The Commissioner, Trade Tax Vs S/S Satya Narayan Anil Kumar

Court: Allahabad High Court

Date of Decision: Sept. 2, 2005

Acts Referred: Central Sales Tax Act, 1956 â€" Section 5
Constitution of India, 1950 â€" Article 286, 286(1), 286(1)(b)
Uttar Pradesh Trade Tax Act, 1948 â€" Section 21

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Advocate: S.C, for the Appellant;

Final Decision: Allowed

Judgement

Prakash Krishna, J.
These two revisions relate to the same dealer namely Satya Narain Amit Kumar. The Revision No. 632 of 1996 is

against the regular assessment order for the assessment year 1987- 88 and Revision No. 642 of 1996 is against the reassessment order, u/s 21 of

U.P. Trade Tax Act, for the assessment year 1986-87. Both the revisions were heard together and are being disposed of by a common judgment.

The dealer opposite party carried on the business of purchase and sale of Kirana and Spices etc. For the assessment year 1986- 87 the books of

account of the dealer opposite party were accepted in the original assessment proceeding vide order dated 17-1-1990. In the original assessment

proceeding the dealer opposite party claimed and it was accepted by the assessing authority that it made sale of Kirana and Masala worth Rs.

14,36,104.77 in the course of export of goods outside the territory of India to Nepal on the basis of Custom certificate submitted by it.

Subsequently on verification of the Custom certificate from the Custom office Bhairahwa (Nepal) it was found that the Custom certificates

submitted by the dealer opposite party were fake and thus exemption was wrongly granted on such sales in the original assessment proceeding. To

assess the escaped turnover the assessing authority initiated proceeding u/s 21 of the Act and levied the tax after giving opportunity of hearing on

the turnover of Rs. 14,36,105/-, the alleged turnover of export sale.

2. For the assessment year 1987- 88 in the regular assessment proceeding the assessing authority rejected the claim of export sale alleged to have

been made by the dealer opposite party to Nepali buyers on the ground that the Custom certificate produced by the dealer opposite party are fake

and fabricated one, in view of the letter No. 047/48/1268 dated 14-11-1990 issued by the Custom Officer, Bharirahwa (Nepal). It was also held

by the assessing authority that even if the said Custom certificates are taken into account, the sale made to the Nepali dealer at Gorakhpur, does

not amount sale made in the course of export sale vide order dated 21-8-1991.

3. The dealer opposite party challenged re- assessment order passed for the assessment year 1986- 87 and the assessment order for the

assessment year 1987- 88 by way of appeals before the Deputy Commissioner (appeals), who has decided both the appeals by a common order

dated 29-1-1992. The Deputy Commissioner (appeals) Trade Tax, dismissed both the appeals. Aggrieved against the order of first appellate

authority Second Appeal No. 160 of 1992 relating to the assessment year 1987-88 and Second Appeal No. 161 of 1992 against re- assessment

proceeding for the assessment year 1987- 88 were filed before the Tribunal. The Tribunal by two separate orders both dated 13-2-1996 allowed

the aforesaid two Second appeals on almost similar grounds.

4. Challenging the legality and propriety of the orders passed by the Tribunal in the aforesaid two Second appeals, present revisions have been

filed.

5. Heard learned counsel for the petitioner and perused the record.

6. The learned standing counsel for the department submitted that the dealer Opp.party has failed to establish the genuineness of the custom

certificates and that the sales were made in the course of export to Nepal. The goods were not dispatched from Gorakhpur to Nepal. The goods

were dispatched from Gorakhpur to Nautanwa through Transport Agency. According to him the necessary ingredients to establish the sale in the

course of export are missing in the present case. It is not sufficient that the goods have ultimately went out of the country. It is essential that the sale

made by the dealer Opp.party should be intimately connected with the movement and export and must result in crossing outside border the country

and must run in a channel. They must be connected with each other and if interlinked then only it can be said in the course of export. The learned

counsel for the dealer Opp.party supported the order of the Tribunal.

