

Universal Exporters Vs. State of U.P.

Universal Exporters Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/462670

Court : Allahabad

Decided On : Aug-19-1983

Reported in : [1983]54STC290(All)

Judge : H.N. Seth, ;R.M. Sahai and ;V.K. Mehrotra, JJ.

Appeal No. : Miscellaneous Writ Petition No. 48 of 1983

Appellant : Universal Exporters

Respondent : State of U.P.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Bharatji Agrawal, Adv.

Disposition : Petition allowed

Judgement :

R.M. Sahai, J.

1. In this petition, initially for direction to the Sales Tax Officer to issue forms III-A, who despite application after application since February, 1982, to 5th January, 1983, was sitting tight over the matter, subsequently amended for quashing order dated 3rd February, 1983, rejecting the petitioner's application dated 5th January, 1983, the basic controversy to be decided is if a registered dealer under the U. P.

Sales Tax Act purchasing goods liable to tax on point of sale to the consumer from a registered dealer is entitled for these forms even if the goods have been purchased for export.

2. For this purpose it is necessary to extract Sub-rule (1) of Rule 12-A of the U. P. Sales Tax Rules which entitled a registered dealer to obtain these forms from the Sales Tax Officer. It runs as under :

A registered dealer who wishes to purchase any goods, liable to tax under Sub-section (1) of Section 3-A or Section 3-AA at the point of sale to the consumer, without payment of tax shall furnish to the selling dealer a certificate in form III-A, duly filled in and signed by him.

3. It entitles a dealer who does not want to pay tax on purchase of goods, mentioned in Section 3-A and Section 3-AA (which now stands deleted but was in force in the assessment years with which this petition is concerned) to furnish a declaration to its selling dealer that he was purchasing it for resale. What is the purpose of this rule Why this exemption from tax Is it to be read in isolation, as suggested by the learned counsel for the assessee, or it has been framed with objective. It is well-known that in the scheme of the Act goods are taxable either at single or multi-point. Normally single point is either at manufacturer, or import or sale to consumer. Little difficulty may arise in first two. But sale to consumer in series of sales may not be easy to determine. Further a dealer registered under the Act is empowered to recover an amount equivalent to the amount of sales tax under Section 8-A(2)(b) from the person to whom the goods are sold. But if it is sold to a dealer who is also registered and purchase is made for resale, then obviously it is not sale to the consumer and the purchasing dealer may be absolved of liability of paying tax.

4. Provision for taxing goods liable to tax at the point of sale to the consumer was made when the Central Sales Tax Act was enacted in 1956 and certain goods were declared to be of special importance by Section 14 and restriction was imposed on States not to levy tax at more than one stage and at the rate specified in Section 15 of the Act. Section 3-AA was added to the State Sales Tax Act by Section 5 of Act 19 of 1956 providing for levy of tax on such goods enumerated in

the Section at the point of sale to the consumer. Every sale, however, was presumed to be a sale to the consumer unless the dealer proved otherwise. As proof by the dealer in every case would have created difficulty, rather uncertainty, the State Government in furtherance of Section 3-AA framed Rule 12-A by Notification No. ST-1095 dated 30th March, 1957, providing for a declaration to be furnished by a purchasing dealer in form III-A to the selling dealer that he was purchasing the goods for resale in same condition.

5. The section was amended by Act 32 of 1957 widening the range of goods by adding words 'in all its forms', 'of all kinds', etc. Sub-section (2) of the amended section read 'unless the dealer proves otherwise, every sale by a dealer shall, for the purposes of Sub-section (1), be presumed to be to a consumer'. With minor amendment in rate, etc., the section continued till it was substituted by Amendment Act 1 of 1973 and stands in the present form. Instead of enumerating various goods the section adopted simpler method of including all goods declared to be of special importance under Section 14 of the Central Sales Tax Act. And instead of Sub-section (2) a new Section 3-AAA was added which reads as under :

3-AAA. Where goods are liable to tax under this Act only at the point of sale to the consumer, every sale by a dealer-

(a) to a registered dealer who does not purchase them for resale, within the State or in the course of inter-State trade or commerce, in the same form and condition in which he has purchased them, or

(b) to any person other than a registered dealer,

shall be deemed to be a sale to the consumer, unless the dealer proves otherwise to the satisfaction of the assessing authority and, for that purpose also furnishes to the assessing authority such declaration, obtained from the purchasing dealer, in such form and manner and within such period, as may be prescribed.

6. Rule 12-A was also amended and various Sub-rules were added to it. Earlier it was framed in pursuance of Section 3-AA but the amended rule has been framed in pursuance of Section 3-AAA as is clear from the section mentioned in the

beginning of the rule.

7. Section 3-AA and Section 3-AAA are thus part of the same. They have to be read together. Former fixes point of taxability. Latter assumes every sale made by a dealer to a registered dealer to be a sale to the consumer unless the purchasing dealer purchases it-

(i) for resale,

(ii) within the State or in the course of inter-State trade or commerce,

(iii) in the same form and condition in which it was purchased.

