(2005) 10 AHC CK 0170

In the Allahabad High Court

Case No : Trade Tax Revision No. 733, 735 and 736 of 2004

The Commissioner, Trade Tax APPELLANT

Vs

Shaiwal Chemicals RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 14, 15, 3, 4
Uttar Pradesh Trade Tax Rules, 1948 — Rule 25A

Citation : (2005) 10 AHC CK 0170

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : C.S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as ''Act'') are directed against the order of Tribunal dated 01.10.2003 relating to the assessment years 1990-91, 1991-92 and 1993-94 respectively under the U.P. Trade Tax Act.

2. The brief facts of the case are that the Dealer/Opposite Party (hereinafter referred to as "the dealer") was engaged in the business of manufacture and sales of Chemical Fertilizer and Zinc Sulphate. Dealer applied for Recognition Certificate u/s 4-B read with Rule 25-A in Form 18. Assessing Authority after making proper enquiry and after being satisfied, issued Recognition Certificate in Form 19. The Recognition Certificate was issued allowing partial exemption on the purchase of raw material required to be used in the manufacturing of Chemical Fertilizer and Zinc Sulphate. Despite dealer being holding Recognition Certificate only for partial exemption, it applied for issuance of Form 3-B with the Assessing Authority for full exemption. Assessing Authority accordingly, issued Form 3-B for full exemption, which have been issued by the dealer to the seller while making the purchases and availed benefit of full exemption. Assessing Authority demanded the differential amount of tax u/s 3-B of the Act on the

ground that the dealer had issued wrong and false Certificate for full exemption while it was entitled only for partial exemption in all the aforesaid years. First appeals filed by the dealer were rejected. Dealer filed Second Appeals before the Tribunal, which have been allowed by the impugned order.

3. Heard learned Counsel for the parties. The present revisions are being disposed of at the admission stage with the consent of both the parties.

4. Tribunal has allowed the Second Appeals on the ground that during the year under consideration vide Circular dated 24th April, 1987, separate Form 3-B for full exemption and partial exemption was provided. It is stated that the dealer applied for Form 3-B relating to full exemption, which have been issued by the Assessing Authority after proper enquiry, therefore, it cannot be said that the dealer had issued wrong and false Form 3-B while making the purchases.

5. Learned Standing Counsel submitted that Section 4-B of the Act contemplates both full and partial exemption as per the Notification. He submitted that for the manufacturing of Chemical Fertilizer and Zinc Sulphate, dealer was entitled for partial exemption only and accordingly Recognition Certificate was issued in Form 19 allowing the partial exemption. He submitted that the dealer had erroneously applied for Form 3-B relating to the full exemption which was erroneously issued by the Assessing Authority. He submitted that merely because Form 3-B for full exemption was issued by the Assessing Authority, the dealer would not become entitle to avail the benefit of full exemption and since the dealer was holding Recognition Certificate, only for partial exemption, Form 3-B issued for full exemption was wrong and false and accordingly demand raised by the Assessing Authority u/s 3-B was justified. In support of his contention, he relied upon the decision of this Court in the case of Massey Engineering -Works, Meerut v. Commissioner of Sales Tax, U.P. reported in 1987 ATJ 1054. Learned Counsel for the dealer submitted that once Form 3-B was issued by the Assessing Authority after proper enquiry for full exemption, dealer can not be held responsible and the said Form 3-B can not be said to be false or wrong. He relied upon the order of Tribunal.

6. Having heard learned Counsel for the parties, I am of the view that the order of Tribunal is erroneous and can not be sustained. To adjudicate the issue involved in the present revisions, it would be appropriate to refer Section 4-B (1) (2), Rule 25-A and Section 3-B:-

Section 4-B (1)

Notwithstanding anything contained in Section 3, 3-A, 3-AAAA and 3-D.

