(2006) 04 AHC CK 0227

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 889, 895 and 896 of 1996

The Commissioner, Trade Tax — APPELLANT

Vs

S/s. Modi Xerox Ltd. — RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 4B(2)
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 3B, 4B, 8(1)

Citation : (2006) 04 AHC CK 0227

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : B.K. Pandey and S.C, for the Appellant; Bharat Ji Agarwal and Piyush Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—These three revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as ''Act'') are directed against the order of Tribunal dated 08.05.1996 relating to assessment years 1986-87, 1988-89 and 1989-90 under the U.P. Trade Tax Act.

2. Dealer/Opposite Party (hereinafter referred to as "the Dealer") was engaged in the business of manufacture and sale of Xerographic Equipment and System since 1985. Dealer applied for Recognition Certificate u/s 4-B of the Act in Form 18 on 10.6.1985. On 26.6.1985, dealer moved an application before the Sales Tax Officer, Rampur giving information that only three items namely Corrugated Boxes, Wooden Pallets and Packing Crates are being purchased at present as required to be mentioned in Column 6. It appears that inadvertently in Column 6 of the application instead of mentioning the manufactured items, material required in the manufacturing had been mentioned. On 29.6.1985, the Assessing Authority had passed orders that the Recognition Certificate be issued with effect from 13.6.1985. In pursuance thereof, Recognition Certificate was issued on 29.6.1985 with effect from 13.6.1985. In Column of the goods, for which, the

dealer was entitled to purchase goods at a concessional rate only "packing material" (enclosure attached) was mentioned. Further application being moved on 25.9.1985, asking to add paints and allied Chemicals and on such application, paints and Allied Chemicals was added w.e.f. 25.9.1985.

3. During the years under consideration, dealer purchased electronic goods in the name of machinery parts and issued Form 3-B in respect thereof, and availed the benefit of concessional rate of tax. The Assessing Authority initiated proceedings u/s 3-B of the Act on the ground that as per the Recognition Certificate, dealer was entitled for the benefit of concessional rate of tax only on the "packing material" and not on the electronic goods and thus, Form 3-B issued for the purchases of electronic goods were wrong and false. Dealer filed reply, wherein, it was stated that in the application, "packing material, raw-material and other allied materials which were required in the manufacturing of Xerographic Equipment and System were mentioned. It was also submitted that the Assessing Authority had ordered for issuance of Recognition Certificate with effect from 13.6.1985 without passing any order declining the benefit on any of the items claimed in the application. It was also submitted that as per the Notification No. ST-II-45/18/X/1987- U.P. Act-10-48-Order-87 dated 5.9.1987. dealer was entitled for the benefit of concessional rate of tax on the "packing material as well as raw-material" thus, Form 8-B were issued under the bonafide belief that it was entitled for the concessional rate of tax on the electronic goods being raw-material. The Assessing Authority, however, had not accepted the plea of the dealer and demanded the amount u/s 3-B of the Act @ 8.8% and demanded interest @ 2% from 01.10.1989. Dealer filed appeals before the Deputy Commissioner (Appeals). Trade Tax, Allahabad. The Deputy Commissioner (Appeals), Allahabad vide its order dated 27.2.1996, rejected the appeals. The Commissioner of Trade Tax filed appeals before the Tribunal. The Tribunal by the impugned order, allowed the appeals and quashed the orders passed u/s 3-B of the Act. The Tribunal held that the orders passed u/s 3-B of the Act were barred by limitation. The Tribunal further held that the notices u/s 3-B of the Act in all the three years, were issued after expiry of four years. On the merit of the case, the Tribunal held that the conduct of the parry shows that it was under the impression that the Recognition Certificate granted to the dealer included the raw-material also as one of the items, and entitled to purchase at the concessional rate of tax. On the facts of the case. Tribunal concluded that the authorities below have not established that the dealer had issued false and wrong certificate Form 3-B.

4. Heard learned Counsel for the parties.

5. Learned Standing Counsel submitted that as per the Recognition Certificate dated 29.6.1985, dealer was entitled for the benefit of concessional rate of rate only on the purchase of "packing material" and not on any other items. He submitted that in the Recognition Certificate, only "packing material" was mentioned. He submitted that the application was moved on 10.6.1985. in the

application "packing material, raw-material and other allied materials" which were required in the manufacturing of Xerographic Equipment and System were mentioned and it appear that at that time, dealer was not required Recognition Certificate for the aforesaid items, except packing material therefore, vide application dated 26.6.1985, it was informed that only three goods are being purchased at present namely Corrugated Boxes, Wooden Pallets and Packing Crates and thus, in the Recognition Certificate only, "packing material" was mentioned. He submitted that when the dealer required Certificate for other items. or their application, addition of paints and other allied Chemicals was made with effect from 5.9.1985. Thus, dealer was very well aware that the Recognition Certificate was issued for "packing material" only and it was also known that for availing the benefit of concessional rate of tax. item should be mentioned in the Recognition Certificate. In the circumstances, dealer had wrongly issued Form 3-B for the purchase of electronic goods, for which, it was not holding a Recognition Certificate and was not entitled for the benefit of concessional rate of tax.

6. Having heard learned Counsel for the parties and have perused the order of Tribunal and the authorities below.

7. In my opinion, order of the Tribunal so far as it held that the initiation of proceeding u/s 3-B of the Act was barred by limitation, is concerned, is wholly erroneous. It is contrary to the view taken by the Division Bench decision of this Court in the case of Bharat Pumps and Compressors Ltd., Naini, Allahabad v. State of U.P. and Anr. reported in 1995 UPTC 256. The Division Bench of this Court held that the period of limitation does not apply to Section 3-B of the Act.

