

THE COMMISSIONER, TRADE TAX, U.P.

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v.

M/S RADICO KHETAN LTD.

(Civil Appeal Nos. 6396-6397 of 2009)

SEPTEMBER 19, 2022

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**[M. R. SHAH AND KRISHNA MURARI, JJ.]**

*U.P. Trade Tax Act, 1948 – s.34 – When applicable – Held: s.34 shall be applicable only in a case where there is a transfer of immovable property belonging to the original assessee, during the pendency of any proceedings under the Act with the intention of defrauding any such tax or other dues – As per proviso to s.34, nothing in s.34 shall impair the rights of a transferee in good faith and for consideration – In the present case, the transfer of goods, plant, and machinery (may be treated as immovable property) in favour of the respondent-purchaser took place on 12.12.85 and 01.01.86 for consideration, whereas the assessment proceedings (for the assessment years 1980-81, w.r.t which the amount of tax due and payable by the original assessee in dispute) had concluded in the year 1984 and assessment was reopened in the year 1988 – Also, the recovery certificate was issued against the original assessee on 15.04.90 and the endorsement for recovery against the purchaser was on 26.03.93 – Thus, at the time of transfer of immovable property of the assessee which was for value/consideration, no proceedings under the Act were pending, therefore s.34 shall not be applicable – Hence, the endorsement to recover the amount due and payable by the original assessee against the purchaser which was in exercise of powers u/s.34 was rightly set aside by the Trade Tax Tribunal – No error committed by High Court in dismissing the revision applications confirming the orders passed by the Tribunal.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.6396-6397 of 2009.

From the Judgment and Order dated 16.12.2008 of the High Court of Judicature at Allahabad in Trade Tax Revision Nos.664 and 667 of 1999.

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R. K. Raizada, Sr. Adv., Bhakti Vardhan Singh, Vikas Bansal, Advs. for the Appellant.

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A Dhruv Agarwal, Shwetank Sailakwal, Nishit Agarwal, Shubham Sharma, Ms. Kanishka Mittal, Vipin Kumar Jai, Advs. for the Respondent.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

B 1. Feeling aggrieved and dissatisfied with the impugned judgments and orders dated 16.12.2008 passed by the High Court of Judicature at Allahabad in Trade Tax Revision Nos. 664/1999 and 667/1999, by which, the High Court has dismissed the said revision applications preferred by the Revenue and has confirmed the orders passed by the Trade Tax Tribunal (hereinafter referred to as the Tribunal) allowing Appeal Nos. C 259/97 (80-81) and 260/97 (81-82) holding that recovery certificate issued in the name of M/s. Shaw Scott Distillery (P) Ltd. (hereinafter referred to as the original assessee) and endorsed against M/s. Radico Khaitan Ltd. (hereinafter referred to as the purchaser) could not be proceeded against the purchaser, the Revenue has preferred the present appeals.

D 2. The facts leading to the present appeals in a nutshell are as under: -

2.1 That the original assessee – M/s. Shaw Scott Distillery (P) Ltd., Rampur was in arrear of Rs. 11,28,877/- and Rs. 53,89,035/- of trade tax for the year 1980-81 and 1981-82, respectively. The recovery proceedings were initiated against the original assessee. The recovery certificate was issued. The plant, machinery and the goods belonging to the original assessee came to be purchased by respondent herein – purchaser on 12.12.1985 and 01.01.1986 for a total consideration of Rs. 12,12,000/-. The Assessing Officer (AO) found that the transfer of E aforesaid property was effected by the original assessee at the time when the assessment proceedings were pending and the Assessing Officer found that the said transactions in favour of the purchaser were F for the purpose to defraud the Revenue. Therefore, in exercise of powers under Section 34 of the U.P. Trade Tax Act (hereinafter referred to as the Act), the recovery certificate issued in the name of original assessee G was endorsed by the Assessing Officer treating the aforesaid transfers void to be recovered the amount from the purchaser in same way as it had to be recovered from the original assessee.

