

(2004) 11 AHC CK 0039
In the Allahabad High Court
Case No : Sales Tax Revision No. 1579 of 1994

The Commissioner, Trade Tax

APPELLANT

Vs

Sri Krishna Flour Mill

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Sales Tax Act, 1948 — Section 11, 4, 4A, 4B, 4B(2)
Uttar Pradesh Sales Tax Rules, 1948 — Rule 25, 25A(1), 25A(5)

Citation : (2008) 11 VST 520

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Sales Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 21.07.1994 for the assessment year 1991-92.

2. Brief facts of the case are that the dealer/opposite party (hereinafter referred to as "Dealer") was running a flour mill and was involved in the manufacturing of atta, suji and chokarjlor the issuance of recognition certificate u/s 4-B of the Act filed an application on 23.02.1991. Assessing authority issued recognition "certificate granting partial exemption on the purchases of wheat w.e.f. 23.02.1991. appears that dealer further moved an application claiming the exemption for the assessment years 1988-89, 89-90 and 90-91. The said application was rejected on the ground that it was infructuous as an order has already been passed on the application dated 23.02.1991 granting the recognition certificate w.e.f. 23.02.1991. Thereafter, applicant again moved an application on 24.06.1991, which is annexure no.I to the revision, in which it was claimed that the exemption should granted from 26,09.1988 and it should be fully exempted while the exemption was granted for concessional rate (a) 4%.

Sales Tax Officer, Sector-1, Chandausi vide order dated 24.06.1991 has rejected the application on the ground that the exemption could not be granted with retrospective effect under the provisions of the Act and the full exemption was available only to the Roller Hour Mill while the applicant mill is different from Roller Hour mill. First appeal filed by the dealer against the order dated 24.06.1991 was rejected vide order dated 21.09.1991. Applicant filed second appeal before the Tribunal, which was allowed vide impugned order dated 21.07.1994.

3. Heard learned counsel for the parties.

4. Tribunal held that it was explained by the dealer that application in Form 18 was given to the counsel, Sri D.D.Bhasinin the year 1988 itself but on account of mistake of his part, it could not be filed. Tribunal accepted the explanation of the dealer that on account of mistake of the counsel, dealer could not suffer and, therefore, directed to grant the recognition certificate w.e.f. 1988-89 with retrospective effect. Tribunal further held that the process employed in the mill is same as that roller Hour mill and, therefore, held that mill used by the dealer was not different than so called roller flour mill and by using latest technology it would not become another kind of the Hour mill and, accordingly, allowed the full exemption on the purchase of the raw material.

5. Learned Standing Counsel submitted that the notification no. ST-II-4519-X, 29.08.1987 granted full exemption to the roller (lour mill only manufacturing atta, maida and suji from the wheat purchased from Food Corporation of India and the unit of the dealer was not the roller Hour mill, and there is no finding that in the mill there was any roller by which the grinding of food grain was being carried on. He submitted that merely because the process employed in the manufacturing are almost similar to the roller flour mill Ordinary Hour mill can not become roller flour mill. He further submitted that in the application for recognition certificate u/s 4-B of the Act it has not been stated that the mill was roller flour mill and the wheat would be purchased from Food Corporation of India. Therefore, the view of the Tribunal granting the full exemption on the purchase is erroneous. He further submitted that under Rule 25 the exemption can be granted only from the date of the application and not from retrospective effect and, therefore, the view of the Tribunal granting the full exemption from the year 1988-89 is erroneous and contrary to the provisions. Learned counsel for the applicant supported the order of the Tribunal and submitted that since the process of manufacturing involved in the dealer unit is same to the roller flour mill, the benefit of full exemption can not be denied. He further submitted that after the order of the Tribunal late fee were also deposited as directed by the S.T.O. vide notice dated 24.03.1995 and hence the exemption should be allowed with retrospective effect.

6. I have perused the order of the Tribunal and the authorities below and the various annexures enclosed alongwith the present revision.

