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The Commissioner, Trade Tax Vs Laxmi Narain Ram Gopal

Trade Tax Revision No. 1319 of 1994

Court: Allahabad High Court

Date of Decision: Nov. 20, 2004

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 â€" Section 11, 14, 15A, 3, 34A#Uttar Pradesh Sales Tax Rules, 1948 â€" Rule 12B, 12B(7)

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Advocate: C.S.C, for the Appellant;

Final Decision: Allowed

Judgement

Rajes Kumar, J.
Present revision u/s 11 of U. P. Sales Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal

dated 23.05.1994 relating to the assessment year 1985-86.

2. The brief facts of the case are that the dealer/opposite party (hereinafter referred to as ""Dealer"") established a new Unit for manufacturing of Dal

and was holding a Eligibility Certificate u/s 4-A of the Act. In view of eligibility certificate, Dal manufactured by the dealer was exempted from tax.

Dealer however, issued Form 3-C (2) and Form 3-C (5) to the purchasers of Dal. Assessing Authority initiated proceeding u/s 3-B on the ground

that Form 3-C (2) and Form 3-C (5) were wrongly issued and on account of issuance of such Forms, tax ceases to be leviable in the hands of

purchasers and accordingly passed an order u/s 3-B and demanded tax which ceases to be leviable on account of issuance of Forms 3-C (2) and

Form 3-C (5). First appeals filed by the dealer were rejected. Dealer filed second appeals before the Tribunal which have been allowed and the

order passed u/s 3-B have been set aside.

3. Heard Counsel for the parties.

4. Learned Standing Counsel submitted that the order of Tribunal is erroneous, inasmuch as, dealer sales of Dal was exempted in view of eligibility

certificate u/s 4-A of the Act and declaration Forms 3-C (2) and 3-C (5) could not have been issued by the dealer. He submitted that on account

of issuance of Form 3-C (2) and 3-C (5), tax ceases to be leviable in the hands of the purchasers and therefore, tax had rightly been levied u/s 3-

B. He submitted that the decisions on which, Tribunal placed reliance is not applicable to the present case and they are the cases of purchase made

for and on behalf of Ex- U. P. Principal as Purchasing Commission Agency. In support of his contention, he relied upon the decision of this Court

in the case of Shyam Industries v. CST reported in 1999 U. P. T. C. 1173.

5. Learned Counsel for the dealer submitted that the Form 3-C (2) and Form 3-C (5) were issued by the Assessing Authority and there was no

bar that the dealer holding eligibility certificate u/s 4-A could not issue Form 3-C (2) and Form 3-C (5). He further submitted that in the Form 3-C

(2) and 3-C (5), dealer had declared that the turnover was exempted u/s 4-A, therefore, on the part of the dealer, declaration was neither false nor

wrong and hence the provision of Section 3-(c) does not apply. Forms have been issued by the Assessing Authority and necessary informations

about the issuance of Forms were also given to the Assessing Authority time to time.

6. Having heard learned Counsel for the parties.

7. I have perused the order of Tribunal and the authorities below.

8. Section 3-B reads as follows:-

Section 3-B Liability on issuing false certificates, etc. Notwithstanding anything to the contrary contained elsewhere in this Act and without

prejudice to the provisions of Sections 14 and 15-A, a (person) who issue a false or wrong certificate or declaration, prescribed under any

provision of this Act or the Rules framed thereunder, to another (person) by reason of which a tax leviable under this Act on the transaction of

purchase or sale (made with or by) such other (person) ceases to be leviable or becomes leviable at a concessional rate shall be liable to pay on

such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued.

Provided that before taking any action under this section, the (person) concerned shall be given an opportunity of being heard.

Explanation- Where a (person) issuing a certificate or declaration discloses therein his intention to use goods purchased by him for such purpose as

will make the tax not leviable or leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or

declaration shall, for the purpose of this section, be deemed to be wrong.

