

(1999) 07 AHC CK 0182

Allahabad High Court

Case No: Sales Tax Revision No. 489 of 1994

Commissioner, Sales Tax

APPELLANT

Vs

Brij Mohan and Company

RESPONDENT

Date of Decision: July 27, 1999

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 3D, 3D(1), 3D(2), 3D(7), 4A
- Uttar Pradesh Trade Tax Rules, 1948 - Rule 12B

Hon'ble Judges: M.C. Agarwal, J

Bench: Single Bench

Advocate: Surya Prakash, for the Appellant; Bharat Ji Agrawal, Senior Advocate, for the Respondent

Final Decision: Dismissed

Judgement

M.C. Agarwal, J.

This revision petition u/s 11 of the U.P. Sales Tax Act, 1948 (now U.P. Trade Tax Act) has been preferred by the Commissioner of Sales Tax and is directed against an order dated 24th December, 1993 passed by the Sales Tax Tribunal, Moradabad whereby it allowed the dealer's second appeal No. 406 of 1990 for assessment year 1984-85.

2. I have heard Sri Surya Prakash, learned Standing Counsel for the revisionist and Sri Bharat Ji Agrawal, learned Senior Advocate for the respondent.

3. The respondent is a sugar merchant. During the year under consideration, it purchased khandsari sugar from manufacturers who were holding eligibility certificates u/s 4-A of the U.P. Sales Tax Act, 1948 as a consequence of which the sales of the sugar manufactured by such manufacturers was exempt from tax. The extent of such purchases was Rs. 4,14,251 and the dealer claimed exemption from tax on such purchases. The dealer-revisionist also sold sugar worth Rs. 1,50,500 as a commission agent of the manufacturers who were holding eligibility certificates u/s

4-A and in respect of such sales and claimed exemption because of the eligibility certificate. These claims were denied by the assessing officer as well as the first appellate authority and the dealer, therefore, filed the aforesaid appeal which was allowed by the Tribunal.

4. Sugar is not taxable at the point of sale and an item which is subject to purchase tax u/s 3-D of the Act. It is, however, exempt from purchase tax if additional excise duty is paid in respect of such sugar under the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

5. I first take up the question of sales amounting to Rs. 1,50,500 which the dealer made as a commission agent. The manufacturer of this sugar was admittedly holding an eligibility certificate issued u/s 4-A of the Act and, therefore, by virtue of Sub-section (2) of Section 4-A, no tax is leviable on the sale of sugar by the manufacturer who holds an eligibility certificate. The contention of the Revenue was that the goods not having been sold by the manufacturer himself and the sale having been made by a third person, namely, the present dealer acting as a commission agent, the benefit of Section 4-A could not be given to the commission agent. The Tribunal has placed reliance on a circular dated January 10, 1991 issued by the Commissioner of Sales Tax, U.P., stating that the exemption would be available even where sales are made through commission agent. It is not in dispute that there was such a circular which stated the legal position and being a circular beneficial to the taxpayer was binding on the authorities subordinate to the Commissioner. This has been so held by the honourable Supreme Court in [M/s. Ranadey Micronutrients etc. Vs. Collector of Central Excise](#), and in [Collector of Central Excise, Baroda Vs. Indian Petro Chemicals](#), . Therefore, the Tribunal's order, on this point, does not suffer from any illegality.

6. As regards the taxability of the purchases amounting to Rs. 4,14,251 admittedly the sugar was manufactured by persons holding eligibility certificate u/s 4-A, as a result of which the sale of sugar by such manufacturers was exempt from tax. The contention of the Revenue, however, was that sugar was not subject to any sales tax and what was leviable thereon was purchase tax u/s 3-D. Such tax according to the Revenue is leviable on a purchaser to whom the benefit of Section 4-A was not available and, therefore, the purchases of Rs. 4,14,251 were liable to purchase tax u/s 3-D. The Tribunal, however, held that no purchase tax was leviable because the manufacturing units were exempt from sales tax u/s 4-A.

7. Section 3-D(l) says that except as provided in Sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, of first purchase.....Thus, there is an exception in Sub-section (2) of Section 3-D. Sub-section (2) reads as under :

"(2) Where in respect of any goods notified under Sub-section (1), the purchaser whether on his own account or on account of anyone else, is a person other than a

registered dealer, there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in the prescribed manner, of sale of such goods by the dealer who sells the goods or through whom the goods are sold to such purchaser, and the rate of tax shall be the same as notified under Sub-section (1),"

Then there is Sub-section (7) which creates presumption which can be rebutted by furnishing the prescribed declaration or certificate. The said Sub-section (7) states as under :

"(7)(a) Every purchase within Uttar Pradesh by a dealer, either directly or through another, whether on his own account or on account of anyone else, shall, for the purposes of Sub-section (1), be deemed to be the first purchase, unless the dealer proves otherwise to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the selling dealer, in such form and manner and within such period, as may be prescribed.

(b) Every sale within Uttar Pradesh by a dealer, either directly or through another, whether on his own account or on account of anyone else, shall, for the purposes of Sub-section (2), be deemed to be a sale to a person other than a registered dealer, unless the dealer selling the goods proves otherwise, to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the purchaser of such goods, in such form and manner and within such period, as may be prescribed."

8. Admittedly in this case the purchasing dealer, i.e., the present respondent did not furnish any declaration and any form to the manufacturing sellers. The contention of the learned Standing Counsel was that the dealer-respondent should have furnished form III-C(5) obtained from the manufacturing dealers. That form would have been necessary if the dealer had admitted his liability to purchase tax but had claimed that it was exempt because Central excise duty both basic and additional had been paid by the manufacturer. In this case the claim was on account of exemption u/s 4-A which was not admissible because the levy was not on sales but was on purchases.

9. Sri Bharat Ji Agrawal, learned counsel for the dealer-respondent, however, contended that on the facts of the present case, no purchase tax was leviable on the purchasing dealer, i.e., the respondent. According to him Sub-section (1) of Section 3-D was subject to an exception provided for in Sub-section (2). Sub-section (2) says that where the purchaser is an unregistered dealer, then the tax is leviable on the sale. Thus, while Sub-section (1) provides for levy of a purchase tax, Sub-section (2) says that when the purchases are made by an unregistered dealer, the tax shall be levied on the sale of such goods by the dealer who sells the goods and, therefore, in the case of an unregistered dealer, there is no purchase tax and it is only tax on sales that can be levied in the hands of the selling dealer. Clause (b) of Sub-section

(7) of Section 3-D provides for circumstances when a sale shall be deemed to be made to an unregistered person, i.e., to a person other than a registered dealer. Meaning thereby, in case the required declaration or certificate is not obtained by the selling dealer from the purchasing dealer and furnished before the assessing authority, the sale would be deemed to be to a person other than a registered dealer, even if factually the purchaser may be a registered dealer. Rule 12-B provides that form III-C(I) shall be issued by the registered dealer to the dealer selling the goods mentioned in clause (a) of Sub-section (1) of Section 3-D. Admittedly, no such declaration in form III-C(I) was furnished by the respondent to the selling dealers and, therefore, the sales in question were taxable as sales in the hands of the selling dealers and not as purchases in the hands of the purchaser, the respondent. In my view, therefore, the Tribunal's order does not require any interference in revisional jurisdiction.

10. In the result, the revision petition is dismissed.