**(2005) 01 AHC CK 0035**

**In the Allahabad High Court**

**Case No :** Trade Tax Revision No''s. 904 and 918 of 1995

The Commissioner, Trade Tax — APPELLANT

Vs

S/s Jyoti Rubber Works — RESPONDENT

**Date of Decision :** 24-01-2005

**Acts Referred:**
Uttar Pradesh Trade Tax Act, 1948 — Section 10, 10A, 10D, 11, 8(3)

**Citation :** (2005) 01 AHC CK 0035

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

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

**Final Decision :** Dismissed

## Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 28.04.1995 relating to the assessment years 1986-87 and 87-88 under the Central Sales Tax Act, by which Tribunal has deleted the penalty levied u/s 10-A of the Act.

2. Brief facts of the case are that the dealer/opposite party (hereinafter referred to as "Dealer") was registered under the Central Sales Tax Act for the purchase of rubber chemical at concessional rate, which was to be used in the manufacturing. During the year under consideration, dealer had purchased rubber and chemical from outside the State of U.P. and issued Form -C. Such rubber and chemical have been used in the manufacturing of roller and have also been used for rubberisation on the roller on job work basis. Assessing authority initiated the penalty proceedings u/s 10-A of the Act for the violation of Section 10- (d) of the Act. Dealer filed reply, which was not accepted and the penalty was levied. First appeals filed by the dealer were rejected. Dealer filed second appeals before the Tribunal, which have been allowed by the impugned order.

3. Tribunal held that in the case of The State of Tamil Nadu Vs. Dunlop India Limited, , rubberisation on the roller was held as sale of rubberized item but

subsequently in the case of Sundaram Industries Limited Vs. State of Tamil Nadu, , rubberisation on the customer roller has been held works contract and, therefore, it has been held that the use of the rubber and chemical in the rubberisation on the roller, which was in the nature of job work was under the bonafide belief, which amounts to reasonable cause.

4. Heard learned counsel for the parties.

5. Learned Standing Counsel submitted that since the dealer had used rubber and chemicals for the rubberisation of the rubber on the roller of other parties on job work, therefore, penalty was rightly levied u/s 10-A of the Act for the violation of Section 10-(d) of the Act.

6. Learned counsel for the dealer contended that since in the case of The State of Tamil Nadu v. The Dunlop India (Supra) it has been held that rubberisalion was manufacturing and rubberized goods have been treated as sale but subsequently, the Madras High Court in the case of State Sundaram Industries Limited v. State of Tamil Nadu has held that the rubberisation on the roller is works contract. He submitted that the present case relates to the assessment orders prior to the year 1991 when the Division Bench of the Madras High Court has held rubberisation as a works contract and the dealer had used rubbers and chemicals for the rubberisation on the roller under the believe that the rubberisation was manufacturing process. He further submitted that the roller on which rubberisation was done on job work have been sold by the party for whom the job work was done and, therefore, there was no violation of Section 8 (3) (b) of the Act in view of the Apex Court decision in the case of Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, . He further submitted that on the facts of the case Tribunal recorded the finding that there was reasonable cause, which is finding of fact and, therefore, order of the Tribunal should be affirmed.

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

8. Section 10-D of the Act reads as follows:

"(d) after purchasing any goods for any of the purposes specified in Clause (b) of Clause (c) or Clause (d) of Sub-section (3) of Section 8 fails, without reasonable excuse, to make use of the goods for any such purposes."

9. Penalty for the violation of Clause (d) of Section 10 is leviable only in a situation when it is found that after purchasing any goods for any purpose specified in Clause (b)(c) or (d) of Sub-section 3 of Section 8 are used for any other purposes without any reasonable cause. Therefore, for the levy of penalty it is necessary to make out any case that there was no reasonable cause. In the present case, dealer explained that the rubberisation was earlier held by the Court in the case of The State of Tamil Nadu v. The Dunlop India (Supra) as manufacturing and sale of the rubberised material in the year 1981 and, therefore, under this bonafide belief the rubber and chemical purchased against

 

Form -C have been used in the rubberisation though subsequently, Madras High Court in the case of State Sundaram Industries Limited v. Stale of Tamil Nadu (Supra) held that the rubberisation on the roller was works contract. On all these facts Tribunal recorded the finding that there was reasonable cause in using rubber and chemical after purchasing against Form-C in the rubberisation on the roller for job work. Finding of the Tribunal is finding of fact and no interference is called for.

10. In the result, both the revisions fail and arc accordingly, dismissed.

 