7. The assessing officer found that on verification of custom certificates produced by the dealer during the course of original assessment

proceedings, forged and fictitious. It has been further found that the custom certificates issued by the Custom Office, Bhairwa were forged in as

much as the signatures of Shri Vyas, the then Custom Officer, Bhairwa were fabricated on the said custom certificates. The signature of the

Custom Officer on the custom certificates produced by the dealer Opp.party did not tally with the genuine signature of the Custom Officer. The

seal or the custom certificate was also fabricated one. These findings of the Assessing Authority were confirmed in appeal by the First Appellate

Authority. However, the Tribunal by a strange process of reasoning has set aside the reassessment order. The perversity of the above reasoning is

writ large. The Tribunal proceeded in the matter that there is no material on record to establish that the assessing officer tried to verify the

correctness of the custom certificates produced by the dealer with the Custom Officers of Bhairwa. This, as apparent from the assessment order, is

wrong. In the assessment order dated 21-8-1991 for the assessment year 1987- 88, reference of an information vide letter No. 047/48-1268

dated 14-11-1990 has been made wherein the custom officer informed the Sales Tax department about salient features of the custom certificate,

issued by it, some of them are, (1) the custom certificate is signed by the custom officer, (2) It contains the serial number of the register, (3) the

serial number of the goods; (4) the initials of the clerk, who makes the certificate. A specimen of the seal, was also sent. The assessing officer

found that the signature of Sri Vyas on the custom certificate produced by the dealer, is fabricated one, on comparison with the genuine certificate

signed by Sri Vyas, Copy of the aforesaid letter was made available to the dealer opposite party, to whom a show cause notice was also issued.

After considering the reply to the show cause the assessing, authority came to the conclusion that the custom certificates are forged.

8. The Tribunal being the last fact finding authority proceeded in the matter by ignoring the relevant material on record and swayed away by

irrelevant considerations, such as Form- B and receipt of payment of cess duty. These documents do not conclusively prove that the goods in

question crossed the Indian Border. Moreover these documents were not filed in original. Photostat copies filed before the Tribunal for the first

time is of little value unless they are proved in accordance with law. Thus the order of the Tribunal is perverse and cannot be sustained.

9. The Assessing Authority has given valid and good reasons such as the signature on the disputed certificates did not tally with the undisputed

signature of the Custom Officer, and the seal of the Custom Office put on the disputed certificates is not genuine, for rejecting the custom

certificates. These findings have not been set aside by the Tribunal. It is relevant to state here that the dealer Opp.party could not dare to produce

the account books or any other material to dispute the correctness of the aforesaid observations of the Assessing Officer.

10. The dealer claimed exemption from tax on the basis of custom certificates which have been found to be forged and fabricated one. It was for

the dealer to establish that the goods have been sent outside the country under a contract.

11. The reliance placed by the Tribunal on the case of Commissioner of Trade Tax v. Arora Industrial Corporation, 1980 UPTC 1271 that

genuineness of the certificate cannot be doubted in the absence of verification by the assessing authority from the custom authorities, is misplaced

one.

12. Besides above, the Tribunal treated the transaction in question as sale in the course of export on the ground that the real test is whether the

goods have actually crossed the border of the country or not. The approach of the Tribunal in the matter is contrary to the various judicial

pronouncements and therefore cannot be approved.

13. In order to appreciate the view taken by the Tribunal it is necessary to refer to Section- 5 of the Central Sales Tax Act, which reads as under:

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5. When is a sale or purchase of goods said to take place in the course of import or export; (1) A sale or purchase of goods shall be deemed to

take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is

effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or

purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs

frontiers of India.

14. The phrase ""(in the course of export)"" infact has been borrowed from Article 286 of the Constitution. Supreme Court has considered this

matter in number of cases including in Ban Gorm Nilgiri Plantation Company v. Sales Tax Officer 15 STC 753. It has laid down following

principles of law on page 759:

A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection

between the two cannot be voluntarily interrupted without breach of the contract or the compulsion arising from the nature of the transaction. In this

sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export,

there must be an obligation to export and there must be an actual export. The obligation may arise by reason of statute; contract between the

parties or from mutual understanding or agreement between them or even from the nature of transaction which links the sale to export. A

transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be

regarded as one in the course of export unless the sale occasions export. And to occasion export there must exist such a bond between the

contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a

transaction of sale cannot be called a sale in the course of export of goods out of the territory of India. There are a variety of transactions in which

a sale of a commodity is followed by export thereof. At one end are transactions in which there is a sale of goods in India for foreign consumption.

For instance the foreign purchaser either by himself or through the agent purchases goods with in the territory of India and exports the goods and

even if the seller has the knowledge that the goods are intended by the purchaser to be exported, such a transaction is not in the course of export

for the seller does not export the goods, and it is not his concern as to how the purchaser deals with the goods. Such transaction without more

cannot be regarded as one in the course of export because etymoiogically "" in the course of export"" contemplates an integral relation or bond

between the sale and the export.

