(2002) 05 AHC CK 0006

In the Allahabad High Court

Case No : Trade Tax Revision No. 319 of 2001

Vegetable Industries Complex — APPELLANT

Vs

Commissioner of Trade Tax — RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 13, 5(1)
Central Sales Tax Act, 1956 — Section 10A
Uttar Pradesh Trade Tax Act, 1948 — Section 10, 11, 9
Uttar Pradesh Trade Tax Rules, 1948 — Rule 41(7)

Citation : (2006) 143 STC 308

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

R.B. Misra, J.—The present trade tax revision has been preferred u/s 11 of the U.P. Trade Tax Act, 1948, in short "Act" against the order dated September 23, 2000 passed by Trade Tax Tribunal in Second Appeal No. 150 of 1999 (1990-91) in reference Rule 41(7) of the U.P. Trade Tax Rules, 1948 and 151 of 1999 (1990-91) in respect of Section 10A (Central Sales Tax Act, 1956).

Heard Sri Bharat Ji Agrawal, Senior Advocate, with Sri Piyush Agrawal, for the applicant and Sri B.K. Pandey, learned Standing Counsel for the respondent.

2. It appears that the applicant/revisionist a Co-operative Federation Limited, Lucknow, is controlled by Government of U.P. and is engaged in the manufacture and sale of edible and non-edible oils and cakes. The applicant was granted registration under Rule 5(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. By virtue of it, the applicant/revisionist is entitled to purchase the goods, raw material on concessional rate which was used in production of notified goods. In the said certificate mill store, iron hard ware, machinery spare parts,

etc., were duly mentioned. In the year 1991 in question, the applicant had purchased steel plate and steel tubes which were used for repairing of the machinery and the applicant under bona fide belief issued form C since in the registration certificate "iron" was specifically mentioned along with spare parts.

3. The assessing authority passed an order on March 27, 1995 (annexure 2) imposing penalty of Rs. 20,000 u/s 10A of the Central Sales Tax Act. The first appeal preferred u/s 9 of the Act before the Deputy Commissioner (Appeal), Trade Tax, Bareilly, was dismissed on March 23, 1999 (annexure 3). Being aggrieved the applicant filed second appeal u/s 10 of the "Act" before Tribunal and by order dated September 23, 2000 (annexure 5) learned Tribunal has dismissed the appeal and confirmed the imposition of penalty.

4. The following questions of law are raised for consideration :

(a) Whether in view of judgment of Supreme Court in the case of judgment of this Court in Snow White Industries v. Commissioner of Sales Tax 1999 UPTC 130 the Tribunal was justified in dismissing the appeal of the applicant ?

(b) Whether in view of Rule 13 of Central Sales Tax (Registration and Turnover) Rules, 1957 in which spare parts and accessories, etc., are specifically mentioned the Tribunal was justified in dismissing the appeal of the applicant ?

(c) Whether in the facts and circumstances of the case the Tribunal was justified in dismissing the appeal of the applicant whereas in the registration certificate spare parts and iron were specifically mentioned, which are fully covered item purchased by the applicant against form C ?

5. It has been contended on behalf of the applicant that under bona fide belief, form C issued on the strength of the registration certificate granted under Central Sales Tax Act in which spare parts and iron were specifically mentioned and the applicant purchased steel plate and tubes which were used for repairing of the machinery which was duly covered by spare parts and machinery and there was no otherwise intention to falsely represent or issue form C or misuse of the declaration form.

6. It has been contended on behalf of applicant/revisionist that the form C can be issued for purchase of machinery/goods even though they are not directly producing goods and no penalty can be imposed on the said purchase against form C and in respect of his submission reliance has been placed by the applicant on Snow White Industries v. Commissioner of Sales Tax 1999 UPTC 130, where the machinery purchased against form C was treated to be non-restricted to machinery directly producing the goods and the penalty imposed was deleted.

7. In Commercial Taxes Officer, Circle D, Jaipur Vs. Rajasthan Electricity Board, Jaipur, , Electricity Board was permitted to purchase motor vehicle and accessories, spare parts, tyres and tubes against form C relating to the distribution of electricity and their non-use made disruption of electric supply. It has been contended according to Rule 13 of the Central Sales Tax (Registration

and Turnover) Rules, 1957, the registered dealer is entitled to purchase plant and machinery, equipment, accessories for the manufacture of notified goods hence the applicant under bona fide belief had purchased steel plate and tubes for the use in the factory which were used for repairing of machinery, was duly covered under the head spare parts/iron as mentioned in its registration certificate.

8. In Commissioner of Sales Tax Vs. Bombay Garage, where a registered dealer having certificate of registration or purchase of air coolers by assessee and issue of form C, who was imposed a penalty on ground that air cooler shall not be covered by the certificate (sic). The view of the Tribunal taken in the Second Appeal holding that assessee was under bona fide belief that their air cooler were covered by certificate of registration and penalty was not to be imposed. Such view was held by High Court of Madhya Pradesh justified.

9. In State of Rajasthan Vs. Jaipur Udyog Ltd., wherein in case of false representation for the purchase of the goods and thus goods were covered by certificate of registration unless it is shown based on false representation penalty cannot be levied (sic).

10. I have heard learned Counsel for the parties and have perused the documents I find force in the contention of the petitioner and the order dated September 23, 2000 is set aside in respect of the revision relating to assessment year 1991 in Central Sales Tax Act. Therefore, the revision is allowed and question of law are answered and dealt with accordingly in favour of the applicant revisionist.