8. It incorporates a rule of presumption. What was provided earlier in the section itself, then by a Sub-section has now been enacted in shape of independent section. Two things stand out clearly, one that presumption is not conclusive. It is rebuttable. Second it is more rigorous from mere proof of resale in the same condition, the requirement now is three fold.

9. In order to rebut the presumption which otherwise arises by operation of law the dealer has to prove to the satisfaction of the assessing authority that goods were not only for resale in the same condition but in the same form also. Further it was for sale within the State or in inter-State trade or commerce. If any one of them is lacking then the sale shall be liable to tax which can be realised from the purchaser. For instance, if the first and the second are satisfied, that is, the goods have been purchased for sale within the State or inter-State trade but the third, that is, they shall be sold in the same form and condition is not proved to the satisfaction of the assessing authority or the assessee does not say so in the declaration furnished by it then the presumption shall operate against him. Similarly if first and third are satisfied but the assessee fails to prove that it shall be resold within the State or in inter-State trade or commerce then also the presumption cannot be said to be rebutted. What has to be proved is rebuttal has been discussed above. How should it be rebutted has been provided for in the latter part of Section 3-AAA itself and for the purpose also furnishes to the assessing authority such declaration obtained from the purchasing dealer, it is this

declaration in form III-A which has been provided in Rule 12-A. This, therefore, is the purpose of Rule 12-A and form III-A.

10. The learned counsel for the assessee was at pains to argue that for issue of form III-A it is only Rule 12-A which has to be looked into. According to him Section 3-AAA was not attracted and a dealer who was purchasing goods liable to tax at the point of sale to the consumer was entitled for form III-A if he did not want to pay tax to his selling dealer. To strengthen his submission he relied on two declarations mentioned in the bottom of form III-A which required him to disclose (1) his registration number (2) further that the goods were purchased for sale in the same condition. The learned counsel wanted an inference to be drawn from this that it was not necessary for the purchasing dealer further to declare or satisfy the assessing authority that the goods shall be sold within the State or in inter-State trade or commerce. Therefore, the learned counsel maintained that even if the goods were purchased for export the purchasing dealer shall not be liable to tax. Reliance was placed on Sub-rule (2) of Rule 12-A which provides 'a sale of any of the goods referred to in Sub-rule (1) shall be deemed to be a sale to the consumer unless the selling dealer proves otherwise to the satisfaction of the assessing authority and for that purpose, also furnishes to the assessing authority a certificate in form III-A, duly filled in and signed by the purchasing dealer' and it was urged that presumption could arise only if the form was not furnished. And as the form required only two declarations to be mentioned the sales tax officer could not refuse to issue it under Sub-rule (5). As discussed earlier the argument proceeds on complete misconception of the rule, the purpose for which it was framed and the objective it sought to achieve. Form III-A or Rule 12-A do not stand on their own. They have been framed under Section 24 of the Act to carry out objective of Section 3-AAA. Read together there hardly remains any doubt that the goods which are purchased for resale in the same condition must be sold within the State or in inter-State trade or commerce. If they are sold in export then they are not covered in Section 3-AAA and the presumption which arises cannot be said to have been rebutted. Form III-A appears to have been prepared under Rule 12-A as it was in 1956. That is why it required a dealer to declare his registration number and that it was for resale in the same condition. It was not amended or substituted when the rule was amended and Section 3-AAA was enacted. But it

does not make any difference. A purchasing dealer wishing to avoid payment of tax has to give the declaration mentioned. Exemption depends not on the form III-A but on satisfying the assessing authority that purchase was for resale in the same form and condition in the State or in inter-State trade or commerce.

11. What remains is to examine if the petitioner, a partnership firm registered both under the U. P. and Central Sales Tax Acts, purchasing dressed hides from registered dealers for export was entitled to form III-A for its purchases in 1979-80 and 1980-81. Necessity to approach this Court arose, because while making purchases it did not pay tax at 4 per cent under Notification No. 8448 of 1975 and assured its sellers to furnish form III-A containing declaration that it was for resale. Effort was made, according to the petitioner, in the beginning of 1982, then on 27th December, 1982 and finally on 5th January, 1983. As repeated efforts bore no fruit and pressure from the selling dealers was mounting this petition for direction was presented on 12th January, 1983. On 3rd February, 1983, may be due to approaching this Court, the process appears to have been expedited and the application which earlier was on behalf of one partner only having been made in order on 5th it was examined on merits but as the purchases had been made for export it was rejected. In the amendment allowed on 21st February, 1983, order was challenged being violative of natural justice, against the statutory provisions and tainted with bias.

12. Law has already been discussed. Purchases made for export were not for sale within the State or inter-State trade or commerce. One of the requirements of Section 3-AAA was absent. Claim of the petitioner, therefore, was not well-founded. No direction can be issued.