Rule 12-B reads as follows:-

(1) The certificates or declarations referred to in Sub-section (7) of Section 3-D shall be in Forms III-(1), III-C (2), III-C(3), III-C(4) and III-C

(5).

(7) In respect of the goods notified under Clause (h) of Sub-section (1) of Section 3-D, the certificate in-

(a) Form III-C (1) shall be issued by the dealer who makes the first purchase of the goods to the dealer selling such goods.

(b) Form III-C (2) shall be issued by the dealer who was the first purchaser of such goods to his selling agent at the time of sending such goods to

him for sale or to the subsequent purchaser at the time of making sale to him of such goods;

[C) Form-III -C (3) shall be issued by the dealer who purchases the goods in the capacity of a purchasing agent to the dealer on whose behalf the

said goods were purchased;

(d) Form III-C (4) shall be issued by the dealer who sells the goods in the capacity of a selling agent to the dealer on whose behalf the said goods

are sold;

(e) Form III-C(5)shall be issued-

(i) by the dealer who had purchased the goods as a purchaser other than the first purchaser, to his selling agent or to the dealer to whom such

goods are sent for sale or, as the case may be, are sold; or

(ii) by the manufacturer of goods on which Central Excise duty, both basic and additional, was leviable and has been paid to his selling agent or the

dealer to whom such goods are sent for sale or, as the case may be, are sold, or

(iii) by the purchaser within Uttar Pradesh of goods referred to in Sub-clause (ii) above to his selling agent or to the dealer to whom such goods

are sent for sale or, as the case may be, are sold

In Form 3-C (2) and 3-C (5) following declarations are being given by the party who issued Forms:-

Form III-C(2) Form III-C(5)

U.P. NoÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. U.P. NoÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

Relating to the yearÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. Relating to the yearÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

Form III-C (2) Form III-C (2)

(See sub rules (6) (b) and 7 (b) of Rule (See sub rules (6) (b) and 7 (b) of Rule

12-B (Certificate in respect of goods 12-B (Certificate in respect of goods

notified u/s 3-D to be issued by the notified u/s 3-D to be issued by the

purchaser/first purchaser thereof to his purchaser/first purchaser thereof to his

selling agent or to the subsequent selling agent or to the subsequent

purchaser, as the case may be). purchaser, as the case may be).

Signature of the Issuing Signature of the Issuing

OfficerÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. OfficerÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

Seal of the issuing officeÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. Seal of the issuing officeÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

Date of issueÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. Date of issueÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

Name and address of the dealer to Name and address of the dealer to

whom issuedÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.. whom issuedÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½..

Number of Registration Number of Registration

CertificateÃ¯Â¿Â½Ã¯Â¿Â½.. CertificateÃ¯Â¿Â½Ã¯Â¿Â½..

Date form which it is Date form which it is

effectiveÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. effectiveÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

IÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½..Proprietor/Partner/Karta of IÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½..Proprietor/Partner/Karta of

Hindu undivided family/Director/person Hindu undivided family/Director/person

duly authorized under Rule 77-A by duly authorized under Rule 77-A by

M/SÃ¯Â¿Â½Ã¯Â¿Â½.(name and full address) do M/SÃ¯Â¿Â½Ã¯Â¿Â½.(name and full address) do

hereby certify that our said firm is hereby certify that our said firm is

registered u/s 8-A of the U.P. Sale Tax registered u/s 8-A of the U.P. Sale Tax

Act and its Registration no. is Act and its Registration no. is

Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. Which is effective Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. which is effective

fromÃ¯Â¿Â½Ã¯Â¿Â½ fromÃ¯Â¿Â½Ã¯Â¿Â½

2. I further certify that our said firm has 2. I further certify that our said firm has

sold/sent for sale to M/S Ã¯Â¿Â½Ã¯Â¿Â½ sold/sent for sale to M/S Ã¯Â¿Â½Ã¯Â¿Â½

(name and full address)Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½ (name and full address)Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½

(commodity) (weight) for RsÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½ (commodity) (weight) for RsÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½

(value) against Bill/Cash memo/Chalan 3. I also certify that the aforesaid goods

NoÃ¯Â¿Â½.. In respect of these goods, our were-

said firm is/has been the purchaser/first

purchaser and accepts/has accepted (i) manufactured by us and have borne

liability to pay purchase tax. (Central Excise Duty, both basic and

additional; or

PlaceÃ¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½.

