

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 4756 OF 2000

COMMNR. OF TRADE TAX, U.P.

Appellant (s)

VERSUS

MAJHOLA DISTILLERY & CHEMICALS WORKS

Respondent(s)

(With appln(s) for exemption from filing O.T.,permission to file additional documents and office report)

Date: 29/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mrs. Shobha Dixit, Sr. Adv.
Ms. Savitri Pandey, Adv.
Mr. Rajeev Kumar Dubey, Adv.
Mr. Kamalendra Mishra, Adv.

For Respondent(s)

Mr. Vijay Kumar, Adv.
Ms. Bharti Tyagi, Adv.
Ms. Mini Srivastava, Adv.
Mr. Vishwajit Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the parties.

The Appeal is disposed of. There will be no order as

to costs.

(R.K. DHAWAN)
COURT MASTER

(VEERA VERMA)
COURT MASTER

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4756 OF 2000

COMMNR. OF TRADE TAX, U.P.

.... APPELLANT.

VERSUS

MAJHOLA DISTILLERY & CHEMICALS WORKS

.... RESPONDENT.

O R D E R

This Appeal is filed against the judgment of the Allahabad High

Court dated 22nd April, 1999. Briefly stated, facts are as follows:

The Respondent is a registered dealer. In the course of sale by him he collected by way of service charges an amount equivalent to 4% being sale under the Central Sales Tax Act. This amount was shown in his turnover.

The Appellant initiated penalty proceedings under Section 15-A(1)(qq) of the U.P. Trade Tax Act. The reply of the Respondent was not accepted by the lower authorities and penalty was imposed on him. The High Court has allowed the Revision. Hence this appeal.

For a consideration of the question as to whether or not penalty

proceedings can be initiated, it is necessary to set out relevant provisions.

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Section 8-A(2)(a) of the U.P. Trade Tax Act reads as follows:

"(2)(a). No person who is not a dealer registered under this Act, shall in respect of any sale or purchase made by or through him, realise from any person any amount by way of sales or purchase tax or any amount in lieu of sales or purchase tax by giving it a different name or colour and no dealer registered under this Act, shall, in respect of any sale or purchase made by or through him, realise from any person, other than a person to whom goods are sold by him, any amount by way of sales or purchase tax, or any amount in lieu of sales or purchase tax, by giving it a different name or colour".

Section 15-A(1)(qq) reads as follows:

"15(A) Penalties in certain cases

.....

(qq) realises any amount as trade tax on sale or purchase of goods or any amount in lieu of such tax by giving it any different name or colour in contravention of the provisions of sub-section (2) of Section 8A;"or

Thus it is to be seen that penalty can only be levied provided there

is

contravention of the provisions of Section 8-A(2)(a).

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Section 8-A(2)(a) is in two parts. The first part which consists of

the words, "No person who is not a dealer registered under this Act, shall in

respect of any sale or purchase made by or through him, realise from any person

any amount by way of sales or purchase tax or any amount in lieu of sales or

purchase tax by giving it a different name or colour" applies in respect of a

person who is not a dealer. This part does not apply in the present case as the

Respondent is admittedly a registered dealer. The second part of Section 8-A(2)

(a) applies to a registered dealer. On behalf of Appellants it is contended that

under this Section the registered dealer can realise from a person to whom

goods are sold amounts by way of sales or purchase tax but cannot realise from

any person, including person to whom goods are sold, any amount in lieu of

sales or purchase tax by giving it a different name or colour. It is submitted that

the interpretation of the High Court that Section 8-A(2)(a) permits a registered

dealer to recover from a seller both sales and purchase tax as well as amounts

in lieu of sales or purchase tax by giving it a different name or colour, is

erroneous.

We are unable to accept this submission. A plain reading of the

Section clearly indicates that a registered dealer cannot realise from any person,

other than the person to whom the goods are sold, (a) the sale or purchase tax

or

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(b) any amount in lieu of sales or purchase tax by giving it a different name or

colour. The words "other than a person to whom the goods are sold" necessarily

means that the above restriction does not apply when a registered dealer deals

with a person to whom the goods are sold. In other words, this portion does not

prohibit the registered dealer from recovering, from the person to whom the

goods are sold, sale or purchase tax and/or any amount in lieu of sales or

purchase tax by giving it a different name or colour. As there is no prohibition

under this Section there is no contravention of Section 15-A(1)(qq). Therefore

the High Court is right in holding that penalty proceedings under Section 15-A(1)

(qq) would not lie.

As the penalty proceedings were only initiated under Section 15-A

(1)(qq) of the U.P. Trade Tax Act, the High Court was not required to go into any

other aspect. However, on the basis of submissions made by parties, the High

Court has proceeded to hold that there was no contravention of provision of

Central Sales Tax Act and that penalty proceedings under Section 10(f) of the

Central Sales Tax Act, 1956, would not lie.

Section 9A of the Central Sales Tax Act reads as follows:

"9A. Collection of tax to be only by registered dealers. - No person

who is not a registered

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dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder".

Thus under Section 9A a registered dealer cannot make any collection accept in

accordance with the Act. It was fairly admitted that there is no provision in the

Act which permits a registered dealer to collect any tax by way of service charge.

Thus by collecting the amount of tax in the guise of service charge there has

been a clear contravention of the provision of Section 9-A. Section 10-A of the

Central Sales Tax Act provides for penalties in cases where a person collects

any amount by way of tax in contravention of the provisions of Section 9-A.

It is admitted that the amount collected by way of service charge is

nothing else but 4% Central Sales Tax. It is collection by way of tax. Merely

because it is termed as service charge does not detract from that position. Thus

the moment such service charge was collected, it was in contravention of the

provision of Section 9A and therefore penalty provisions under Section 10 of the

Central Sales Tax Act could have been initiated. The High Court was absolutely

wrong in laying down that there was no

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contravention of the provisions contained under Section 9-A and penalty even under Section 10(f) could not have been initiated.

Of course as stated above in this case the High Court need not have dealt with this aspect at all. As the High Court was laying down a wrong law it was necessary to correct it.

The Appeal is disposed of accordingly. There will be no order as to costs.

.....J
(S.N. VARIAVA)

.....J
(TARUN CHATTERJEE)

NEW DELHI;

SEPTEMBER 29, 2005.