2.2 The purchaser – respondent herein - M/s. Rampur Distillery & Chemicals Ltd. (subsequently renamed as M/s. Radico Khaitan Ltd.) H

challenged the endorsement of recovery certificate against it before the First Appellate Authority. The First Appellate Authority dismissed the appeals preferred by the purchaser. Feeling aggrieved with the order of the First Appellate Authority, the purchaser challenged the same before the Trade Tax Tribunal. The Tribunal allowed the said appeals and held that the endorsement of recovery certificate against the purchaser is bad in law by observing that (i) no assessment proceedings/proceedings under the Act were pending when the purchaser – M/s. Rampur Distillery & Chemicals Ltd. purchased the goods, plant and machinery from the original assessee and (ii) that the transactions of sale of goods, plant and machinery between the original assessee and the purchaser cannot be said to be with the intention of defrauding tax or any other dues and (iii) that the purchaser was the bona fide purchaser.

2.3 Feeling aggrieved with the common judgment and order passed by the Trade Tax Tribunal, the Revenue preferred the revision applications before the High Court. By the impugned judgments and orders, the High Court has dismissed the said revision applications which has given rise to the present appeals.

3. We have heard learned counsel appearing on behalf of the respective parties at length.

4. At the outset, it is required to be noted that the dispute is with respect to the amount of tax due and payable by the original assessee – M/s. Shaw Scott Distillery (P) Ltd. for the assessment years 1980-81. It has come on record that the assessment proceedings were concluded in the year 1984. The assessment was reopened in the year 1988. The transfer of goods, plant and machinery belonging to the original assessee - M/s. Shaw Scott Distillery (P) Ltd. took place on 12.12.1986 and 01.01.1986 for a total sale consideration of Rs. 12,12,000/- which were much prior to the initiation of reassessment proceedings. It is not in dispute that the recovery certificate against original assessee came to be issued on 15.04.1990 and the endorsement for recovery against the purchaser was on 26.03.1993. It is also required to be noted that the sale consideration of Rs. 12,12,000/- has not be disputed by the Revenue. The endorsement to recover the amount due and payable by the original assessee against the purchaser is sought to be made in exercise of powers under Section 34 of the Act. Section 34 of the Act reads as under: -

“(1) Where, during the pendency of any proceedings under this Act, any person liable to pay any tax or any dues creates a

A charge on, or transfers any immovable property belonging to him in favour of any other person with the intention of defrauding any such tax or other dues, such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings;

B Provided that nothing in this section shall impair the rights of a transferee in good faith and for consideration.

C (2) Nothing in sub-section (1) shall apply to a charge or transfer in favour of a banking company as defined in the Banking Regulation Act, 1949 or any other financial institution specified by the State Government by notification in this behalf.”

D 5. Section 34 of the Act shall be applicable only in a case where there is a transfer of immovable property belonging to the original assessee, during the pendency of any proceedings under the Act with the intention of defrauding any such tax or other dues. As per proviso to Section 34, nothing in Section 34 shall impair the rights of a transferee in good faith and for consideration. Thus, the power of Section 34 can be exercised only in a case where the transfer of immoveable property belonging to the original assessee is made during the pendency of any proceedings under the Act and such transfer is found to be with the intention to defraud any such tax and other dues.

E In the present case, the transfer of goods, plant, and machinery (may be treated as immoveable property) had taken place on 12.12.1985 and 01.01.1986 for a sale consideration of Rs. 12,12,000/-. On that day, no assessment proceedings and/or any proceedings under the Act and/or recovery proceedings were pending. As observed hereinabove, the assessment proceedings were concluded in the year 1984 and the same was reopened in the year 1988. The recovery certificate was issued against the original assessee on 15.04.1990. Thus, at the time of transfer of immoveable property of the assessee which was for value/ consideration, no proceedings under the Act were pending, Section 34 of the Act shall not be applicable. Under the circumstances, the endorsement against the purchaser dated 26.03.1993, which was in exercise of powers under Section 34 of the Act has rightly been set aside by the Tribunal. At the cost of repetition, it is observed that in the facts and circumstances of the case narrated hereinabove, Section 34 of the Act shall not be applicable at all.

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6. Under the circumstances, no error has been committed by the High Court in dismissing the revision applications confirming the orders passed by the Trade Tax Tribunal setting aside the endorsement of recovery certificate issued in favour of original assessee against the purchaser. A

7. In view of the above and for the reasons stated above, both the appeals fail and the same deserve to be dismissed and are accordingly dismissed. No costs. B

Divya Pandey  
(Assisted by : Deepak Panwar, LCRA)

Appeals dismissed.