(2005) 09 AHC CK 0216

In the Allahabad High Court

Case No : Trade Tax Revision No. 1265 of 1997

The Commissioner, Trade Tax	APPELLANT
Vs	
S/S Khurja Tin Factory	RESPONDENT

Date of Decision : 12-09-2005

Acts Referred:
- Central Sales Tax Act, 1956 — Section 8(5)
- General Clauses Act, 1897 — Section 21
- Uttar Pradesh Trade Tax Act, 1948 — Section 11, 11(8)

Citation : (2005) 09 AHC CK 0216

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 (hereinafter referred to as "Act") is directed against the order of Tribunal dated 29th May, 1997 relating to the assessment year 1990-91 under the Central Sales Tax Act.

2. It appears that the dealer opposite party (hereinafter referred to as "the dealer") had made purchases of sheets from outside the Country and thereafter sold the same in the same form and condition outside the State of U.P. in the course of inter-State sales. The dealer claimed that the sales in the course of inter-State sales was liable to tax at the rate of one percent under Notification No. 3618 dated 1.7.1969. The assessing authority has not accepted the claim of the dealer on the ground that the goods has not been subjected to tax under the Central Sales Tax Act which is one of the conditions of the Notification No. 3618 dated 1.7.1969. The assessing authority accordingly levied the tax at the rate of 4 percent. First appeal filed by the dealer has been rejected so far as this aspect of the matter is concerned. The dealer filed appeal before the Tribunal. The Tribunal by the impugned order allowed the appeal and held that the turnover of Rs. 5,21,256.75 paise is liable to tax at the rate of one percent under the above

notification. The Tribunal held that since the dealer had made purchases from outside the Country, there was no question of payment of Central Sales Tax.

3. Heard Learned Standing Counsel. No one appears on behalf of the dealer inspite of the service of the notice.

4. Learned Standing Counsel submitted that one of the conditions for levy of tax at the rate of one percent is that the purchases should be subjected to tax under the Central Sales Tax Act, while in the present case, admittedly, the goods has not been subjected to tax under the Central Sales Tax Act inasmuch as the goods have been purchased from outside the Country and, therefore, the tax at the rate of one percent under the aforesaid notification could not be levied. I find force in the argument of the Learned Standing Counsel.

5. Notification No. ST-3618/X-900 (21)-69, dated 1.7.1969 reads as follows.

(Published in U.P. Gazette Extraordinary, dated 1.7.1969)

"Whereas, the State Government is satisfied that it is necessary so to do in the public interest;

Now, therefore, in exercise of the powers under subsection (5) of Section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), read with Section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897), and in supersession of Notification No.ST-3946/X-960 (9)-66, dated August 26, 1966, the Governor is pleased to direct that, with effect from July 1, 1969, the tax payable under Sub-section (1) of the said section by any dealer having his place of business in Uttar Pradesh in respect of the sale by him from any such place of business, in the course of inter-State trade or commerce, of any goods to which the said Sub-section (1) applies, shall, subject to the conditions hereinafter specified, be calculated at the rate of one percent;

(1) The sales are made to a registered dealer having his place of business outside Uttar Pradesh and

(2) The sales relate to goods which are proved to the satisfaction of the appropriate sales tax authority to have been imported into Uttar Pradesh and are exported from Uttar Pradesh without any charge in form or identity and have already been subjected to a tax under the Central Sales Tax Act, 1956, in respect of a sale in the course of inter-State trade or commerce which resulted in the import of the goods into the State of Uttar Pradesh."

6. Under the aforesaid notification, inter-State sale is liable to tax at the rate of one percent on the condition (1) The sales are made to a registered dealer having his place of business outside Uttar Pradesh and (2) the sales relate to goods which are proved to the satisfaction of the appropriate sales tax authority to have been imported into Uttar Pradesh and are exported from Uttar Pradesh without any change in form or identity and have already been subjected to a tax under the Central Sales Tax Act 1956, in respect of a sale in the course of inter-

State trade or commerce which resulted in the import of the goods into the State of Uttar Pradesh. Therefore, one of the conditions is that the goods have already been subjected to tax under the Central Sales Tax Act in respect of the sale in the course of inter-State trade or commerce. Thus, unless it is shown that the transaction, which resulted in the import of the goods inside the State of U.P., has already been subjected to tax under the Central Sales Tax Act, the aforesaid notification is not applicable. In the present case, admittedly, it has not been shown that the transaction which resulted in the import of the goods have already been subjected to tax under the Central Sales Tax Act In the present case goods have been imported from outside the Country and therefore the goods have not been subjected to tax under the Central Sales Tax Act. The Tribunal has erred in allowing the benefit of the notification and levied the tax at the rate of one percent, even though one of the conditions, namely, that the transaction of import has not been subjected to tax under the Central Sales Tax Act is not fulfilled.

7. In the result, revision is allowed. The order of the Tribunal is set aside, so far as levy of tax at the rate of one percent on the turnover of Rs. 5, 21,256.75 paise is concerned. The Tribunal is directed to pass appropriate orders u/s 11(8) of the Act.

