

Commissioner of Sales Tax

Vs

Prabhudayal Prem Narain

Civil Appeal No. 2506 (NT) of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

26.07.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Notice was issued on this special leave application stating that the matter would be disposed of finally at the notice stage itself. None has appeared pursuant to the notice. We have considered the matter and heard Shri Manchanda, counsel for the petitioner. Special leave is granted and the appeal is disposed of by the judgment herein.

2. This appeal arises from the judgment and order of the High Court of Allahabad, dated August 18, 1982. The said judgment was delivered on a revision application filed before the High Court. The application related to the assessment year 1977-78 under the U.P. Sales Tax Act. The first question involved before the High Court of Allahabad was whether the purchase of pulses effected by the assessee prior to May 1, 1977 could be subjected to tax under Section 30(2) of the Sales Tax Act. The Tribunal held that these could be so subjected.

3. The High Court referred to the Notification No. ST-III-2712/X-6(2)-77 U.P. Act XV-48-order-77 and held that the contention of the assessee could not be accepted that he had purchased the pulses in question before May 1, 1977. There was no dispute on this contention raised subsequently. The only contention that was urged before the High Court was that the Assistant Commissioner (Judicial), was about granting relief to the assessee in respect of his turnover on pluses of Rs. 3,75,500 to the extent of Rs. 3,19,679 on the basis of certain evidences that had been produced before the assessing authority and the Assistant Commissioner. The Tribunal was of the view that since the assessee had not furnished Form III-C(1), he was not entitled to any exemption under Section 3-D of the Act. It appears that in the case of Abdul Ghani Banney Khan v. CST (1982 UPTC 665) a learned Single Judge of the High Court of Allahabad held that on the language of Section 3-D(7-b), the assessee was entitled to lead evidence to the satisfaction of the assessing authority that the sale was made to a registered dealer and was not confined only to furnishing Form III-C(2). There was, however, an earlier decision to the contrary in the case of CST v. Kailash Trading Co. (1981 UPTC 821) of the same court which has been referred to in this case.

4. In the judgment under appeal the High Court was of the view that as the Tribunal had not gone into the proof furnished by the assessee before the assessing authority and the Assistant Commissioner (J) in support of his claim for exemption which according to the decision in Abdul Ghani Banney Khan (1982 UPTC 665), should be examined by the Tribunal, it remitted the matter to the Tribunal. In the premises the High Court allowed the revision and remitted the matter back to the Tribunal and directed it to consider the question whether the dealer was entitled to get any

exemption on the basis of the evidence that he had furnished. According to the appellant, the revenue, here the High Court was wrong because in view of Section 3-D(7-b) of the Act, he was not entitled to lead any other evidence apart from submitting to the registered dealer From No. III-C(2). Clause (b) of sub-section (7) of Section 3-D provides as follows :

Every sale within Uttar Pradesh by a dealer either directly through another, whether on his account or on account of anyone else, shall, for the purposes of sub-section (2), be deemed to be a sale to a person other than a registered dealer, unless the dealer selling the goods proves otherwise to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the purchaser of such goods, in such form and manner and within such period, as may be prescribed.

5. Under the said section, declaration forms have been prescribed by Rule 12-B. It appears that this question stands concluded so far as the State of U.P. is concerned, by a Bench decision of the said High Court in the case of M/s. Govind Ram Tansukh Rai & Co., Budaun v. CST. (1985 UPTC 1060) There, after considering the aforesaid two decisions of the learned Single Judges, the Division Bench held that 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 was required to be considered by the taxing authorities.

6. In that view of the matter the decision of the Division Bench must prevail. This also follows logically from the decision of this Court in Kedar Nath Jute Mfg. Co. Ltd. v. CTO (16 STC 607 : (1965) 3 SCR 626 : AIR 1966 SC 12), where this Court while dealing with similar provisions under the Bengal Finance Sales Tax Act, held that 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. This Court further reiterated that the provisions of this nature should be construed as mandatory. In that view of the matter there is no scope for taking any contrary view. In the premises, 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.

7. The appeal is allowed and the decision of the High Court is set aside and the order of the Tribunal is restored. There will be no order as to costs.

</html