

Kalra Glue Factory vs Sales Tax Tribunal And Ors. on 2 March, 1987

Equivalent citations: [1987]167ITR498(SC), JT1987(1)SC713, 1987SUPP(1)SCC465, 1987(SUPP)SCC465, [1987]66STC292(SC), AIRONLINE 1987 SC 118, (1987) 167 ITR 498, (1987) 1 JT 713 (SC), 1987 SCC (SUPP) 465

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Bench: B.C. Ray, M.P. Thakkar

ORDER

M.P. Thakkar, J.

1. Civil Appeal No. 560 of 1987.

2. Appeal by special leave against the judgment and order dated July 22, 1986 of the Allahabad High Court in S. T. Revision No. 455 of 1986.

3. **FACTS OF THE CASE :** The appellant, a firm at Hapur which manufactured glue, was assessed by the Sales Tax Officer, Hapur, to Central sales tax for the year 1974-75 on an estimated turnover of Rs. 2 lakhs. The Assistant Commissioner set aside the assessment, but on appeal the Sales Tax Tribunal, Meerut, upheld the assessment to Central sales tax on a reduced turnover of Rs. 1,93,380. In order to arrive at its conclusion, the Tribunal relied, inter alia, upon the statement of one Sri Banke Lal, a partner of D. P. Paints Ltd. of Delhi, to the effect that sometimes Shri Lakshman Dass, a partner of the appellant-firm, came there for giving some concession to a purchaser, brought the purchaser and booked their orders for glue with D. P. Paints Ltd. and that, after this, the goods to be supplied to the purchaser came from Hapur. Sri Banke Lal had also given specific details about the transaction of 8 trucks worth Rs. 1,93,380; but he had accepted that journey expenses and octroi were incurred by his firm. The Tribunal also found that the commission had been charged in a lump sum for the whole year. The appellant's revision application (S. T. R. No. 465 of 1986) was dismissed by the Allahabad High Court by its order dated July 22, 1986, on the short ground that no substantial question of law arose in the case.

4. The appellant thereupon preferred a petition to the Supreme Court for special leave to appeal against the order of the High Court rejecting its revision application. In the special leave petition, the appellant had averred that the statement of Sri Banke Lal ought not to have been taken into account by the Tribunal inasmuch as his statement was recorded at the back of the appellant and the appellant had no occasion to test his statement by cross-examination. The appellant had also offered

to produce certain documents in support of its case before the Supreme Court.

5. Rajaram Agarwal, Senior Advocate (Sunil K. Jain and Vijay Hansaria, Advocates, with him), for the appellant.

6. Gopal Subramaniam and Ashok K. Srivastava, Advocates, for the respondents.

ORDER

7. Special leave granted. Heard both the sides.

8. We allow this appeal solely on the ground that the statement of Banke Lal which was not tested by cross-examination was used in order to reach the conclusion that the transaction was an inter-State sale. We are told that Banke Lal has now died. Under the circumstances, we set aside the order of the High Court as also of the Sales Tax Tribunal and remit back the matter to the Sales Tax Tribunal at Meerut. It will be open to the appellant to produce the documents which the appellant has offered to produce before us. The Tribunal will permit the appellant to produce the documents subject to being satisfied the genuineness thereof and to pronounce upon the reliability of the documents and the impact of it on the matter in issue.

9. Respondents Nos. 3 and 4 have stated in paragraph 7 of the counter-affidavit as under:

The Tribunal while examining the nature of transaction about the transaction of Rs. 1,93,380 had observed as under :

We wanted to see the bills made by M/s. D. P. Paint Mart to M/s. Baba Glue Factory on consignment basis, if any, as alleged. The beaks or bills could have clinched the issue but, they have not been produced on the plea that they are no more available as Sri Banke Lal has himself expired.

Thus the primary evidence which was very relevant to decide whether the goods sent by the Hapur party to M/s. D. P. Paint Mart of Delhi were for sale on consignment basis and whether M/s. D. P. Paint Mart had actually sold them on consignment basis to M/s. Baba Glue Factory of Delhi has not been made available before us for the reasons best known to the assessee party.

10. It will be open to the Tribunal to call upon the appellant to produce the aforesaid bills and other documents and in case the same are not produced, it will be open to the Tribunal to draw adverse inferences admissible in law in regard thereto. It will also be open to the Tribunal to consider the circumstances that "arhat" was credited in a lump sum. The Tribunal will render its decision afresh taking into account all the material and circumstances in the light of the submission.

11. The interim order as regards the interest amount shall continue to operate till the Sales Tax Tribunal disposes of the matter.

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