(1986) 12 AHC CK 0013

In the Allahabad High Court

Case No : Sales Tax Revision No. 319 of 1986

Commissioner of Sales Tax APPELLANT

Vs

Ganesh Int. Udyog RESPONDENT

Date of Decision : 09-12-1986

Acts Referred:

Citation : (1987) 67 STC 190

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Advocate : Rakesh Ranjan Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Misra, J.—This revision has been preferred by the Commissioner, Sales Tax, U. P., Lucknow against the order dated 5th February, 1986, passed by the Sales Tax Tribunal, Saharanpur Bench, Saharanpur.

2. For the assessment year 1978-79, the assessing authority had rejected the book version of the turnover shown by the assessee and made an estimate of turnover. Aggrieved against the same, the assessee had preferred an appeal before the Assistant Commissioner (Judicial), who upheld the rejection of the account books of the assessee but reduced the quantum of turnover. Against this order, both the Commissioner of Sales Tax as well as the assessee filed second appeals before the Sales Tax Tribunal. The appeal preferred by the assessee was decided earlier by the Tribunal. The main contest in the appeal preferred by the assessee before the Tribunal was as to whether the account books of the assessee were liable to be rejected. The said appeal was duly contested by the Commissioner of Sales Tax before the Tribunal. After hearing the parties, the Tribunal for the reasons stated by it in its impugned order allowed the appeal of the assessee and held that the account books of the assessee were liable to be accepted. It appears that the other second appeal filed by the Commissioner of Sales Tax challenging the reduction in the quantum of turnover before the

Tribunal was not listed and heard along with the aforesaid second appeal filed by the assessee. The said departmental appeal was ultimately heard and the impugned order of the Tribunal was passed. In the impugned order, the Tribunal has taken the view that since the account books of the assessee have been accepted in the appeal filed by the assessee, the very basis of filing this appeal which challenges the reduction of quantum of turnover no longer subsists. In this view of the matter, the Tribunal has dismissed the appeal filed by the Commissioner of Sales Tax aforesaid.

3. I have heard learned Standing Counsel appearing on behalf of the Commissioner of Sales Tax. He has very strongly relied upon the decision of the Supreme Court in the case of Commissioner of Sales Tax v. Vijai Int. Udyog 1986 UPTC 131 and submitted that in view of the said decision the impugned order of the Sales Tax Tribunal be set aside and the Tribunal be directed to rehear both the appeals filed by the assessee as well as the department together.

4. I, however, find that there is no substance in the aforesaid submission made by the learned Standing Counsel. In so far as the decision of the Supreme Court in the case of Commissioner of Sales Tax v. Vijai Int. Udyog 1986 UPTC 131 is concerned, the Supreme Court was concerned in that case with the controversy as to whether under the situation of that case the doctrine of merger was applicable and the view taken by the Supreme Court was that the said doctrine of merger was not applicable as both the assessee and the Commissioner of Sales Tax had a statutory right of appeal before the Tribunal against the decision of the Assistant Commissioner (Judicial) and in the exercise of that right two separate appeals had been filed. Towards the last of the paragraph 3 of its judgment aforesaid the Supreme Court has clearly mentioned that the doctrine of merger is not applicable when both the parties have filed appeals before the Tribunal against the order of the Assistant Commissioner (Judicial) partly allowing the appeal of the assessee. In the present case I find that this controversy is not at all involved, nor the Tribunal has under the impugned order relied upon the aforesaid doctrine of merger for dismissing the appeal in question. In paragraph 4 of the aforesaid judgment of the Supreme Court, the following observations are there :

To meet out justice to the parties and overcome the difficulty arising in the circumstances indicated above, we suggested to the counsel of the parties that both the appeals should be reheard by the Tribunal and counsel for both parties fairly agreed that it should be done. We accordingly allow this appeal, set aside the order of the High Court as also the two separate orders of the Tribunal by consent of parties and direct that Appeal No. 1366 of 1980 filed by the assessee and Appeal No. 641 of 1981 filed by the Commissioner relating to the year 1978-79 shall be reheard....

5. This situation does not prevail in the present case. Sri Rakesh Ranjan Agarwal, counsel appearing on behalf of the assessee, is not agreeable that both the appeals which were preferred before the Sales Tax Tribunal by either of the

parties, should be reheard. In this view of the matter, it cannot be said that the said decision is an authority for consideration that both the appeals be reheard. On the other hand, in the case of Commissioner of Sales Tax v. Ganesh Flour Mills Co. Ltd. 1986 UPTC 291 the aforesaid decision of the Supreme Court has been considered and distinguished on the same reasoning as I have already indicated above. I see no reason as to why a different view than the view taken in the case of Commissioner of Sales Tax v. Ganesh Flour Mills Co. Ltd. 1986 UPTC 291 be taken.

6. That apart, the matter can be examined from another angle. Let us assume for a moment that even if both the appeals one filed by the assessee and the other filed by the department, were to be heard together by the Tribunal and after hearing both the parties the Tribunal came to the conclusion that the account books of the assessee are to be accepted and in consequence thereof the appeal of the assessee had to be allowed, in such a situation, in my opinion, the very basis of the departmental appeal on the question of reduction of quantum of turnover does not exist or survive. In that situation, the only order that the Tribunal would have passed on the departmental appeal was to say that since the account books of the assessee have been accepted in the appeal filed by the assessee, therefore, the question of determination of turnover or reduction of quantum of turnover does not survive. This has precisely been done by the Tribunal.

7. Having heard learned counsel for the parties, therefore, I find no error of law is involved in the impugned order passed by the Tribunal.

8. In the result, the revision fails and is dismissed with costs.