(2005) 02 AHC CK 0031

In the Allahabad High Court

Case No : Trade Tax Revision No. 1062 of 1996

The Commissioner, Trade Tax — APPELLANT

Vs

S/S Ajudhya Distillery — RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 12
Central Sales Tax (Uttar Pradesh) Rules, 1957 — Rule 8A(1)
Central Sales Tax Act, 1956 — Section 6(2), 8, 8(1), 8(3), 8(4)
Central Sales Tax Rules, 1957 — Rule 12, 12(1), 12(2), 12(3), 12B
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 11(8)

Citation : (2005) 02 AHC CK 0031

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. Trade Tax Act (herein a referred to as "Act") is directed against the order of Tribunal dated 23.02 to the assessment year, 1989-90 under the Central Sales Tax Act.

2. Following question has been raised in the present revision.

"Whether on the facts and in the circumstances of the case learned two Member Bench of Tribunal are legally justified to hold:

(i) Benefit of Form-C should he given to the dealer on the bush of counter-foil of Form-C though neither "original nor duplicate form ''C'' was filed by the dealer."

3. Heard learned counsel for the parties,

4. Relevant provisions of Section 8 of the Central Sales Tax are referred as follows:

"8. Rates of tax on sales in the course of inter-state. trade or commerce-

(1) Every dealer, who in the course of inter-state trade or commerce-

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in Sub-section (3)

shall be liable to pay tax under this Act, with effect from such date as may he notified by the Central Government in the Official Gazette for the purpose which shall be two per cent, of his turnover or at the rate applicable to the sale or purchase of such goods) inside the appropriate State under the sales tax law of that State, or as the case may be under any enactment of that State imposing value added tax, whichever is lower:

Provided that the rate of tax payable under this subsection by a dealer shall, continue to be four per cent, of his turnover, until the rate of two per cent takes effect under this Sub-section.

(4) The provision of Sub-section (1) shall not apply to any sale in the course of inter-state trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner-

(a) a declaration duty filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority or

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duty filled and signed by a duly authorized officer of the Government.

Provided that the declaration referred to in clause (a) is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

Rule 12 of the Central Sales Tex (Registration and Turnover) Rules, 1957 reads thus:

"12 (1) the declaration and the certificate referred to in Sub-section 4 of Section 8 shall be in Forms C and D respectively:

Provided that Farm C in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1974, or before the commencement of the Central Sales Tax, (Registration and Turnover) (Amendment) Rules, 1976, may also be used upto the 31st December, 1979 with suitable modifications;

Provided further that a single declaration may cover all transactions of sale, which take place in one financial year between the same two dealers.

5. Rule 8-A(1) of the Central sales Tax (U.P.) Rules, 1957 reads as follows.

"8-A. Submission of declarations or certificates to the Sales Tax Officer and matters incidental thereto-(1) A dealer who claims-

(a) to have made inter-State sales to a registered dealer or to a department of the Central Government or a State Government; or

(b) exemption from tax under Sub-section (2) of Section 6 of the Act; or

(c) to have sent goods to a dealer registered in another State otherwise than by way of sale in the course of interstate trade or commerce,

shall, in respect of each such claim, furnish to the assessing authority the portion marked ''Original'' of the appropriate form of declaration and/or certificate referred to in rule 12 of the Central Rules."

6. Rule 8-A (1) of the Central Sales Tax (U.P.) Rules, that that dealers who claims to have made inter-State sale to a registered shall, in respect of such claim, furnish to the assessing authority the portion marked "Original" of the appropriate form of declaration and/or certificate referred to in rule 12 of the Central Rules. Therefore, filing of the portion marked "original" of Form-C is mandatory and without its filing the claim of the dealer that the sale was made to a registered dealer cannot of be accepted.

7. In a similar matter -Commissioner of Sales Tax, Delhi v. Delhi Automobi1es (P.) Ltd. reported in 48 STC 333, the Delhi High Court held that the production of a declaration form is a condition precedent'' for the availability of the concession. The Bench also has observed that these detailed provisions are intended as a measure of safeguard against possible mis-utilisation of the forms and also to ensure that relief is not obtained by more than one selling dealer in respect of the same declaration form by using the various parts of it differently.

8. Against the decision in Commissioner of Sales Tax Delhi v. Delhi Automobiles (P.) Ltd., (supra) of the High Court of Delhi, the Delhi Automobiles (P) Ltd. preferred an appeal before the Apex Court Delhi Automobiles (P) Ltd. v. Commissioner of Sales Tax, delhi (1997) 10 SCC 486 which was dismissed. Court have observed in para 7 as under;

"In our view, in the first place, the assessee had not done all that it could; it could, and should, have preferred an appeal against the order of the learned single judge and persisted in his application for obtaining the Official Liquidator duplicates of the ''C'' Form declarations, as required by Rule 12(3). Since it did not in the face of the clear language of the rule, its case can hardly be said to be a hard case. The judgment cited by the learned counsel has no application because that was a case where the language of the statute was found to be ambiguous. The language of the provision here is clear and was rightly applied by the High Court.

