

PETITIONER:
COMMISSIONER OF SALES TAX A

Vs.

RESPONDENT:
PRABHUDAYAL PREM NARAIN

DATE OF JUDGMENT 26/07/1988

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1775 1988 SCR Supl. (1) 583
1988 SCC Supl. 729 JT 1988 (3) 542
1988 SCALE (2) 306

ACT:

U.P. Sales Tax Act 1948/U.P. Sales Tax Rules, 1948.
Section 3D(7)(b)/Rule 12B & Notification No. ST-111-2712-
Exemption from tax-Dealer entitled to claim only when
declaration forms furnished.

HEADNOTE:

The respondent a dealer in pulses, claimed exemption under s. 30(2) of the U.P. Sales Tax Act, 1948 for the assessment year 1977-78 contending that the purchases affected by him prior to 1.5.1977 could not be subject to tax. The assessing authority and the Assistant Commissioner (Judicial) rejected the assessee's claim for exemption from tax. D

on appeal, the Tribunal was of the view that since the assessee had not furnished Form III-C(I), he was not entitled to any exemption under s. 3-D of the Act.

The High Court allowed the revision petition on the ground that as the Tribunal had not gone into the proof furnished by the assessee before the assessing authority and the Assistant Commissioner (Judicial) in support of his claim for exemption, and remitted the matter back to the Tribunal, directing it to consider the question whether the dealer was entitled to get any exemption on the basis of the evidence that he had furnished.

In the appeal to this Court, it was contended on behalf of the Revenue-appellant that the High Court was wrong because, in view of s. 3D(7-B) of the Act the assessee was not entitled to lead any other evidence apart from submitting the registered dealer Form No. III-C(2).

Allowing the Appeal,

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HELD: 1. The High Court was in error in directing the Tribunal to consider the matter on further evidence. The assessee is entitled to exemption only on furnishing the declaration forms. Since he did not do so, he is not entitled to the exemption. [586E]

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2. Under section 3-D(7) declaration forms have been prescribed by Rule 12-B. The provision should be construed as mandatory. If the dealer had not furnished the required

declaration forms in order to be entitled for exemption, he cannot file any other evidence which he requires to be considered by the taxing authorities[1586D].

Kedar Nath Jute Mfg. Co. Ltd. v. Commercial Tax Officer
JUDGMENT:

M/S Govind Ram Tansukh Ram Tansukh Rai & Co. Budaun v. Commissioner of Sales Tax, U. P., [1985] UPTC 1960, approved.

Abdul Ghani Banne Khan v. CST., 1982 UPTC 665, over-ruled.

&
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2506(NT) of 1988.

From the Judgment and order dated 18-8- 1982 of the Allahabad High Court in S.T.R. No. 89 of 1982.

S.C. Manchanda, R.S. Rana and A.K. Srivastava for the Petitioner.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. Notice was issued on this special leave application stating that the matter would be disposed of finally at the notice stage itself. None has appeared pursuant to the notice. We have considered the matter and heard Shri Manchanda, counsel for the petitioner. Special leave is granted and the appeal is disposed of by the judgment herein.

This appeal arises from the judgment and order of the High Court of Allahabad, dated 18th August, 1982. The said judgment was delivered on a revision application filed before the High Court. The application related to the assessment year 1977-78 under the U.P. Sales Tax Act. The first question involved before the High Court of Allahabad was whether the purchase of pulses effected by the assessee prior to 1.5.1977 could be subjected to tax under Section 30(2) of the Sales Tax Act. The Tribunal held that these could be so subjected.

The High Court referred to the Notification No. ST-III-2712/X-

6(2)-77 U.P. Act XV-48-order-77 and held that the contention of the
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assessee could not be accepted that he had purchased the pulses in question before 1st May, 1977. There was no dispute on this contention raised subsequently. The only contention that was urged before the High Court was that the Asstt. Commissioner (Judicial), was about granting relief to the assessee in respect of his turnover on pulses of Rs.3,75,500 to the extent of Rs.3,19,673 on the basis of certain evidences that had been produced before the assessing authority and the Asstt. Commissioner. The Tribunal was of the view that since the assessee had not furnished Form IIL-C(1), he was not entitled to any exemption under Section 3-D of the Act. It appears that in the case of Abdul Ghani Banne Khan v. CST, [1982] UPTC 665, a learned Single Judge of the High Court of Allahabad held that on the language of Section 3D(7-b), the assessee was entitled to lead evidence to the satisfaction of the assessing authority that the sale was made to a registered dealer and was not confined only to furnishing form IIIC(2). There was, however, an earlier decision to the contrary in the case of Commissioner of Sales Tax v. Kailash Trading Co., [1981] UPTC 82 1 of the same Court which has been referred to in this case.

In the judgment under appeal the High Court was of the view that as the Tribunal had not gone into the proof furnished by the assessee before the assessing authority and the A.C. (J) in support of his claim for exemption which according to the decision in Abdul Ghani Banne Khan (supra), should be examined by the Tribunal, it remitted the matter to the Tribunal. In the premises the High Court allowed the revision and remitted the matter back to the Tribunal and directed it to consider the question whether the dealer was entitled to get any exemption on the basis of the evidence that he had furnished. According to the appellant the revenue, here the High Court was wrong because in view of Section 3D(7-b) of the Act, he was not entitled to lead any other evidence apart from submitting to the registered dealer Form No. III-C(2). Clause (b) of sub-section (7) of Section 3-D provides as follows:

"Every sale within Uttar Pradesh by a dealer either directly through another, whether on his own account or on account of any one else. shall, for the purposes of subsection (2), be deemed to be a sale to a person other than a registered dealer, unless the dealer selling the goods proves otherwise to the satisfaction of the assessing authority after having furnished such declaration or certificate, obtained from the purchaser of such goods, in such form and manner and within such period, as may be prescribed."

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Under the said Section, declaration forms have been prescribed by Rule 12-B. It appears that this question stands concluded so far as the U.P. is concerned, by a Bench decision of the said High Court in the case of M/s. Govind Ram Tansukh Ram Tansukh Rai & Co. Budaun v. Commissioner of Sales Tax, U.P., [1985], 1060. There, after considering the aforesaid two decision of the learned Single Judges, the Division Bench held that if the assessee had not furnished the required declaration forms in order to be entitled to exemption, the assessee could not file any other evidence which required to be considered by the taxing authorities.

In that view of the matter the decision of the Division Bench must prevail. This also follows logically from the decision of this Court in Kedar Nath Jute Mfg. Co. Ltd. v. Commercial Tax officer & Ors., 16 STC 607, where this Court while dealing with similar provisions under the Bengal Finance Sales Tax Act, held that the dealer could claim exemption on the sales to the registered dealer by furnishing the declaration form and unless such declaration forms are furnished, the dealer was not entitled to any exemption. This Court further reiterated that the provisions of this nature should be construed as mandatory. [In that view of the matter there is no scope for taking any contrary view. In the premises, the High Court in the impugned order was in error in directing the Tribunal to consider the matter on other evidence. The assessee is entitled to exemption only on furnishing declaration forms. Since the assessee did not do so, he was not entitled to exemption.]

The appeal is allowed and the decision of the High Court is set aside and the order of the Tribunal is restored. There will be no order as to costs.

N.V.K.

Appeal allowed.

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