

(2004) 11 AHC CK 0244

Allahabad High Court

Case No: Trade Tax Revision No's. 1354, 1356 and 1357 of 1995

The Commissioner, Trade Tax

APPELLANT

Vs

Leasing and Finance Ltd. and Key
Leasing and Finance Ltd.

RESPONDENT

Date of Decision: Nov. 9, 2004

Acts Referred:

- Central Sales Tax Act, 1956 - Section 10, 10A
- Constitution of India, 1950 - Article 366
- Uttar Pradesh Sales Tax (Amendment) Act, 1985 - Section 29A
- Uttar Pradesh Trade Tax Act, 1948 - Section 11, 2, 3, 8(3)

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Advocate: S.C, for the Appellant; Bharat Ji Agarwal, for the Respondent

Final Decision: Dismissed

Judgement

Rajes Kumar, J.

These three revisions u/s 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") are directed against the order of the Tribunal dated 31st August, 1995 relating to the assessment years, 1987-88, 1989-90, 1990-91, under the Central Sales Tax Act by which Tribunal has cancelled the penalty levied u/s 10A of the Central Sales Tax Act.

2. Brief facts of the case are that the dealer opposite party (hereinafter referred to as "Dealer") was a Leasing company. Dealer purchased certain machinery from outside the state of U.P. and given on lease to the parties outside the State of U.P. and while making purchases the dealer issued Form-C to the Ex-U.P. parties. Assessing Authority levied the penalty u/s 10A of the Act for the alleged violation of Section 10(d) of the Act. It is alleged that the opposite party issued form-C but have not sold such machinery inside the State of U.P. nor under the Central Sales Tax Act

inasmuch as the definition of sale under the Central Sales Tax Act did not include the lease transaction. Dealer tiled appeal before the Deputy Commissioner (Appeals) Trade Tax, Kanpur. Deputy Commissioner (Appeals) allowed the appeal and remanded back the matter to the assessing officer. First appellate authority held that on the fact of the case, there was no violation of Section 10(d) of the Act. First appellate authority however, observed that the dealer while issuing Form-C had made wrong declaration that it was registered, while it was not registered at Rajasthan where the machinery have been given on lease. Appellate Authority remanded back the matter to the assessing officer with the direction to (issue a notice specifying] under which clause default was committed and thereafter pass the penalty order. Dealer filed appeal before the Tribunal. Tribunal vide impugned order set aside the order of the first appellate authority as well as order of the assessing authority and quashed the penalty levied u/s 10A of the Act.

3. Heard learned counsel for the parties.

4. Tribunal held that both under the U.P. Trade Tax Act and under Rajasthan Trade Tax Act. the definition of the sale included transfer of right to use goods. Therefore, the leasing transaction was covered within the ambit of sale and, therefore, there was no violation of Section 10(d) of the Act Tribunal relied upon the decision of this Court in the case of Jindal Leasing Ltd. v. Commissioner of Sales Tax reported in 1993 UPTC page 1188. Tribunal further held that the order of the first appellate authority remanding the case to the assessing officer to give fresh inning to levy penalty under different clause after holding that there was no default under clause (d) of Section 10 of the Act is unjustified. Tribunal held that the case could not be remanded back to the assessing officer to give fresh inning and accordingly penalty was quashed.

6. I have perused the order of the Tribunal and the Authorities below.

7. Admitted fact of the case which are referred in detail in the order of the first appellate authority that the dealer had purchased machinery from M/S Kirlosker Electric Co Ltd. Banglore and others Bilti was prepared in the name of self for M/s J.K. Cement, Neembahera, Rajasthan, which was subsequently endorsed in favour of the dealer. Thereafter, the dealer took the delivery of such machine at Neembahera, Rajasthan and gave such machines to M/s. J.K. Cement Works Neembahera, Kailash Nagar Rajasthan on lease. From the aforesaid fact it is clear that the machines have been given on lease at Rajasthan Tribunal observed that definition of sale u/s 2 (o) of the Rajasthan Sales Tax Act (No. 29/54) transfer of right to use have been included in the definition of sale by Rajasthan Sales Tax Amendment Act. 1987 (Act No. 7 of 1987) with effect from 1.4.1987 and new Clause (4) of Section 2 (o) of the Rajasthan Sales Tax Act has been introduced. Under the U.P. Trade Tax Act, Section 2 (h) was amended by Sales Tax Amendment Act, 1985 and "transfer of right" to use has been included with the ambit of sale. The aforesaid amendment have been made enlarging the definition of sale in view of the insertion of Section 29-A under Article

360 of the Constitution of India by which the definition of sale has been enlarged including the transfer of right to use the goods. In view of the aforesaid amendment both under the U.P. Trade Tax Act and under the Rajasthan Sales Tax Act, the sale included transfer of right, to use goods during the year under consideration and therefore the goods purchased from outside the State of U.P. in respect of which Form-C was issued was actually sold at Rajasthan by way of lease and therefore there was no violation of Section 8(3)(b) of the Act and there was no violation of Section 10(d) of the Central Sales Tax Act. first appellate authority as well as the Tribunal has rightly help that there was no violation of clause (d) of Section 10 of the Act.

8. In the case of Jindal Leasing Ltd v. Commissioner of Sales Tax, reported in 1993 UPTC 1188 this court held as follows:

"The learned Standing Counsel, on the other hand, conceded that for determining whether the goods have been resold. In terms of the registration and Form "C" furnished by the dealer, the definition of "sale", as contained in the Sales Tax Act of the State in which the goods are sold or transferred would be relevant and therefore, the view of the authorities below that it must be a sale as defined under the Central Sales Tax Act, is not correct. He however, contended that although the definition of "sale" was amended by U.P. Act No. 25 of 1985, but no consequential amendment was made immediately and, therefore, the goods that were leased out do not become liable to sales tax with effect from 2nd February, 1983. He pointed out that Section 3 (f), which is the charging section in respect of such transactions, was enacted with effect from 13th September, 1985 and the notification prescribing the goods which would be subjected to tax and prescribing the rate of tax was issued only on April 27, 1987 meaning thereby that from that date only the transactions of lease were not liable to sales tax, and, therefore, any transactions that took place prior thereto would not be a sale within the meaning of the U.P. Sales Tax Act. This contention, in my view, is not tenable because what has to be seen is whether the goods have been sold within the meaning of the Act and, not whether the sales thereof are liable to tax."

9. I also agree with the view of the Tribunal that the remand of the case to provide a fresh inning to the assessing authority is not justified. Penalty u/s 10A of the Act was levied by the Assessing Authority for the alleged violation of clause (d) of Section 10 of the Act. Once first appellate authority arrived at a conclusion on the fact of the case that there was no violation of Section 10(d) of the Act penalty ought to have been quashed. The case could not be remanded back to the assessing officer with the direction to issue a fresh notice specifying the clause under which the default was committed. It is always open to the assessing officer to initiate penalty proceedings for the default under any other clause of Section 10 of the Act separately. There was no need to remand back the matter after coming to the conclusion that the penalty levied for the default of Section 10(d) of the Act was not

justified.

10. In the result, all the three revisions fail and are accordingly, dismissed.