13. Even if the order was passed without hearing the petitioner, the legality or otherwise of it is not necessary to examine as satisfaction of the Sales Tax Officer, that the requisition of the petitioner for blank forms was not genuine and reasonable does not appear to suffer from any error of law.

14. Bias was raised more emotionally than factually. It was under legal misapprehension.

15. Before closing it may be mentioned that although in the order dated 3rd February forms were refused because purchases were for export but in the counter-affidavit to supplementary affidavit U. P. and inter-State sale was also admitted. To the extent the purchases are covered by it the petitioner is certainly entitled to the benefit of Rule 12-A.

16. In the result this petition fails in so far as quashing of order dated 3rd February, 1983, is concerned. The Sales Tax Officer shall issue forms in accordance with law in respect of those purchases which have been made for resale in the State or inter-State trade or commerce. There shall be no order as to costs.

V.K. Mehrotra, J.

17. The question raised in this petition is whether the petitioner, which is registered as a dealer under the U. P. as well as the Central Sales Tax Acts and sells dressed hides purchased from registered dealers within the State of U. P. is entitled to issuance of forms III-A for furnishing declaration under Rule 12-A of the U. P. Sales Tax Rules or not. Sometime after the petitioner filed the present petition an order was passed by its assessing authority, i.e., the Sales Tax Officer, Sector 10, Kanpur, on 3rd February, 1983, refusing to issue these forms on the ground that the petitioner did not make the sale within the State or in the course of inter-State trade but exported the dressed hides and as such he was not entitled to the issue of the forms.

18. Section 3 was the lone charging provision of the U. P. Sales Tax Act when initially enacted. Section 3-A was added with effect from 5th June, 1948, by U. P. Act 25 of 1948. It provided [in Sub-section (1)] that notwithstanding anything contained in Section 3, the State Government may, by notification in the official Gazette, declare that the proceeds of sale of any goods or class of goods shall not be included in the turnover of any dealer except at such single point in the series of sales by successive dealers as may be prescribed. Sub-section (2) of Section 3-A permitted the State Government to prescribe the rate of tax which could not, however, exceed one anna per rupee. The enactment of the Central Sales Tax Act in the year 1956 resulted in some changes in the State Act. Section 3-AA was

added by U. P. Act 19 of 1956 and it said that in respect of the commodities mentioned in it, the turnover was not liable to tax except at the point of sale by a dealer to the consumer notwithstanding anything contained in Sections 3 and 3-A. Further, unless the dealer proved otherwise, the sale was to be presumed to be to a consumer. By U. P. Act 32 of 1957, certain additions were made to the list of commodities in this provision and by Act 1 of 1973, the provision was worded as follows:

Section 3-AA. Rate and point of tax in respect of certain goods.-Subject to the provisions of Section 3-D, the turnover in respect of goods declared under Section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce shall not be liable to tax except at the point of sale by a dealer to the consumer and the rate of tax shall be such, not exceeding the maximum rate for the time being specified in Section 15 of the said Act, as the State Government may, by notification in the Gazette, declare.

19. By the said amending Act, Section 3-AAA was brought on the statute in these terms :

3-AAA. Presumption regarding certain sales.-Where goods are liable to tax under this Act only at the point of sale to the consumer, every sale by a dealer-

(a) to a registered dealer who does not purchase them for resale, within the State or in the course of inter-State trade or commerce, in the same form and condition in which he has purchased them, or

(b) to any person other than a registered dealer,

shall be deemed to be a sale to the consumer, unless the dealer proves otherwise to the satisfaction of the assessing authority and, for that purpose also furnishes to the assessing authority such declaration, obtained from the purchasing dealer, in such form and manner and within such period, as may be prescribed.

20. Amongst the Rules framed under the U. P. Sales Tax Act is Rule 12-A of which relevant portions are these :

Rule 12-A. Exemption of certain sales.-(1) A registered dealer who wishes to purchase any goods, liable to tax under Sub-section (1) of Section 3-A or Section 3-AA at the point of sale to the consumer, without payment of tax shall furnish to the selling dealer a certificate in form III-A, duly filled in and signed by him.

(2) A sale of any of the goods referred to in Sub-rule (1) shall be deemed to be a sale to the consumer unless the selling dealer proves otherwise to the satisfaction of the assessing authority and, for that purpose, also furnishes to the assessing authority a certificate in form III-A, duly filled in and signed by the purchasing dealer.

21. In prescribed form III-A the dealer was to disclose the number of its registration certificate together with the date from which it was effective and to further certify that the goods were purchased by it for sale in the same condition. This declaration had to be furnished, as mentioned in the prescribed form in terms of Rule 12-A.

