

SUPREME COURT OF INDIA

Air Tech India

Vs.

Asstt. Commr., Comml. Taxes

C.A. No. 2917 of 1996

(S. P. Bharucha and R.C. Lahoti JJ.)

14.12.1999

ORDER

S.P. BHARUCHA AND R.C. LAHOTI, JJ.

1. We are concerned with the interpretation of Rule 3(66a) of the Bengal Sales Tax Rules, 1941, to this limited extent:

Provided that the dealer claiming the benefit of this clause will be so eligible only if he keeps separate accounts in respect of such newly set up Small Scale Industry, issues serially numbered cash/ credit memos for sales of goods manufactured in such industry, keeps vouchers and other documents for purchases of plant and machinery for establishment of such industry and maintains other records to prove that sales claimed exempt under this clause were of goods manufactured in such industry set up by him.

2. The assessee satisfied all the requirements for the purposes of obtaining the benefit of the said rule except that it maintained cash/credit memos that started with the serial No. 1 for each of the two

months for which it claimed the benefit. The Assistant Commissioner, Commercial Taxes, denied the benefit, observing thus:

Perusal of the copies of sale bills reveals that for every calendar month the dealer issued sale bills starting with serial number 1. Hence, it cannot be said that the sale bills are serially numbered.

This order was upheld in revision by the Deputy Commissioner, who said that if the assessee's argument that there was no break in the serial numbers of the sale bills in any particular month was accepted as correct, it might also be argued that sale bills issued each day starting with serial number 1 should also not be recorded as a violation of the relevant provisions. The West Bengal Taxation Tribunal upheld the view taken by the authorities below.

3. Learned Counsel for the assessee submitted that the assessee had issued bills that were serially numbered and there was no dispute on this score. In his submission, there was no warrant for refusing the assessee the benefit on the ground only that the bills were serially numbered for each month and not for a whole year. There was no justification for reading any such requirement into the plain language of the first proviso of Rule 3(66a). He also submitted that, in any event, there was substantial compliance with the provision. On behalf of the Sales Tax authorities, it was contended that under the scheme of the Bengal Finance (Sales Tax) Act, 1941 and the Rules thereunder, the requirement to maintain and issue serially numbered cash and credit memos could relate only to numbering over a year and not a single month.

4. We find no merit in the submission on behalf of the Sales Tax authorities. The first proviso to Rule 3(66a) must be read as it stands. It requires the assessee to issue serially numbered cash and credit memos for Sales of goods manufactured by it. There is no requirement that such serial issue should be for the period of one year or indeed for any other period.

5. It would have been another thing if the Sales Tax authorities had found as a fact that the assessee had not issued bills serially. But, as it is, they found that the assessee had issued bills serially, with only this corollary that a new serial was started with each new month. There was, in our view, no justification in these circumstances for denying the assessee the benefit.

6. In the result, the appeal is allowed and the order under appeal set aside. The appellant shall be entitled to the benefit as aforesaid. No order as to costs.