(ii) received by us from our principals

Date Ã¯Â¿Â½Ã¯Â¿Â½Ã¯Â¿Â½. who have issued to us Form III-C

(2)/III- C(5) No. Ã¯Â¿Â½.. datedÃ¯Â¿Â½Ã¯Â¿Â½in

respect thereof,

or

(value) against Bill/Cash memo/Chalan

No. Ã¯Â¿Â½Ã¯Â¿Â½.. In respect of these goods,

our said firm is/has been the

purchaser/first purchaser and

accepts/has accepted liability to pay

purchase tax.

PlaceÃ¯Â¿Â½Ã¯Â¿Â½

DateÃ¯Â¿Â½Ã¯Â¿Â½..

Signature

Proprietor/Partner/Karta/Director/

Person

duly authorized under Rule 77-A

Signature

Proprietor/Partner/Karta/Director/

Person

duly authorized under Rule 77-A

9. Form 3-C (2) party who issues Form gives declaration that it"s Firm is the first purchaser and accepts liability to pay purchase tax. In Form 3-C

(5). Declaration is made that he has received Form 3-C (2)/3-C (5) from its Principal or received Form 3-C (2) and 3-C (5) from whom he has

made purchases.

10. In the present case being eligibility certificate holder u/s 4-A, Dal was exempted from tax and therefore, there was no liability of tax on Dal and

hence, declaration made in the Form 3-C (2) that it was liable for purchase tax or admits liability of purchase tax was wrong. Further since dealer

had not acted as Agent for sale of Dal and had not purchased Dal declaration in Form 3-C (5) was also wrong. In fact, Form 3-C (2) and Form

3-C (5) should not have been issued in respect of manufactured Dal. In the circumstances, stated above, declaration made in Form 3-C(2) and

Form 3-C (5) both were false and wrong and on the account of issuance of Form 3-C (2) and 3-C (5) tax ceases to be leviable on the purchases,

thus, both the conditions of Section 3-B were satisfied in the present case and therefore, order passed u/s 3-B was justified. Similar question came

up for consideration before this Court in the case of Shyam Industries, Gorakhpur v. CST (Supra), this Court held as follows:-

4- Learned Counsel for the revisionist contended that by issue of the declaration in Form-III-C, no liability of the revisionist had ceased because

there was no liability at all as it was holding an eligibility certificate. Learned Counsel for the revisionist, however, conceded that by the issue of

such declarations the liability of the dealer, who purchased the oil cake from the revisionist, to pay purchase tax u/s 3-D had ceased. The liability

arises if by reason of declaration tax liability under the Act on the transaction of purchase of sale made with or by such other person ceases to levy

or becomes leviable at a concessional rate. Therefore, the seizure of liability is not contemplated with reference to the buyer or the dealer but is

with reference to the transaction. The transaction in question were of a sale and purchase. A sale by the revisionist is purchase by the other side

and, therefore, there was a transaction of sale on the one side and purchase on the other the purchase was liable to tax and because of the

declaration the purchase seized to be taxable in the hands of the purchaser. The declarations were patently wrong because the dealer revisionist

was a manufacturer and not a purchaser, therefore, the dealer to whom the goods were sold could not be a subsequent purchaser and Form -III-

C (2) could not be issued in terms of Rule 12-B (7) (b) of the U. P. Sales Tax Act.

12. For the reasons stated above, the order of Tribunal is liable to be set aside. In the result, present revision is allowed. Order of Tribunal is set

aside.