(2005) 08 AHC CK 0239

Allahabad High Court

Case No: T.T.R. No. 1030 of 1997

The Commissioner, Trade Tax	APPELLANT
Vs	
Vishal Scrap Traders	RESPONDENT

Date of Decision: Aug. 12, 2005

Acts Referred:

- Central Sales Tax Act, 1956 - Section 8(5)

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Advocate: S.C, for the Appellant;

Final Decision: Allowed

Judgement

Prakash Krishna, J.
Raising short controversy the present revision which relates to the assessment year 1987-88 has been filed by the Commissioner of Trade Tax challenging the legality and propriety of the order of the Tribunal, dated 22nd April, 1997 passed in Second Appeal No. 623 of 1997.

2. The facts of the case are not much in dispute. The dealer/opposite party carries on the business of purchase and sale of iron scrap purchased dealer/opposite party from the registered dealers outside the State thereafter it is soled by the dealer/opposite party to another registered dealer out side the State of U.P. The rate of taxability to such sales outside the State of U.P. is presently involved in the revision.

3. The dealer/opposite party has admitted the tax liability on the central sales at the rate of 1% in view of the notification No. 3618, dated 1st July 1969 issued by the Stale Government I u/s 8(5) of the Central Sales Tax Act.

4. The assessing officer has found that the dealer/opposite party has purchased the scrap from a registered dealer outside the State of U.P. There is also no dispute that

the scrap was sold as such in same form and condition by the dealer/opposite party to a registered dealer outside the State of U.P. The only dispute is with regard to the condition as! to whether the scrap purchased by the dealer/opposite party from out side the State of U.P. was tax paid or not. The assessing authority found that the benefit of the aforesaid notification can not be extended to the dealer/opposite party in view of the fact that no tax was paid by the dealer/opposite party on the inter State purchase of scrap. He had only paid the commission at the-rate of 1%, therefore, the dealer/opposite party was not held to be entitled of the aforesaid notification. This order was confirmed in appeal. The Tribunal in further appeal has set aside the order on the ground that the purchases were made by the dealer/opposite party from the registered dealer out of U.P.. This according to the Tribunal is sufficient compliance of the conditions of the aforesaid notification no. 3618.

5. I have given, careful consideration to the facts and circumstances of the case. It is evident that the Tribunal has not recorded a finding that the iron scrap purchased by the dealer/opposite party was tax paid, The Tribunal proceeded to extend benefit of the aforesaid notification on the basis that it is look out of the authorities of the appropriate State to realize the tax from the selling dealer of the dealer/opposite party. difficult to agree with the aforesaid reasoning of the Tribunal. Notification no, 3618 clearly lays down three conditions Which are required to be fulfilled by a dealer availing the benefit of the aforesaid notification. Out of three conditions the only dispute is with regard to the one condition namely. the goods purchased by a dealer of U.P. from out side State of U.P. and subsequently sold by such dealer in inter State trade or commerce, was tax paid or not. The dealer/opposite party has to establish that the scrap has already been subjected to tax under the Central Sales Tax Act. It is not sufficient as wrongly held by the Tribunal, that the selling dealer was a registered dealer. The burden lay upon the dealer/opposite party to establish that the scrap in question had already been subjected to tax under the Central Sales Tax Act. In case of non fulfillment; of this condition it would disentitle the dealer to claim concessional rate of tax on the scrap.

6. The Supreme Court in the case of State of Punjab and Ors. v. Punjab Fibres Ltd. AIR 2004 SCW 6988 has held as follows :-

"it is settled law that to avail of benefits of notification the parties must strictly comply with the conditions of the notification. It is also settled law that the notification has to interpreted In terms of its wording, where the language is clear and unambiguous benefit can not be granted merely on the ground of sympathy".

7. Here also the language of the notification is clear and unambiguous. At least no ambiguity could be pointed out by the dealer/opposite party in the above notification. The words "have already been subjected to the tax under the Central Sales Tax Act" in the notification no. 3618 dated 1.7.1969 do show beyond pale of doubt that before claiming the benefit under the aforesaid notification it has to be

established that the goods have already been subjected to Central Sales Tax.

8. The order of the Tribunal gives an impression that it proceeded in the matter as if substantial compliance of the requirements of the notification is sufficient. In my view this approached of the Tribunal is legally not correct. The clause of the notification is clear and explicit and there is no room of any doubt therein. The Supreme Court in the case of State Level Committee and Anr. v. Morgardshammar India Ltd. 1996 UPTC 213 has held that in the case of clear language of the clause it is not possible to entertain the submission of substantial compliance. It has further been held that a provision providing for exception or exemption as the case may be has to be construed strictly.

9. In view of the aforesaid discussion, the order of the Tribunal can not be sustained. The revision is allowed and the order of the Tribunal as well as of the first appellate authority are hereby set aside. No order as to costs.