7. Relevant part of the notification dated 29.08.1987 reads as follows:

"In exercise of the powers u/s 4-B of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No.XV of 1948) read with Section 21 of the Uttar Pradesh General Clause Act, 1904 (U.P. Act No. I of 1904), and in supersession of all previous notifications issued under the aforesaid Section 4-B, the Governor is pleased;

(a) to declare the goods mentioned in column 2 of Annexure I, II and III to this notification to be notified goods for the purpose of aforesaid Section 4-B, and

(b) to order that with effect from September 1, 1987, and subject to the conditions and restrictions specified in the said Section 4-B:

(1) no tax shall be payable in respect of the sale to or, as the case may be, purchase by a dealer, holding a recognition certificate under sub-section (2) of the aforesaid Section 4-B, of any raw materials, accessories and component parts required for use in the manufacture by him of the notified goods mentioned in column 2 of Annexure I or of any goods required for use in the packing of such notified goods manufactured by him;

(2) no tax shall be payable in respect of the sale to or, as the case may be, purchase by a dealer, holding a recognition certificate as aforesaid, of goods mentioned in column 3 of Annexure II required for use as raw material in the manufacture by him of the notified goods mentioned in column 2 of the said Annexure;

(3) in respect of the sale to or, as the case may be, purchase by a dealer, holding a recognition certificate as aforesaid, of goods mentioned in column 3 of Annexure III required for use as raw materials, accessories or components parts in the manufacture by him of the notified goods mentioned in column 2 of the said Annexure, or of goods required for use by him in the packing of such notified goods manufactured by him, tax shall be payable at the rates specified in column 4 of the said Annexure;

(4) in the case of a dealer being a new unit holding a recognition certificate as aforesaid, the date of starting production whereof falls on or after October 1, 1982, no tax shall be payable or, as the case may be, tax shall be payable at (he concessional rate of four per cent, in respect of the sale to or, as the case may be, purchase by such new unit of sub-assemblies and consumable stores required for use in the manufacture by it of the notified goods mentioned in column 2 of Annexure I or, as the case maybe, Annexure 111, and

(5) in respect of the sale to or, as the case may be, purchase by any dealer, holding a recognition certificate as aforesaid of machinery, plant, equipment, spare parts, processing materials, fuels or lubricants and, in cases not covered by sub-clause (4) above, of consumable stores and sub-assemblies, required by such dealer for use in the manufacture by him or any of the notified goods mentioned in Annexure I, II and III, tax shall be payable at concessional rate of four per cent:-

Provided that no concession under this notification shall be admissible;-

(i) if the turnover of goods manufactured by the dealer is exempt from tax u/s 4 of the said Act of 1948; and

(ii) in respect of the sale to or purchase by distilleries and breweries and dealers engaged in the manufacture of paper, catechu (Kattha), matches, empty match boxes, match splints and match veneers. Explanation :-

The expressions "new unit" and "date of starting production" shall have the meaning assigned to them in Section 4-A of the Uttar Pradesh Sales Tax Act, 1948.

ANNEXURE-I

1. Bicycles, tricycles, perambulators, and parts and accessories thereof including seat tops (saddle).
2. Glass and glassware including optical glass in all its Forms but excluding ornamented or cut glass bangles.
3. Oils extracted by solvent extraction process.
4. ???.
5. ??.

ANNEXURE - II

SI.NO. Name of notified goods Name of raw Materials 1. Mentha oil. Itfentha herb, 2. Menthol. Mentha oil. 3. Rice. Paddy. 4. Leather board. Leather cuttings. 5. Carpets. Hand spun woolen fibre popularly known as "Desi katr. 6. Harrows. Steel discs. 7. Atta, maida & suji manufactured by roller flour mills. Wheat, if purchased from the Food Corporation of India, 8. Bakery products Atta, maida and suji. (that it to say, bread, biscuit, cakes, buns, pastries and rusks). 9. Limestone chips and lime-stone powder. Lime-stone. ANNEXURE - III

SL.No. Name of notified Name of Rate of tax of raw goods raw materials materials etc.

1. All other goods. (1) Oil-seeds. 2 per cent. (2) Oilcake. 3 per cent. (3) Any other raw 4.per cent. materials, accessories and component parts and packing materials.