15. Reliance was also placed on the following observation in State of Bihar and Ors. v. Tata Engineering and Locomotive Co. Ltd. 27 STC 127:

The expression in the course of appearing in Article 286(1)(b) came up for consideration in State of Travancore Cochin v. Bombay Company

Limited. There in this Court held that whatever else may or not fall within Article 286(1)(b) of the Constitution, sales and purchases which

themselves occasion in export or import of the goods as the case may be out of or into the territory of India come within the exemption. In that

case this Court further observed that a sale by export involves a series of integrated activities commencing from the agreement of sale with a

foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be

dissociated from the export without which it cannot be effectuated and the sale and the resultant export form parts of a single transaction. Of these

two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the

other. Even in cases where the property in the goods passed to the foreign buyers and the safes were thus completed within the State before the

goods commenced their journey from the State, the sales must be regarded as having taken place in the course of the export and therefore exempt

under Article 286(1)(b). The same exposition of law is true of clause (2) of Article 286 as it stood prior to its amendment on 11th September,

1956

16. It was also urged that passing of title in Indian Territory was immaterial. Whether the title passed in Indian Territory or foreign territory,

according to the learned counsel, did not make any difference as for deciding whether the sale was in course of export, what had to be seen was

whether the sale had occasioned the export. Attention was drawn to Commissioner of Sales Tax v. Dhampur Sugar Mills Limited and Anr., 26

STC 65 where the sale was held to be in course of export although the delivery of goods was made to foreign buyers within Indian territory. In this

connection learned counsel relied on following observation in Union of India v. K.G. Khosla Co. Ltd. 1979 UPTC 751 ''that a sale which

occasions movement of goods from one State to another is a sale in course of inter state trade, no matter in which State the property in the goods

passes.

17. The aforesaid decisions along with other decisions have been considered by a learned Single Judge of this Court in the case of Commissioner

of Sales tax v. Ganeshilal and Sons 1981 UPTC Page 128 and has held that from the language of Section- 5 of the Central Sales Tax Act it is

clear that it a sale in the course of export only which is exempt and not ""sale for export"". When can a sale said to be in the course of export or for

export depends on the variety of circumstances. The export means taking out something out of the Country across the Custom barriers. The word

course"" means ""sequence"", process, a patch"" in which anything moves. The sequence of movement should be preceded by sale and must result in

export to attract Section- 5. The sale, movement and export must result in crossing of goods outside the country and must run in a channel. They

must be connected with each other and inter linked then only it can be said to be in the course of export.

18. In view of the above discussion, it cannot be said that the sales made by the dealer Opp.party were made in the course of export to Nepal.

There is nothing on record to show that the sales made by the dealer Opp. party were part of the movement of goods from India to outside India

and was interlinked and connected with the crossing of border of the country. The dealer Opp.party transported the goods from Gorakhpur to

Nautanwa. At Nautanwa, it was open to the Nepali dealer after taking the delivery to deal with the goods in the manner, he likes. In this view of

the matter even if the sale has been made with the intention that the goods sold shall be taken out of Indian and the goods ultimately crossed the

border, these by themselves do not result in sale in the course of export. It is the sale which must occasion the export. Resultantly the sales made

by the dealer opposite party to Nepali purchasers at Gorakhpur, cannot termed as sales made in the course of export sales. The upshot of the

above discussion is as follows:-

(1) The sale of goods to Nepali dealer at Gorakhpur cannot be treated as sale made in the course of export sale, as the Nepali dealer was not

under a contractual obligation to necessarily carry the goods to Nepal.

(2) The custom certificates relied upon by the dealer opposite party proved to be forged.

(3) The Tribunal was not justified to take other evidence, not produced during the assessment or reassessment proceeding and thus it could not

rely on Photostat copies of documents when the original were not filed. The reliance placed by the Tribunal on the case of Commissioner of Trade

Tax v. Arora Industrial Corporation, 1980 UPTC 1271 that genuineness of the certificate cannot be doubted in the absence of verification by the

assessing authority from the custom authorities, is misplaced one.

19. In the result the order of the Tribunal cannot be sustained. The same is hereby set aside. The revision are allowed and the appeals filed by the

dealer Opp.party before the Tribunal stand dismissed with cost of Rs. 1,000/- (Rupees one thousand only).