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**(2006) 11 AHC CK 0211**  
**In the Allahabad High Court**

The Commissioner, Trade Tax

APPELLANT

Vs

S/s Kapoor Rice Mill

RESPONDENT

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**Date of Decision :** 23-11-2006

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 14

**Citation :** (2009) 20 VST 733

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

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 15th January, 2000 relating to the assessment year 1991-92.

2. The dispute relates to the levy of tax on the amount of Rs. 2,95,710/-relating to the purchases of Khali as a Commission Agent on behalf of the manufacturer. The Assessing Authority levied the tax on the aforesaid amount in the absence of any Form 3-B. Dealer filed First Appeal before the Deputy Commissioner (Appeals), Trade Tax, Sitapur, which was rejected. Dealer filed Second Appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal and deleted the tax on the aforesaid turnover. The Tribunal held that the Principal had issued Form 3-B and liability to pay tax was on the Principal and not on the Commission Agent.

3. Heard learned Standing Counsel as well as Sri K. Saksena appearing on behalf of the dealer/opp. party.

4. With the consent of both the parties, present petition is being disposed of finally.

5. Learned Standing Counsel submitted that Section 2(c) defines dealer which includes Commission Agent, thus Commission Agent is liable for tax under the

provisions of the Act. He submitted that u/s 4-B of the Act, only those dealers who are holding Recognition Certificate, is entitled for the benefit, However, under Sub-section (a-1) of Section 4-B of the Act, benefit has been extended to the Commission Agent on their purchases of declared commodity and not to any other commodity. Khali which was purchased by the dealer as a Commission Agent on behalf of the manufacturer Principal is not a declared commodity u/s 14 of the Central Sales Tax Act, therefore, provisions of Section 4-B (a-1) is not applicable in view of the Division Bench decision in the case of Agrawala Brothers v. Commissioner of Sales Tax reported in (1990) UPTC 76. Learned Counsel for the dealer submitted that the Tribunal has held that since the Form-3B was issued by the Principal manufacturer, therefore, the Principal manufacturer was liable to pay tax and not the Commission Agent. He submitted that the view taken by the Tribunal is legally correct and is liable to be sustained.

6. Having heard learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below and given my anxious consideration to the rival submissions.

7. Section 4-B(1) and 4-B(a-1) reads as follows:

Section 4-B- Specific relief to certain manufacturers.

(1)- Notwithstanding anything contained in Sections 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;

(a-1)- Where any declared goods liable to tax under Sub-section (1) of Section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer, holding a valid recognition certificate issued under Sub-section (2) in respect thereof, the dealer who made the first purchase shall in respect of such purchase and subject to such conditions and restrictions as may be specified by notification in that behalf, be exempt from tax or be liable to tax at such concessional rate as may be notified by the State Government.

Provided that any notification under this clause or Clause (a) in respect of paddy may be made effective from a date not earlier than the first day of May, 1977;

Provided further that the rules to carry out the objects of the clause or Clause (a) may also be made effective from the date not earlier than the first day of May, 1977.

8. I find substance in the argument of learned Standing Counsel. u/s 2(c) of the Act, the Commission Agent is a dealer and is liable to tax under the provisions of the Act. u/s 4-B(1) of the Act, dealer who are holding Recognition Certificate is only entitled for the benefit of concessional rate of tax. The provisions of Sub-section (a-1) of Section 4-B of the Act which provides benefit to the Commission Agent is applicable to the declared commodity and not to any other commodity. Khali is not declared commodity, therefore, provisions of Sub-section (a-1) of Section 4-B of the Act is not applicable. In the case of Agrawala Brothers v. Commissioner of Sales Tax (supra), the Division Bench of this Court held that u/s 4-B(1) of the Act only those dealers who are holding Recognition Certificate are entitled for the benefit of Section 4-B of the Act and not the Commission Agent, therefore, the present dealer who acted as a Commission Agent, was not entitled for the benefit of exemption u/s 4-B of the Act.

9. Argument of learned Counsel for the dealer is that since the Principal had issued Form 3-B to the Selling dealer, therefore, the dealer is liable to tax and not the Commission Agent, cannot be accepted. In my view, issue of Form 3-B by the Principal manufacturer to the Selling dealer, is wholly irrelevant and has no effect on the liability of tax on the Commission Agent. u/s 3-D(3) in case Commission Agent has paid tax on behalf of Principal in respect of that transactions, Principal shall not be liable to tax. In this view of the matter, order of the Tribunal is erroneous and is liable to be set aside.

10. In the result, revision is allowed. Order of the Tribunal 15.1.2000 is set aside, so far as it deleted the tax on the purchases of Khali. The Tribunal is directed to pass appropriate order u/s 11(8) of the Act.