(a) Where any goods liable to tax under Sub-section (1) of Section 3-D are purchased by a dealer who is liable to tax on the turnover of first purchases under that Sub-section, or where any goods are purchased by- any dealer in circumstances in which such a dealer is liable to purchase tax in respect thereof u/s 3-AAAA and the dealer holds a recognition certificate issued under Sub-section (2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate, or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf:

(2) Where a dealer requires any goods, referred to in Sub-section (1) for use in the manufacture by him, in the State of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfies such requirements and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form and subject to such conditions, as may be prescribed.

Explanation

For the purposes of this Sub-section:-

(a) goods required for use in the manufacture shall mean raw materials, processing materials, machinery plant, equipment consumable stores, spare parts, accessories, components, sub assemblies, fuels or lubricants; and

(b) notified goods means such goods as may from tune to tune, be notified by the State Government in that behalf.

Rule 25-A;-

(1) An application for issue of recognition certificate under Sub-section (2) of Section 4-B shall be made to the Trade Tax Officer in Form XVIII, ...shall be signed in the case of a business carried on by-

(4) If the (Trade Tax) Officer is satisfied, after making such enquiry as be thinks necessary, that the particulars contained in the application are correct and complete, the fee referred to in Sub-rule (3) has been paid on the security, if any, required to be furnished under Sub-section (3) of Section 4-B has been furnished by the dealer within the time, and in the manner required by the (Trade Tax)s Officer, he shall grant him a recognition certificate in Form XIX for use at the principal place of the business and also furnish, fee of cost, an attested copy of such certificate for every other place of business within the State, if any.

Section 3-B- Liability on issuing false certificate 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 issued a false or wrong certificate or declaration prescribed under any provision of this Act or the rules framed 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 the goods purchased by him for such purposes as will make the tax not leviable or 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.

7. Section 4-B contemplates both full as well as partial exemption as provided under the Notification. The relevant Notification for these years was the Notification dated 30.6.1990. The aforesaid Notification provides full exemption on the manufacture of some of the notified commodities mentioned in the Notification and partial exemption to the other notified goods.. Admittedly, dealer was granted Recognition Certificate in Form 19 for partial exemption. Thus, dealer was entitled to purchase raw material etc. required to be used in the manufacturing at a concessional rate, as such, and to issue Form 3-B for concessional rate. Since the dealer was holding Recognition Certificate for partial exemption, dealer ought to have applied Form 3-B for partial exemption while dealer had illegally applied for Form 3-B relating to full exemption and the Assessing Authority erroneously issued Form 3-B for full exemption, appears to be without verifying the registration certificate. Dealer could not become entitle to avail the benefit of full exemption and to issue Form 3-B for full exemption merely because it was erroneously issued by the Assessing Authority on the basis of misrepresentation made by the dealer. Dealer cannot take the advantage of wrong committed by the Assessing Authority. Issuance of Form 3-B for full exemption for which, the dealer was not entitled, amounts to be issuing a wrong and false Certificate. In the circumstances, Assessing Authority had rightly invoked the provisions of Section 3-B and demanded the differential amount, which had been illegally availed by the dealer. In the similar circumstances, this Court in the case of Massey, Engineering Works, Meerut v. Commissioner of Sales Tax, U.P. (supra) held the assessee liable to pay amount u/s 3-B. This Court held as follows:-

No doubt, Form III-Kha items form the recognition certificate (Form XIX). Ordinarily Form III-Kha cannot vary from the recognition certificate. When the recognition certificate is in respect of concessional rate only, full exemption cannot be granted under Form III-Kha. Form III-Kha will invariably be in conformity with the recognition certificate. Exemption either full or partial is granted by the recognition certificate and Form III-Kha is issued accordingly.

In the instant case if it is established that the recognition certificate was really issued allowing partial exemption, then the declaration in Form III-Kha pertaining to full exemption will be patently erroneous and it will be immaterial whether the error was made by the Sales Tax Officer or by assessee. The predominant question would be whether the declaration is wrong and not the one as to who is responsible for doing the wrong.

8. For the reasons stated above, order of Tribunal are liable to be set aside

9. In the result, all the above three revisions are allowed. Orders of Tribunal are set aside. However, there shall be no order as to costs.