courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2002) 04 AHC CK 0190

Allahabad High Court

Case No: Trade Tax Revision No. 218 of 1999

Gupta Grain Merchant	APPELLANT
Vs	
Commissioner of Trade Tax	RESPONDENT

Date of Decision: April 30, 2002

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 3D
- Uttar Pradesh Trade Tax Rules, 1948 - Rule 12B

Citation: (2003) 131 STC 25

Hon'ble Judges: R.B. Misra, J

Bench: Single Bench

Advocate: Rajesh Agarwal, for the Appellant; S.D. Singh, for the Respondent

Final Decision: Allowed

Judgement

R.B. Misra, J.
The present trade tax revision has been preferred u/s 11 of the U.P. Trade Tax Act (called "the Act" in short) against the order dated March 5, 1998 passed in Second Appeal No. 244 of 1993 (Year 1985-86).

1. Heard Sri Rajesh Agarwal, learned counsel for the applicant-revisionist and Sri S.D. Singh, learned Standing Counsel for the respondent.

2. The brief facts necessary for adjudication of the case are that the applicant-revisionist deals, in foodgrain, oil seed, etc., which are declared commodity u/s 14 of the Central Sales Tax Act, 1956. In the relevant year applicant-revisionist purchased foodgrain from registered dealers and obtained forms III-C(2) and III-C(5) from such dealers. The selling dealers have declared and admitted liability of tax. However, the said forms III-C(2) and III-C(5) have been lost; the information above the same was given to the assessing officer on March 27, 1989. On the request of the applicant-revisionist, the assessing authority

made enquiries from the concerned assessing authorities of seller and received confirmatory letter that the said forms in question have been issued to the applicant-revisionist. In the circumstances, the realisation of tax levied in the absence of forms have been waived in view of circular dated January 15, 1988.

3. The circular dated January 15, 1988 is provided as below :

^^i= la- fof/k nks&29&I 1 I 84&85 ls 87&88&3217@ fcï¿½h dj dk;kZy; vk;qDr fcï¿½h dj] mRrj izns"k A

fof/k&vuqHkXk

fnukad 15 tuojh 1988

fo"k; % mRrj izns"k fcï¿½h dj vf/kfu;e dh /kkjk 3&gh ds varxZr NwV ls lacaf/kr fu/kkZfjr izi=ksa ds LFkku ij vU; izek.k&i= fn;s tkus ij NwV dh vuweU;rk A

ekuuh; mPp U;k;ky; }kjk loZJh xksfoUn jke rulq[k jk; ,.M dEiuh cuke vk;qDr fcï¿½h dj] 1985 ;w ih Vh lh 1060 esa fn;s x;s fu.kZ; ds QyLo:i /kkjk 3&gh ds vUrxZr ï¿½; dj@fcï¿½h dj ls dj&eqfDr rHkh fey ldrh gS tc fu/kkZfjr izi= I 3&x I nkf[ky fd;k tk;s A ysfdu dHkh&dHkh ,slh ifjfLFkfr Hkh vk tkrh gS fd dj&eqfDr izkIr djuksokys O;kikjh dks nwljs O;kikjh }kjk fu/kkZfjr izi= tkjh ugh fd;k tkrk gS] ;|fi dj&eqfDr izkIr djusokyk O;kikjh] fu/kkZfjr izi= u nsusokys O;kikjh ds dj&fu/kkZj.k vf/kdkjh ls lacaf/kr [kjhn@fcï¿½h ij dj tek dk izek.k&i= izkIr dj izLrqr djrk gS "kklu dks ;g ekeyk bl lq>ko ds lkFk fd] dj&fu/kkZfj.k vf/kdkjh fu/kkZfjr izi= ds vHkko esa dj fu;ekuqlkj vkjksfir dj ns vksj VSDl tek ds izek.k&i= ds vkk/kkj ij ,slk vkjksfir dj ekQ dj nsa vkSj ,sls vf/kdkj dj&fu/kkZj.k vf/kdkjh dks ns fn;s tk;s] lUnfHkZr fd;k x;k gS A "kklu us vius i= la ,l-Vh-&2&7484@ nl&87&9&88&I 176 I @84 fnukad 29-12-87 }kjk fuEu funsZ"k fn;s gSa&