22. What appears clear from these provisions is that the goods referred to in Section 3-AA could only be taxed at the point of sale by a dealer to the consumer and at no other. In other words, unless the point of sale to the consumer was reached, the same was not susceptible of being taxed irrespective of the number of times the transaction of sale may have taken place. The legislature emphasised the intention of the sale to the consumer alone being subject to tax by the words which it used in Section 3-AAA, namely, that where the sale was made by a dealer to another registered dealer who does not purchase them for resale within the State or in the course of inter-State trade or commerce in the same form or condition in which he had purchased them or to any person other than a registered dealer shall be deemed to be a sale to the consumer, unless the dealer proves otherwise. Incorporated in these words also was a Rule of presumption, which was rebuttable, that except for a sale made to a dealer for resale within the State or in the course of inter-State trade or commerce in the same form or condition in which he had purchased the goods the sale was a sale made to the consumer. The intendment is clear that the sale must be made by a dealer to a consumer before he would be liable for payment of tax on that transaction ; otherwise the

transaction of sale made by him was not liable to tax.

23. Rule 12-A was framed to ensure the due functioning of the provisions relating to liability for payment of tax on a sale made to a consumer. Normally, due to the rule of presumption enshrined in Section 3-AAA, a sale by a dealer to another registered dealer (with whose case alone we are concerned in this petition) would be deemed to be a sale to the consumer, making the purchasing dealer liable to pay tax except where he had made the purchase for resale in the same form or condition in which he had purchased them within the State or in the course of inter-State trade or commerce. If, however, a purchasing dealer had made purchases with a view to resell the goods in the same form and condition in which he had purchased them and not to consume them himself, which fact should be established by him by providing the necessary declaration in the prescribed form, he would be able to make the purchase without making payment of tax to the registered dealer from whom he had purchased the goods. The selling dealer would not be entitled to insist upon payment by the purchasing dealer of sales tax in such a situation. For, then, he would be able to tell his assessing authority that he had not made the sale to a consumer and was, therefore, not liable to pay tax on the transaction.

24. Where as, in the instant case, the purchasing dealer was not buying the goods for consumption but was doing so for sale in the same form or condition he would be entitled to ask the selling dealer to let him have the goods without payment of sales tax, for, a transaction of sale, other than to a consumer, was not liable to tax and the selling dealer would not be able to require the purchasing dealer to pay the amount of sales tax on the transaction because it is not a sale to a consumer. The purchasing dealer would have, in these circumstances, the right to refuse to pay the amount of sales tax to the dealer from whom he makes the purchases in case he is able to furnish declaration in the prescribed form III-A which alone would entitle the selling dealer to establish before his assessing authority that he had not made sale to a consumer. The purchasing dealer, who would be under an obligation to pay the amount of tax to the selling dealer, except when he is able to furnish to the selling dealer the declaration in the prescribed form III-A, would have a corresponding right to demand issuance to him of form III-A for furnishing the

same to his selling dealer. The fact that the purchasing dealer will make an export of the commodity in the same form and condition would not be enough to refuse the issuance of the form to him for the fear that the turnover may be left untaxed. The fear is imaginary for Section 3-AAAA of the Act shall take care of such transaction. The purchasing' dealer has been made liable to pay tax on the turnover of purchases at the same rate at which sales tax would have been payable by the selling dealer on it. In any case, the mere fact that a transaction of the kind involved in the present petition shall remain untaxed, is not enough to take the view that it should be held subject to levy of tax even though the transaction is not one of sale to a consumer. We cannot forget that 'in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used' : see *Cape Brandy Syndicate v. Commissioners of Inland Revenue* [1921] 1 KB 64. The words of Lord Simonds, when he said in *Walsfon v. Commissioners of Inland Revenue* [1921] 31 TC 141 that:

It was urged that the construction that I favour leaves an easy loophole which the evasive taxpayer may find escape. That may be so; but I will repeat what has been said before. It is not the function of a court of law to give to words a strained and unnatural meaning because only thus will a taxing section apply to a transaction which, had the legislature thought of it, would have been covered by appropriate words' are most apposite. And so are those of Lord Buckmaster in *F. L. Smidth & Co. v. Greenwood* 8 TC 193 (HL) that:

It is important to remember the rule, which the courts ought to obey, that, when it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The courts cannot assent to the view that, if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly cast upon the taxpayer.

25. The matter must,' as observed by Lord Porter, in *Indian Iron and Steel Co. Ltd. v. Commissioner of Income-tax* [1943] 11 ITR 328 'depend upon the wording of the

section and not upon the consequences which follow.

26. If the legislature thought that the sale to a consumer alone was to be taxed and said so in unmistakable terms, it would be difficult to take the view that the transaction which, admittedly, is not one of sale to a consumer, should be brought to tax on the ground that it was not resale of the goods in the State itself or in the course of inter-State trade or commerce.