8. There is no dispute that as per the Notification No. ST-II-45/18/X/1987-U.P. Act-10-48-Order-87 dated 5.9.1987 dealer being a new Unit, was entitled for the benefit of concessional rate of tax both on the "packing material as well as on the raw-material", but for the claim of exemption, it is necessary to have a Recognition Certificate. The exemption flows only from the Recognition Certificate. In case if the dealer is not holding a Recognition Certificate, it is not entitled for the benefit of concessional rate of tax. In the Recognition Certificate, admittedly, dealer was allowed to purchase "packing material" only at a concessional rate. It is true, that in the application in Form 18 "packing material. raw-material and other allied materials" which were required in the manufacturing of Xerographic Equipment and System was mentioned, but from the perusal of letter dated 26.6.1985. it appears that at that time, since the dealer was required to purchase only Corrugated Boxes. Wooden Pallest and Packing Crates, therefore. informed the Assessing Authority vide the aforesaid letter that the said items are being purchased at present and accordingly. Recognition Certificate was issued for "packing material" only If the dealer intended to have a Recognition Certificate for the raw-material and other allied materials, there was no occasion to write a letter dated 26.6.1985. It is useful to refer the language of the letter dated 26.6.1985:

Modi Xerox Limited. Modipur. Durgnagia. (5) Rampur, U.P.(India). (2) Tel:842 (32) MODI XEROX 26/6/85

The Sales Tax Officer,

Rampur-11. RAMPUR.

Dear Sir,

Sub:-Application for recognition Certificate under Sub-section (2) of Section 4-B Of the U.P. Sales Tax Act. 1948.

Please refer to the discussion the undersigned had with your honour in the above connection, we wish to inform you that the following goods are being purchased at present as required to be mentioned in Column No. 6:

(i) Corrugated Boxes.

(ii) Wooden Pallets.

(iii) Packing Crates.

We shall be highly thankful to your honour if an early action is taken in the above regard.

Thanking you Yours faithfully. Sd/ (S.K. Gupta) Dy. Com. Manager.

Dealer further moved an application on 25.9.1985 for addition of paints and allied Chemicals. This also shows that the dealer was fully aware that it was holding a Recognition Certificate only for "packing material" and on the further requirement, request was made for further addition of paints and allied Chemicals. It is useful to refer the letter dated 25 9.85:

Modi Xerox Limited, (6) Modipur. (2) 5 Bareilly Road, Rampiir 244901 MODI XEROX U.P. (India) (30) Phone 4842, 4081 to 4084 September 25, 1985. Telex:0877-213 MODI IN 193256 25986

Dear sir,

Kindly refer to the recognition certificate under Sub-section (2) of Section 4-B of U.P. Sales Tax Act, 1948 issued by your goodself on 29th June, 1985.

We shall request you to please include the following items in the said certificate:

1. Paints & Allied Chemicals.

Thanking you. Yours faithfully, For MODI XEROX LIMITED SD/- (S.K. GUPTA) DY. COMMERCIAL MANAGER.

(Seal) 31.10.85

Sd/-4.11.85

Adesh

Niyamanusar Dinank 25.9.85 say Manyata Pramarhpatra may Barhaway

Sd/- LXI

Registered office Modipuram 250110 Meerut. U.P. (India).

9. The aforesaid letter starts with the word "kindly refer to the Recognition Certificate under Sub-section (2) of Section 4-B of U.P. Sales Tax Act" which shows that the dealer was fully aware about the contents of the Recognition Certificate and sought addition on the ground that the paints and allied Chemicals were not added and without mentioning of the items in the Recognition Certificate, benefit of concessional rate of tax could not be availed. Thus, it cannot be said that dealer was under the bonafide belief that the Recognition Certificate was also in respect of raw-material and other allied materials, if it was so, there was no necessity for moving the application for addition of paints and allied Chemicals, inasmuch as. raw-material and other allied materials fully covered the said items. Thus, it can not be accepted that the dealer was under the bonafide belief that it was holding a Recognition Certificate for the raw-material and thus entitled to purchase electronic goods at a concessional rate and if the dealer issued Form 3-B knowingly that it was not entitled to avail the benefit of concessional rate of tax under the Recognition Certificate in respect of electronic goods and availed benefit of concessional rate of tax. it amounts to issuing a wrong and false Certificate, when the dealer was purchasing electronic goods as raw material and intending to issue Form 3-B. why electronic goods were not got added, is best known to the dealer. Thus, the demand raised u/s 3-B is therefore, justified.

10. However, dealer claimed that for several years, despite details being furnished for issuing Certificate for purchase of electronic goods. Form 3-B were issued and for several years, no objection were raised, thus, it would be proper and appropriate that the demand may be raised only to the extent of benefit availed by the dealer.

11. In the case of CST v. R.S. Steel Works reported in 1987 UPTC 28 it has been held that the demand raised u/s 3-B is not a tax. therefore. the interest could not be charged u/s 8(1) of the Act.

12. In the result, all the aforesaid three revisions are allowed in part. Order of the Tribunal is set aside and the levy of penalty is confirmed to the extent of amount for which, the concessional rate of tax had been availed by the dealer.