mPp U;k;ky; dh O;oLFkk dh n"kk ls ;gh ekuk tk;sxk fd izi= ds vHkko esa NwV vuqeU; ugha dh tk ldrh A Qyr% nksuksa O;kikfj;ksa ij fu;ekuqlkj dj vkjksfir djuk gksxk A rFkkfi pwï¿½fd ,d inh; dj] O;oLFkk esa ,d oLrq ij ,d ls vf/kd okj dj yxkus dh "kklu dh dksbZ eU"kk ugha gS] vr% bl izLrko ij "kklu dks vkifRr ugh gS fd ;fn ,d O;kikjh }kjk VSDl tek dk izek.k i= ns fn;k tkrk gS rks nwljs O;kikjh ij vkjksfir dj ekQ dj fn;k tk;s vkSj ,slh ekQh dk vf/kdkj fu/kkZjd vf/kdkjh dks ns fn;k tk;s A rFkkfi dj dh ikQh dsoy bl vk/kkj ij fn;k tkuk mfpr u gksxk fd nwljs O;kikjh us lacaf/kr lO;okgj ij dj tek dj fn;k gS vkSj mldk izek.k izLrqr dj fn;k gS A vfirq blds lkFk ;g Hkh vko";d gksxk fd ,slk nwljk O;kikjh fyf[kr izk:i ls foï¿½h dj vf/kdkjh dks bl vk"k; dk izkFkZuk i= ns fd mlus tks /kujkf"k lacaf/kr lO;ogkj ij dj ds :i esa tek dh gS mls dj&eqfDr dk nkok djusokys O;kikjh dh vksj ls tek fd;k x;k ekuk tk;sa D;ksafd ,slk u djus ij ;fn igys O;kikjh ij vkjksfir dj ekQ dj fn;k tkrk gS vkSj nwljk O;kikjh] ftlus dj tek fd;k gS] dj dh okilh dk nkok djrk gS rks mls tek dh xbZ /kujkf"k okil djus ls bUdkj fd;k tkuk lEHko u gksxk A

d"i;k rnuqlkj dk;Zokgh fd;k tkuk lqfuf"pr djsa vkSj bl laca/k esa iwoZ esa tkjh fd;s x;s ifji=ksa dks rnuqlkj la"kksf/kr le>k tk;s A**

4. In the above circular exclusive power of waiver has been given to the assessing officer. However, the Deputy Commissioner (Executive), initiated proceeding u/s 10-B and thereafter passed the order indicating that the waiver of tax granted by the assessing officer is not justified because certificate prescribed in the circular has not been furnished and order dated March 28, 1993 of the Deputy Commissioner passed u/s 10-B is enclosed as annexure 2. Being aggrieved with the said order, the applicant-revisionist preferred second appeal before the learned Tribunal which affirm the view of the Deputy Commissioner by its order dated March 5, 1998 (annexure 3).

5. The following questions has been submitted for the consideration :

"(a) Whether, in view of the facts and circumstances, the Tribunal ought not have remanded back the case to the assessing authority to give further opportunity and make further enquiries to obtain thecertificate as required under the circular dated January 15, 1988 when the selling dealer has already paid the sales tax on the transaction and on the goods in question ?"

6. It has been contended on behalf of the applicant-revisionist that in exercise of power u/s 10-B, the Deputy Commissioner has not correctly appreciated the scope of circular dated January 15, 1988 and once the satisfaction has been derived by the assessing officer that for the goods in question, the tax has already been paid by selling dealer, therefore, waiver granted by the assessing officer should have properly considered and benefit should have been given to the petitioner.

7. In [19881 71 STC 1 (SC); 1988 UPTC 1204 (Commissioner of Sales Tax v. Prabhudayal Prem Narain) the Supreme Court has held that for the failure to furnish form III-C(1) the assessee is not entitled to exemption and assessee cannot file any other evidence in place of the form for this purpose.

The Supreme Court while taking the above view has reversed the 1982 UPTC 1094 (Prabhu Dayal Prem Narain v. Commissioner of Sales Tax) where the court has held :

"that the High Court in the impugned order was in error in directing the Tribunal to consider the matter on other evidence. The assessee is entitled to exemption only on furnishing declaration forms. Since the assessee did not do so, he was not entitled to exemption." (para 6 of UPTC ; page 3 of STC).

The Supreme Court in Commissioner of Sales Tax v. Prabhudayal Prem Narain [1988] 71 STC 1 has approved [1988] 71 STC 4 (All.) [App.] ; 1985 UPTC 1060 (Govind Ram Tansukh Rai & Co. v. Commissioner of Sales Tax) where if the assessee had not furnished the required declaration forms in order to be entitled for exemption, the assessee could not file any other evidence which required to be considered by the taxing authorities and Supreme Court in Commissioner of Sales Tax v. Prabhudayal Prem Narain [1988] 71 STC 1 has also relied on Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others, : where "the dealer could claim exemption

on the sales to the registered dealer by furnishing the declaration form and unless such declaration forms are furnished, the dealer was not entitled to any exemption and the provisions of this nature was construed as mandatory".

8. However, since the State Government has come with circular dated January 15, 1988 and undisputedly the tax has already been paid on the goods in transaction in question, therefore, it is necessary that the assessing officer is treated to have power to give waiver but for that he has to obey and observe the formalities and requirement of circular dated January 15, 1988 and therefore, view taken on March 5, 1998 by the learned Tribunal is likely to be set aside. Therefore, the order dated March 5, 1998 is set aside and the matter is relegated to the assessee to verify and obtain the required information and obtain certificate if necessary as required under circular dated January 15, 1988 to extend the benefit to the applicant-revisionist accordingly. In these terms, the question of law is dealt accordingly.

9. A certified copy of this order shall be given to the learned counsel for the applicant who may produce the same to the concerned authority. The assessing authority shall proceed with co-operation of the applicant-revisionist to expedite the matter preferably within four months.