27. The order passed by the assessing authority on 3rd February, 1983, in this case proceeds upon a manifestly erroneous view of law that a person who makes export of goods, liable to tax at the point of sale to a consumer alone and does not resell it in the State or in the course of inter-State trade or commerce is not entitled to issuance of form III-A. The view of the assessing authority militates against the scheme of the Act that where the sale is by a registered dealer to another registered dealer who intends to resell the goods and not consume them, would not suffer tax at the point of sale by the registered dealer to such a purchasing registered dealer. When under the Act, the rule prescribes the mode of proof of the fact that the purchasing dealer was not purchasing the goods for consumption but for resale by furnishing of the prescribed form, the purchasing registered dealer is entitled to the issuance of that prescribed form. The Act and the Rules contain sufficient safeguards to penalise the dealers where they misuse the form issued to them. The issuance of form cannot be refused to a dealer like the present petitioner for the reason that he purchases the goods for resale by way of export.

28. Bias, to an extent that the order of 3rd February, 1983, may be said to be vitiated on that account, cannot be said to have been established in these proceedings. But, failure to observe the rules of natural justice in not hearing the petitioner at all before passing the order would clearly vitiate it. After all, fair play demanded that the petitioner should have been given an opportunity to place its point of view before coming to the conclusion that its prayer for issuance of the forms was liable to be rejected. The order proceeds on the assumption that the petitioner does not make resale within the State or in the course of inter-State trade or commerce of the goods purchased by it which is not quite correct in view of what has been mentioned in the supplementary counter-affidavit itself. Hearing

the petitioner would have obviated this error. It cannot be gainsaid that the petitioner would be out of pocket by substantial amounts which it would have to pay to the dealers, from whom he made the purchases in question, due to the refusal of its prayer for issuance of the forms for being furnished to them. The order of 3rd February, 1983, cannot be sustained on this account too.

29. My brother has taken the view that where the petitioner has asked for the forms in respect of the transactions where he resells the goods in the same form and condition within the State or in the course of inter-State trade or commerce, he is entitled to the issuance thereof. I am in complete agreement with it but, with utmost respect to him, I find it difficult to subscribe to the view that the petitioner could not ask for issuance of forms III-A regarding purchases made by him of goods for resale in the same form and condition by way of export. The order dated 3rd February, 1983, in my opinion, deserves to be quashed. I would, therefore, allow the petition and quash it with the direction to the appropriate authority to reconsider forthwith the petitioner's claim for issuance of form III-A in accordance with law. I would also hold that the petitioner is entitled to costs.

Order of reference

(By the Court)

30. In view of difference of opinion amongst us papers of this writ petition may be placed before Honourable the Chief Justice for appropriate orders.

H.N. Seth, J.

31. In view of difference of opinion between the learned Judges constituting the Bench before which this petition for relief under Article 226 of the Constitution came up for hearing, the case has been referred to me for opinion.

32. The petitioner, M/s. Universal Exporters, Kanpur, is a registered partnership firm which deals in dressed hides/tanned leather. It has also secured registration under the provisions of the U. P. and Central Sales Tax Acts. It claimed that during the period relevant to the assessment years 1979-80 and 1980-81 it had

purchased for sale tanned leather/dressed hides worth Rs. 1,22,09,587.80 and Rs. 1,33,07,107.92 from registered dealers in the State of U. P. As the goods purchased by the petitioner were not intended to be consumed by it and it did not want to pay to the selling dealers sales tax in respect thereof, it had to supply form III-A, prescribed by the Rules framed under the U. P. Sales Tax Act, to the sellers. While making the purchases, the petitioner assured its sellers that it will after obtaining the requisite forms from the sales tax authorities supply the same to them. The selling dealers, therefore, did not, at the time of sale, charge sales tax from the petitioner. With a view to discharge its obligations to the selling dealers, the petitioner, in the early part of the year 1982, made an application and requested the assessing authority to issue 96 forms III-A to it. Again on 27th December, 1982, the petitioner applied for 500 forms III-A, but despite repeated requests both written and oral, the assessing authority neither made any order on the petitioner's application nor did it issue the forms requested for. Last of such requests was made by the petitioner vide its application dated 5th January, 1983, wherein it was explained that various selling dealers, whose assessments were neither pending or had been finalised ex parte, were insisting that the petitioner should immediately supply requisite forms III-A to them so that they may obtain necessary relief in their respective assessments. As the Sales Tax Officer did not take any action on the petitioner's request, its reputation suffered and various dealers were reluctant to deal with it. The petitioner accordingly filed the present petition on 10th January, 1983 and approached this Court for relief under Article 226 of the Constitution.

33. In the meantime the Sales Tax Officer (assessing authority) vide his order dated 3rd February, 1983, served upon the petitioner on 16th February, 1983, rejected its application for forms III-A as in his opinion the concerned transactions entered into by the petitioner were by way of export of leather. As the petitioner neither effected sales in U. P. nor in the course of inter-State trade, it was not entitled to forms III-A. The petitioner then got his petition amended and prayed that as the reasons given by the Sales Tax Officer in his order dated 3rd February, 1983, rejecting its requests for forms were clearly untenable, the said order should also be quashed. In its rejoinder affidavit the petitioner refuted the case of the sales tax authorities that all the sales effected by it during the period relevant to

the assessment years 1979-80 and 1980-81 were sales in the course of export and asserted that during that period it also had sold tanned leather/dressed hides within the State as well as in the course of inter-State trade. According to it the Sales Tax Officer was biased against it and the order dated 3rd February, 1983, deserved to be quashed for this reason as well.

