(2014) 01 AHC CK 0163

In the Allahabad High Court

Case No : Trade Tax Revision Nos. 131 along with 132 of 1992

A.C.M.E. Engineer APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 10A

Citation : (2014) 71 VST 170

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Pradeep Agarwal, P.K. Agarwal and R.K. Dwivedi, Advocate for the Appellant; H.P. Srivastava, Additional Chief Standing Counsel, Advocate for the Respondent

Judgement

Dr. Satish Chandra, J.—Both the revisions have been filed by the assessee u/s 11 of the U.P. Sales Tax Act, 1948 against the consolidated judgment and order dated June 24, 1992, passed by the Sales Tax Tribunal, Lucknow, in Second Appeals Nos. 254 and 255 of 1991 pertaining to the assessment year 1983-84 and 1984-85, respectively, whereby penalty u/s 10A of the Central Sales Tax Act was sustained. The brief facts of the case are that the assessee started business in various items of electrical goods and machinery including generating sets, control panels, pumps and pumping sets, electric motors, etc., as a dealer and manufacturer under the name and style of ACME Engineers. While doing the business in "electrical goods", the purchases were made within and outside the U.P. The assessee used the form C and form XXXI, without any authority. So, the assessing officer has levied the penalty u/s 10A for Rs. 67,129 and Rs. 53,643, respectively for the assessment years under consideration. Both the appellate authorities have confirmed the same. Still not being satisfied, the assessee has filed the present revisions.

2. With this background, Sri Pradeep Agarwal, learned counsel for the assessee, submits that there was no order refusing to grant of registration in respect of the

items mentioned in the list or rejecting the application in respect of these items mentioned in the list.

3. The learned counsel also submits that as per the Central Sales Tax Act, no notice proposing to refuse the registration in the items mentioned in the list was indicated to the assessee. No order was passed refusing to grant the registration in those items or rejecting the application in respect of these items. The list of the items was filed along with applications for registration in which items to be imported were mentioned under the different heads.

4. It is also a submission of the learned counsel for the assessee that there was no mala fide intention on the part of the assessee. So, there is no occasion to levy the penalty. To support his submissions, he relied on the ratio laid down in the following cases:

(i) Commissioner, Sales Tax, U.P., Lucknow v. Meerut Roller Flour Mills Pvt. Ltd., Meerut Cantt. [1995] 98 STC 20 (All) : [1995] UPTC 285;

(ii) Orient Paper Mills Ltd. v. Commissioner of Sales Tax, Madhya Pradesh, Indore [1969] 23 STC 308(MP) ; and

(iii) Shyam Cold Storage Vs. Sales Tax Officer, .

5. Lastly, he made a request that the penalty may kindly be cancelled.

6. On the other hand, Sri H. P. Srivastava, learned Additional Chief Standing Counsel relied on the orders passed by the lower authorities including the impugned order.

7. After hearing both the parties and on perusal of the record, it appears that the assessee has imported the goods. It is claimed that in form A, the assessee has attached the list mentioning the items for the purpose of import and re-sale. But, the fact remains that without registration and without proper permission, he has imported the electrical goods and machinery and parts.

8. In the instant case, learned counsel for the revisionist has relied upon the ratio laid down in the case of Commissioner, Sales Tax v. Meerut Roller Flour Mills Pvt. Ltd., Meerut Cantt. [1995] 98 STC 20 (All) : [1995] UPTC 285 which is related with the exemption u/s 4A of the Trade Tax Act, but the same is not the issue in hand. The case of Shyam Cold Storage Vs. Sales Tax Officer, is related to the application under the Central Sales Tax Act, where the honourable court observed that the registration could only be in respect of running business, which required new machinery and that no registration could be granted, if the business for which the plant was sought to be purchased was not in existence. But, in the instant case, the issue is pertaining to the penalty.

9. Similarly, the ratio laid down in the case of AIR 1969 53 (M.P.) is related to the application for amendment in the certificate issued under the Central Sales Tax Act. The ratio is not applicable in the instant case. Thus, the case laws cited by the learned counsel for the revisionist are not helpful in the instant case.

10. From the record, it also appears that on January 8, 1982 in the application (form A) in column 16A, the generating sets and pump panels were mentioned, but in column 16B and 17, no item was mentioned. Merely, it was mentioned that the list is attached. The so called list was not available in the record as observed by the appellate authorities. It is also not cleared that where the said application was submitted.

11. In the above-mentioned circumstances, the Tribunal observed that on January 8, 1982, the assessee has submitted merely form A, but without any list. Concurrent findings have been recorded by both the appellate authorities. When the concurrent findings have been recorded by the appellate authorities, then no interference is required. The said findings have not been challenged. So, it is binding on this court as per the ratio laid down in the case of Commissioner of Income Tax Vs. Kantilal Prabhudas Patel, and Commissioner of Income Tax Vs. D. Subramanian, .

12. Needless to mention that the Tribunal is a final fact finding authority as per the ratio laid down in the following cases:

(i) CIT v. Suraj Dal Mill [2005] 37 STJ 547 Alld.;

(ii) CIT v. Durga Dal Mill [2006] 3 VLJ 152 Alld.;

(iii) Kamala Ganapathy Subramaniam and Another Vs. Controller of Estate Duty, ; and

(iv) Anjani Coal Agency v. CIT [2005] 37 STJ 294 (All).

13. In the instant case, the assessee has used form C and form XXXI, without any authority.

14. From the above, it appears that the assessee has not attached the list along with the form A. Goods were imported without any registration and authority. When it is so, then the penalty levied is justifiable. Hence, the impugned order is hereby sustained along with the reasons mentioned therein. In the result, both the revisions filed by the assessee are dismissed.