the installation kit, which was necessary part of the Xerographic equipment and system and if not disclosed separately and have been disclosed alongwith the turn over of Xerographic equipment and system and it cart not be said that the dealer had furnished inaccurate price.

4. Heard learned counsel for the parties.

5. Learned Standing Counsel submitted that in the present case, dealer had deliberately shown the price of the machine including the value of the Toner, Developer and Fuser oil though in the bill separate price for these items were charged, and therefore, furnished inaccurate particulars, and concealed the

material fact. He further submitted that in the monthly return, sales during the course of final assessment proceeding, the value of the Toner Developer and Fuser oil were not disclosed, the assessing authority could not notice the fact and was misled. He submitted that in the invoice price of the machine was separately charged on which discount was given and, thereafter, price of installation kit was charged separately relating to price of Toner, Developer and Fuser oil. He submitted that Toner, Developer and Fuser oil were only consumables and not part of Xerographic machines and system. If the Toner, Developer and Fuser oil would be the part of the system, their price should not be separately charged. He further submitted that subsequently, the company started manufacturing Toner, Developer and claimed the exemption u/s 4-A treating these two items as new independent product and not as a part of the Xerographic machine or system. In this regard, he refers letter dated 20.30.1989. He submitted that, even though the dealer had full knowledge that Toner, Developer and Fuser oil were only consumables and not the part of the Xerographic machine and system and were separate items but to mislead the assessing authority, value have not been shown in the return filed under Rule 41 (1) and in the statement filed at the time of original assessment proceeding though price was separately charged. He submitted that the act of the dealer was clear case of deliberately furnishing inaccurate particulars and the concealment of material fact and, therefore, penalty orders are, liable to be restored.

6. Learned counsel for the applicant submitted that under the bona fide belief that Toner, Developer and Fuser oil were part of the Xerographic machine and system, their turn over were shown alongwith the turn over of Xerographic machine and system and therefore, it can not be said to be a case of furnishing of inaccurate particulars and concealment.

7. I have perused the order of Tribunal and the authorities below:

8. Section 15-A(1) (c) reads as follows:

15-A. Penalties in certain cases - (1) If the Assessing Authority is satisfied that any dealer or other person-

(c) has concealed the particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or-

In the Trade Tax Revision Nos. 483, 484, 485, 486, 487 and 488 of 1994 decided on 8-10-2004. This Court set aside the order of Tribunal and held that Toner, Developer and Fuser oil are not the part of the Xerographic machine and system and are only consumables. Now the question is" whether the dealer had deliberately furnished inaccurate particulars and liable for penalty. To examine the issue few facts are necessary to be state. Admittedly, in the invoice price of machine was separately charged and the price of the installation kit, which was the price of Toner, Developer, Fuser oil and photoreceptor was separately charged. If separate price was charged in the bill towards the aforesaid items,

dealer should have shown the value of these items separately in the monthly return as well as in the statement filed at the time of original assessment proceeding. It appears to mislead the assessing authority the value of these aforesaid items have been included in the turn over of Xerographic machine. It would be a different case that the dealer would have shown the price of the Toner, Developer and Fuser oil separately in the return and in the statement would have claimed exemption on such turn over on the ground that the aforesaid three items were part of the system but instead of doing so the value of these items have not been shown separately and have been included in the value of the machine. When the dealer intended to start the manufacturing of Toner and Developer vide letter dated 09.04.1985 amendment was sought in the original industrial Licence. The manufacturing of Toner was started in October, 1986 and the toner in March, 1987 and the exemption u/s 4-A on the turn over of Toner and Developer were claimed treating these two items as separate independent items, which is clear from the letter dated 20.10.1989, which is annexed as CA-4 to the counter affidavit. This also shows that though dealer was aware that toner and developer was a new independent item but in the original assessment proceeding, which was taken up in the year March, 1989 and thereafter, the turn over of these items have not been shown separately and have been shown along with turn over Xerographic machine.

In my opinion, aforesaid fact establishes that the dealer had deliberately furnished inaccurate particulars and had concealed the material fact, therefore, liable for penalty. Thus the order of the assessing authority levying penalty u/s 15-A (1) (c) is liable to be restored.

In the result, all the revisions are allowed and the order of Tribunal is set aside and the penalty orders passed by the assessing authority u/s 15-A (1) (c) are restored.