34. Both the learned Judges before whom the petition came up for hearing held that the plea of bias raised on, behalf of the petitioner was without any substance and the petitioner did not re-agitate that plea before me. They also held that the petitioner was entitled to receive forms III-A in respect of such goods which it had after purchasing from various dealers, either sold within the State or in the course of inter-State trade. Correctness of this conclusion has not been questioned before me by the learned standing counsel appearing for the sales tax authorities. There was, however, difference of opinion between the learned Judges with regard to the question as to whether or not the petitioner was entitled to receive forms III-A and to supply the same to its selling dealers in connection with the goods which it had, after purchasing from various registered dealers, exported outside the country. Whereas in the opinion of V.K. Mehrotra J., the petitioner was entitled to receive forms III-A in respect of such transactions. R. M. Sahai, J., held that the petitioner was not so entitled.

35. Main controversy between the parties, therefore, concerns the question as to whether the petitioner is, in respect of such goods which it had after purchasing from various registered dealers in U.P. exported outside India, entitled to receive from III-A and to supply the same to its selling dealers.

36. Section 14 of the Central Sales Tax Act declares a number of goods to be goods of special importance in inter-State trade or commerce and Section 15 thereof provided that every sales tax law of a State in so far as it imposes or authorises the imposition of tax on sale or purchase of the goods declared to be of special importance in inter-State trade or commerce under Section 14 of the Act is to be subject to the condition that tax payable under the State law in respect of sale or purchase of such goods inside the State is not to exceed the limit fixed by it and further that such tax can be levied at one stage only. However, the stage at

which such tax is levied is to be determined by the State Legislature.

37. Accordingly, the State Legislature, with a view to give effect to the provisions contained in Sections 14 and 15 of the Central Sales Tax Act introduced Sections 3-AA, 3-AAA and 3-AAAA in the U. P. Sales Tax Act, 1948, which at the relevant time and prior to the amendments made in the year 1982, ran thus :

3-AA. Rate and point of tax in respect of certain goods.-Subject to the provisions of Section 3-D, the turnover in respect of goods declared under Section 14 of the Central Sales Tax Act, 1956 (Act 74 of 1956), to be of special importance in inter-State trade or commerce shall not be liable to tax except at the point of sale by a dealer to the consumer and the rate of tax shall be such, not exceeding the maximum rate for the time being specified in Section 15 of the said Act, as the State Government may, by notification in the Gazette, declare.

3-AAA. Presumption regarding certain sales,-Where goods are liable to tax under this Act only at the point of sale to the consumer every sale by a dealer-

(a) to a registered dealer who does not purchase them for resale, within the State or in the course of inter-State trade or commerce, in the same form and condition in which he has purchased them, or,

(b) to any person other than a registered dealer,

shall be deemed to be a sale to the consumer, unless the dealer proves otherwise to the satisfaction of the assessing authority and, for that purpose also furnishes to the assessing authority such declaration, obtained from the purchasing dealer, in such form and manner and within such period, as may be prescribed.

3-AAAA. Liability to purchase tax on certain transactions.-Where any goods liable to tax at the point of sale to the consumer are sold to a dealer but in view of any provision of this Act no sales tax is payable by the seller and the purchasing dealer does not resell such goods within the State or in the course of inter-State trade or commerce, in the same form and condition in which he had purchased them, the purchasing dealer shall subject to the provisions of Section 3, be liable to pay tax on such purchases at the rate at which tax is leviable on sale of such goods to the

consumer within the State :

Provided that if it is proved to the satisfaction of the assessing authority that the goods so purchased had already been subjected to tax or may be subjected to tax under Section 3-AAA, no tax under this section shall be payable.

Explanation.-For the purpose of this section and of Section 3-AAA, the sale of-

(i) ginned cotton after ginning raw cotton purchased as aforesaid, or

(ii) dressed hides and skins or tanned leather after dressing or tanning raw hides and skins purchased as aforesaid, or

(iii) rice, during the period commencing on September 2, 1976 and ending with April 30, 1977, after hulling paddy purchased as aforesaid,

shall be deemed to be in the same form and condition.

38. The State Government also, for purposes of aforementioned provisions contained in the Act, framed Rule 12-A, relevant portion whereof runs thus :

12-A. (Section 3-AAA) Exemption of certain sales.-(1) A registered dealer who wishes to purchase any goods, liable to tax under Sub-section (1) of Section 3-A or Section 3-AA at the point of sale to the consumer, without payment of tax shall furnish to the selling dealer a certificate in form III-A, duly filled in and signed by him.