8. Under the aforesaid notification the full exemption was available only to the goods mentioned in annexure-1 and also to the goods mentioned in annexure-II. In respect of all other goods, except oil seeds and oil cakes, there was a partial exemption @ 4% only. For the claim of full exemption it has to be satisfied that the goods manufactured by the manufacturer falls under annexure-1 or the goods falls under annexure-II. In annexure-11 the exemption is available only to the roller flour mill manufacturing aata, maida and suji using the wheat purchased

from the Food Corporation of India as raw material. Perusal of the first application in Form-18, which is annexure-3 to the revision, there was no mention that the dealer (lour mill was roller flour mill and wheat would be purchased from Food Corporation of India. In the application dated 24.06.1991 also by which full exemption was claimed from 26.09.1988, there was no mention that the dealer unit was roller flour mill and the wheat would be purchased from Food Corporation of India. Tribunal in its order though drawn the distinction between the ordinary Hour mill and roller four mill but granted the exemption on the ground that the process of manufacturing in both the flour mills are same and the mill run by the dealer cannot be treated different than the so called roller flour mill by using the latest technology, and it will not become another kind of flour mill. Tribunal appears to be intended to say that the roller flour mill is also flour mill and the exemption to all the flour mills are available under the notification.

9. In my opinion, the view of the Tribunal is wholly erroneous. The roller flour mill can not be equated with the normal Hour mill. The definition of the roller flour mill referred in the Tribunal order borrowed from the page 262 from the book "Interpretation of Sales Tax Committee" reads as follows:

"According to the Oxford Dictionary it is a cylinder of wood, stone metal etc, and the various proportions used alone or as rotating part of machine for Heaseaning friction."

10. According to the Tech Dictionary roller mill have been defined as any mill that uses rollers as 1) a mill crushing or coarse grinding of grain, for (b) a mill in which wheat as made into flour by passing it between rollers, a machine in which flees seed is broken in preparing it for press.

11. Therefore, in the roller flourmill the essential component is a roller and the grinding is being carried on by the grinding and pressing in between the roller. Therefore, unless a mill has rollers and the grinding process being carried on by rollers, it can not be said to be Roller flour mill. Neither it was claimed by the dealer nor there is any finding of Tribunal that in the dealer flour mill, rollers were available and the grinding being carried on by the roller. The notification grants the exemption only to the roller flour mill and not all the roller flour mill. In the fiscal statute there is no room of any intendment and presumption. In the case of Commissioner of Income Tax, Gujarat Vs. Keshavlal Lallubhai Patel, . Apex Court held sas follows:

"In taxation, you have to look simply at what has been clearly said. There is no room of any intendment, there is no enquiry about a tax, there is no presumption as to a tax, you read nothing in your imply, noting but look fairly at what has said and at what is said clearly and that is tax."

Therefore, in my opinion, Tribunal has erred in granting the full exemption.

12. So far as the grant of exemption with retrospective effect is concerned, the

view of the Tribunal is erroneous. Rule 25-A (5) contemplates granting of recognition certificate from the date of presentation of application and not from any other date. Rule 25-A (5) reads as follows:

"Rule 25-A (5) the recognition certificate so granted shall take effect from the date of presentation of the application under sub-rule (I) and shall remain in force for so long as the dealer continues to be eligible for the grant of recognition certificate under the Act goes on depositing a fee at the rate of Rs.fifty per year in the prescribed manner before the commencement of the assessment years to which the fee relates, failing which the recognition certificate shall cease to remain in force:

Provided that if the dealer deposits such fee after the commencement of the assessment year to which the fee relates together with a late fee of twenty-five rupees for every month of delay or part thereof, the assessing Authority may, on being satisfied that there were sufficient reasons for the delay in depositing the fee in time and after recording his reasons therefore in writing, direct that the recognition certificate shall be deemed to have remained in force as if no delay had occurred in depositing the fee."

13. For the reasons stated above, order of the Tribunal is erroneous and the accordingly, set aside.

14. In the result, revision is allowed. Order of the Tribunal is set aside.