9. Indian Agencies (Regd.), Bangalore Vs. Additional Commissioner of Commercial Taxes, Bangalore, Apex Court upheld the denial of benefit of

concessional rate of tax on the basis of copy of Form ''C'' marked as ''duplicate''. Apex Court held! that benefit of concessional rate of tax can be allowed only on furnishing of original copy of Form. C'' as required under the Rule 12(1) of the Central Sales Tax Rules and Rule 6 (ii) of CST (Karnataka) Rule.

10. Apex Court held as follows:

"10. We are of the view that the Rule 6 (b)(ii) of the Central Sales Tax (Karnataka) Rules, 1957 which provides for furnishing of the original C-Form in order to claim the concessional rate of tax consistent with the provisions of the Central Sales Tax Act and there is no conflict between the provisions of Rule 12(2) AND (3) OF THE Central Sales Tax Rules and Rule 6 (b) (ii) of the Central Sales Tax (Karnataka) Rules, 1957 as contended by the appellant Rule 12 of the Rules is intended to prevent misuse of C-Forms by unscrupulous and mischievous dealers and makes it obligatory for the dealer to furnish indemnity bond. In other words, in order to claim concessional rate of tax, the original C-Form has to be attached to the return as provided under Rule 6 (b) (ii) of the Central Sales Tax (Karnataka) Rules, 1957. It is not a mere formality or technicality but it is intended to achieve the object of preventing the forms being mis-used for the commission of fraud and collision with a view to evade payment of taxes. In our opinion, Rule 6 (b) (ii) which is clear and categoric cannot be liberally construed but it should be construed strictly. We, therefore, hold that without producing the original of the C-Form as prescribed under rule 6 (b) (ii) of the Rules the appellant is not entitled for concessional rate of tax under Sub-section (4) of Section 8 of the Act.

21. The learned senior counsel for the appellant submitted that there is no suggestion anywhere that there is anything wrong with the genuineness of the transaction or any doubts as to the possession by the purchasing dealer on (of?) a certificate enabling the sellers to obtain the concessional rate of tax u/s 8 of the Act. Under such circumstances, the authorities should not have taken the strict view in rejecting the claim of the confessional rate of tax. At first sight, the argument of the learned counsel for the appellate appears to be genuine and Acceptable hut considering the mandatory nature of the provisions of the Act and Rules, this Court is called upon to decide the questions involved in this case. The provisions being mandatory they should have been complied with. The appellant made no attempt to comply with Rule 12 (3) till after his claim was rejected by the Assessing Authority. Having made no attempt to comply with the mandatory provisions, he disentitled himself from getting the concessional rate. Even otherwise, in our view, ''''it is a pure question of law as to the proper interpretation of the provisions of Section 8 of the Central Sales Tax Act and the provisions of Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 and Rule 6 (b) (ii) of the Central Sales Tax (Karnataka) Rules, 1957. In view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. (supra) and of the decision in Delhi Automobiles (P) Ltd. (supra), it is clear that these provisions have to he strictly construed and that unless there is strict

compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax."

11. In the case of CST v. S/S Dhanraj Dal Mill reported in 2004 NTN (Vol. 24) 65. This court held as follows.

"So far as the question No. 2 is concerned, it is held that the benefit of exemption cannot be allowed on the basis of ''the Photo State copy of the Form. Filing of Form for the claim of exemption or concessional rate of tax has been held mandatory by Hon''ble Supreme Court in the case of CST v. Prabhu Dayal Prem Narain, reported in 1988 UPTC, 1204. Since the filing of the Form is mandatory for the claim of the exemption/concessional rate of tax, Form should be proper and in accordance to the Rule, Rule 12-B contemplates filing of original copy of Form. It does not contemplate filing of Photo stat copy of Form, therefore, the benefit of exemption can only be allowed on the basis of the original Forma and not on photo stat copy. In case of Shivam Industries, Agra v. CTT (Supra), In case of M.P. Traders v. CTT (Supra) it has been held that the benefit of exemption on the photo stat copy of Forms cannot be allowed. In the case of CST v. Radhika Agencies (2001 UPTC 309) exemption on the basis of the certificate issued by the seller was denied."

12. In the result, revision is allowed. Order of the Tribunal, is set aside and the question is answered in favour of the department and against the opposite party. It is held that the benefit of concessional rate allowed against counter foil of Form-C is erroneous. Tribunal is directed to pass appropriate order u/s 11(8) of the Act.