(1989) 02 AHC CK 0007

In the Allahabad High Court

Case No : Sales Tax Revision No. 203 of 1989

Babu Ram Rajendra Kumar APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 27-02-1989

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)
Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)
Uttar Pradesh Sales Tax Act, 1948 — Section 9(1B)

Citation : (1990) 77 STC 243

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agrawal, for the Appellant; V.M. Sahai, for the Respondent

Final Decision : Allowed

Judgement

Anshuman Singh, J.—This revision u/s 11 of the U.P. Sales Tax Act, 1948 (hereinafter referred to as "the Act"), is directed against the judgment dated 7th December, 1988, passed by the Sales Tax Tribunal, Ghaziabad, rejecting the appeal of the applicant against the judgment of the Deputy Commissioner (Appeals), Ghaziabad, refusing to grant 20 per cent waiver to the applicant for the assessment year 1982-83 (Centre).

2. The applicant was carrying on the business of foodgrains in the assessment year in question. Its books of account for the assessment year 1982-83 (U.P.) were accepted under Rule 41(7) of the U.P. Sales Tax Rules by the assessing officer. It is alleged that on the basis of some information, the Assistant Commissioner (Assessment), Bulandshahr, proceeded to assess the applicant u/s 9(2) of the Central Sales Tax Act and as such a notice u/s 21 of the Act was issued to show cause. The case of the applicant is that since it was not carrying on any business under the Central Sales Tax Act, 1956, it did not file any return and did not admit any liability. However, the assessing authority assessed the

applicant on a total turnover of Rs. 66,00,000 creating a liability of Rs. 6,05,000. The assessee feeling aggrieved against the aforesaid order filed an appeal u/s 9 of the Act before the Deputy Commissioner (Appeals), Ghaziabad. The assessee moved an application along with the appeal for waiver of the deposit of 20 per cent, which is a condition precedent, for entertainment of the appeal in case the assessee has failed to file any return under proviso to Section 9(I-B)(b) of the Act. The Deputy Commissioner (Appeals), by order dated 5th July, 1988, allowed the waiver application in part. The assessee feeling further aggrieved against the aforesaid appellate order preferred a second appeal u/s 10 of the Act before the Tribunal which by the impugned order confirmed the order of the Deputy Commissioner (Appeals).

3. I have heard Sri Rakesh Ranjan Agrawal, learned counsel for the applicant, and Sri V.M. Sahai, learned counsel appearing for the Commissioner of Sales Tax. Learned counsel for the applicant contended that the appeal of the applicant has been rejected by the Tribunal on the ground that the view taken by this Court in Atma Ram Misra v. Commissioner of Sales Tax [1990] 77 STC 232 ; 1987 UPTC 547, is not a good law inasmuch as the matter has been referred to a Division Bench in Civil Misc. Writ Petition No. 1014 of 1987 (South Eastern Roadways v. State of U.P.). It has been contended by the learned counsel for the applicant that in spite of the fact that the view taken by this Court in Atma Ram Misra''s case [1990] 77 STC 232 ; 1987 UPTC 547, has been referred to a larger Bench but so long the view taken in the aforesaid case is not overruled by this Court, the law laid down in Atma Ram Misra''s case [1990] 77 STC 232 ; 1987 UPTC 547, is a good law and the Tribunal was bound to follow the same. Learned counsel appearing for the Commissioner of Sales Tax on the contrary has submitted that the matter is still pending before the Division Bench and the case has not been decided so far. In view of the said facts, I am of the opinion that so long the view taken by this Court in Alma Ram Misra''s case [1990] 77 STC 232 ; 1987 UPTC 547, is not overruled by a larger Bench, the view taken in that case is binding on the sales tax authorities and the Tribunal was not justified in rejecting the appeal of the applicant on the said ground.

4. In the result the revision succeeds and is allowed. The order dated 7th December, 1988, passed by the Tribunal is set aside and the Deputy Commissioner (Appeals), Sales Tax, Ghaziabad Range, Ghaziabad, is directed to register the appeal of the applicant for the assessment year, 1982-83 (Centre) without insisting on the deposit of 20 per cent to be made by the applicant and dispose of the appeal according to law on merit. The parties shall bear their own costs.

5. Let a copy of this order be sent to the Tribunal concerned as contemplated u/s 11(8) of the Act.

6. A copy of this order may be supplied to the learned counsel on payment of usual charges.