(2) A sale of any of the goods referred to in Sub-rule (1) shall be deemed to be a sale to the consumer unless the selling dealer proves otherwise to the satisfaction of the assessing authority and for that purpose, also furnishes to the assessing authority a certificate in form III-A, duly filled in and signed by the purchasing dealer. The original portion of all such certificates shall be furnished by the selling dealer to the assessing authority up to the first date on which he is required to furnish his accounts for final assessment in respect of the assessment year to which the claim relates. The assessing authority may, in its discretion, require the selling dealer to produce for inspection the portion of the certificate marked 'duplicate'.

(3) A registered dealer, who wishes to obtain blank forms of certificate referred to in Sub-rule (1), shall apply to the Sales Tax Officer within whose jurisdiction his principal place of business is situated. The application shall be signed by one of the persons mentioned in Sub-rule (1) of Rule 54 or by a person authorised under Rule 77-A, as the case may be.

(4)...

(5) If the Sales Tax Officer is satisfied that the requisition of the dealer for blank forms is genuine and reasonable, he may issue the same in such number as he deems fit. If the fee paid is more than the fee payable for the number of forms issued, the balance shall be credited to the account of the dealer to be adjusted against any future issue of the forms.

(6)...

(22)...

39. Blank forms III-A prescribed by Rule 12-A are issued to registered dealers, intending to purchase goods liable under the Act to tax at the point of sale to the consumer (hereinafter referred to as the goods), enabling him to make a declaration and to certify that the goods purchased by him are intended for resale in the same condition. The object of obtaining a declaration in form III-A obviously is to enable the concerned selling dealer to discharge the burden placed upon him by Section 3-AAA and Rule 12-A(2) and to satisfy the assessing authority that the sale effected by him was in fact to a person other than a consumer and that he is in respect of such transaction not liable to tax.

40. Rule 12-A(5) obliges the Sales Tax Officer to issue blank forms III-A to a dealer if he is satisfied that the requisition made by the dealer is genuine and reasonable. Accordingly when a dealer makes a requisition for the forms III-A in connection with purchase of such goods turnover whereof would under Sections 3-A and 3-AA be taxable at the point of sale effected to him, that is, where such transaction of sale is to be regarded as sale to a consumer, the Sales Tax Officer can justifiably conclude that the requisition for such forms is neither genuine nor

reasonable and can refuse to issue the same. Crucial question, therefore, that arises for consideration is as to whether the petitioner when it purchased the goods for sale for purposes of export outside India is a consumer within the meaning of the Act.

41. When Section 3-AA provides that the turnover in respect of the goods declared under Section 14 of the Central Sales Tax Act to be of special importance in inter-State trade or commerce, shall not be liable to tax except at the point of sale by a dealer to a consumer what it really means is that sales tax can be levied on the turnover of sales of goods specified in the section only in the hands of such dealers who sell the same to consumer. In the context the word 'consumer' appears to have been used in this section in the sense of a person other than a dealer, that is, a person who after purchasing the goods puts the same to his own use and does not subject them to any further transaction of sale. Viewed in this light, it is clear that the petitioner when it purchased the goods for being resold by him either for purposes of export or in the course of export it was not a consumer and the point at which the goods were sold to him cannot be regarded as a point of sale to a consumer. Thus the turnover of such sales effected to the petitioner did not become taxable under Section 3-AA of the Act in the hands of the petitioner's selling dealers. Accordingly, as provided in Rule 12-A(1) if the petitioner did not want to pay the tax to his selling dealer at that stage it became necessary for it to obtain forms III-A and to supply the same to its selling dealers. It is significant to note that form III-A merely requires a certificate from the purchaser that he has purchased the goods for sale in the same condition. It does not require the dealer to give a further certificate that the goods have been purchased for sale either within the State or in the course of inter-State trade or commerce. Accordingly, where a dealer purchased the goods either for sale outside the State or in the course of export, he can legitimately give the certificate contemplated by form III-A and there is no reason why the sale tax authority should refuse to issue form III-A to such a dealer.

42. The learned standing counsel appearing for the department vehemently contended that Sections 3-AA, 3-AAA and 3-AAAA should be read together and as forming part of one integrated scheme whereunder the legislature clearly intended

that once the goods of the nature covered by Section 3-AAA are sold in the State of U. P. they must, in the series of sales that might take place, be subjected to sales tax at one stage or the other. There cannot be a situation where such goods once sold in the State shall escape liability to sales tax altogether. Section 3-AAA, therefore, provides that all sales except those effected to a registered dealer who does not purchase them for resale within the State or in the course of inter-State trade or commerce in the same form and condition in which he had purchased them shall be deemed to be sales made to a consumer and that the expression 'consumer' should not be understood in the normal sense as has been explained by me above. According to the learned counsel, the reason for giving an artificial meaning to the expression 'consumer' is that whereas in cases where the goods do not go outside the State and are sold and resold within the State they would eventually be sold to a consumer who puts the same to his own use and does not resell them. In such a case sales tax can be levied at that stage. In the case of goods which a dealer, after purchasing, sells in the course of inter-State trade or commerce the sales tax can be levied and collected for the benefit of the State under the provisions of the Central Sales Tax Act. But where a purchasing dealer instead of reselling the goods in the State of U. P. or in the course of inter-State trade or commerce, sells them outside the State or in the course of export out of India, the transaction entered into by him would neither be taxable under the U. P. Sales Tax Act nor under the Central Sales Tax Act and that is why the legislature has created a fiction that sales effected to such persons are unlike sales effected inside U. P. or in the course of inter-State trade or commerce, to be deemed to have been made to a consumer.

43. Having given my careful consideration to the submission made by the learned counsel for the department I am unable to accept the same. It is not correct to say that Section 3-AAA contemplates that every purchaser other than a purchaser who is a registered dealer and who does not purchase the goods for resale within the State or in the course of inter-State trade or commerce in the same form and condition in which he has purchased them, must necessarily be regarded as a consumer. The import of this section, which is headed as 'presumption regarding certain sales' merely is that unless the dealer proves it otherwise to the satisfaction of the assessing authority, the latter will act on the basis that all sales of such

goods as are liable under Sections 3-A and 3-AA to tax at the point of sale to the consumer, except those effected to a registered dealer who purchased the same either for resale within the State or in the course of inter-State trade or commerce in the same form and condition in which he had purchased them, are sales made to consumers. The section postulates that it is open to selling dealer to satisfy and prove to the satisfaction of the assessing authority that a sale effected by him to a registered dealer who does not purchase the goods for resale within the State or in the course of inter-State trade or commerce has in fact been made to a person who is not a consumer, but then the burden of proving that the purchaser is not a consumer would be on the selling dealer who wants to have the turnover of such sale excluded from his taxable turnover and that for this purpose the dealer will also have to furnish to the assessing authority a declaration in form III-A from the purchasing dealer. In this view of the matter it is difficult to accept that Section 3-AAA creates a legal fiction and comprehensively defines the expression 'consumer' as meaning persons other than the registered dealer who purchase the goods either for resale within the State or in the course of inter-State trade or commerce.

44. The submission made by the learned standing counsel that if the word 'consumer' is understood in the sense of a person who after purchasing the goods does not further sell them and does not cover a case where a person after purchasing the goods puts them to sale either in the course of export or outside the State, it will defeat the legislative intention to necessarily tax such goods at one stage or the other, does not appeal to me. The legislature has taken care to enact Section 3-AAAA according to which where any goods liable to tax at the point of sale to the consumer are sold to a dealer but in view of any provision of the Act no sales tax is payable by the seller and the purchasing dealer does not resell such goods within the State or in the course of inter-State trade or commerce in the same form and condition in which he had purchased them, the purchasing dealer becomes liable to pay tax on such purchases at the rate at which tax is leviable on sales of such goods to the consumer within the State. In case a person who purchases the goods of the nature specified in Section 3-AA for sale outside the State or in the course of export is not treated to be a consumer as, in my opinion, he should not be and he so sells them, no sales tax in respect of

such transactions would, under the provisions of the Sales Tax Act, be payable, but then as such person does not resell such goods within the State or in the course of inter-State trade or commerce in the same form and condition in which he had purchased them, he, under Section 3-AAAA, becomes liable to pay tax on the purchases made by him at the rate at which tax is leviable on the sale of such goods. It is thus clear that even though the transaction entered into with such a person has not been made liable to tax in the hands of the selling dealer, it has been subjected to tax in the hands of the purchaser and it cannot be said that the goods have altogether escaped liability to tax. It thus follows that even in such cases the legislative intendment that once the goods of the nature covered by Section 3-AA are sold in the State, they must, in the series of sales that might take place, be subjected to tax under the Act at some stage or the other does not get defeated. I accordingly see no reason to give the restricted meaning to the word 'consumer' as suggested by the learned standing counsel.

45. As already mentioned, Rule 12-A(5) obliges the Sales Tax Officer to issue blank forms III-A to a dealer if he is satisfied that the requisition made by him is genuine and reasonable. The Sales Tax Officer vide his order dated 3rd February, 1983, rejected the petitioner's application for forms merely for the reason that the petitioner was not entitled to the same as the transactions in respect of which he had requisitioned the forms were neither sales within the State nor sales in the course of inter-State trade or commerce, implying thereby that the petitioner's request was rejected as in the opinion of the Sales Tax Officer the transactions in respect of which the petitioner had made the requisition were in law to be treated as transactions of sales effected to a consumer. In view of the aforesaid discussion I am clearly of the opinion that this reason given by the Sales Tax Officer for rejecting the petitioner's application for forms III-A is not tenable and the order dated 3rd February, 1983, passed by him deserves to be quashed.

46. Let this opinion be laid before the Bench concerned for further orders.

BY THE COURT

(August 19, 1983)

46. In view of the opinion of Honourable H. N. Seth, J., the writ petition succeeds and is allowed. The order dated 3rd February, 1983, passed by the Sales Tax Officer is quashed. The petitioner shall be entitled to its costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com