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(2006) 07 AHC CK 0067

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Puttan Dal Mill RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:
Central Sales Tax Act, 1956 — Section 11, 6A

Citation : (2007) 7 VST 238

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of Tribunal dated January 1, 1998 relating to the assessment year 1983-84 under the Central Sales Tax Act, 1956.

2. Dealer/opposite party (hereinafter referred to as "dealer") was carrying on the business of foodgrains and pulses. During the year under consideration, dealer claimed to have despatched the goods of Rs. 5,35,171 outside the State of U. P. to the consignment agent for sale but in respect of the said despatch neither any form F nor any evidence was produced to prove that the dispatch was not in the course of inter-State sales. Accordingly, the assessing authority levied the tax treating it as inter-State sales. Order of the assessing authority has been confirmed by the first appellate authority. Tribunal, however, accepted the plea of the dealer that the goods were despatched to the consignment agent for sale.

3. Heard Sri U.K. Pandey, learned Standing Counsel and Sri Suyash Agarwal, learned Counsel for the dealer.

4. Learned Standing Counsel submitted that u/s 6A of the Central Sales Tax Act burden lies upon the dealer to prove that the movement of the goods was not in pursuance of a prior contract of sale. He submitted that no evidence whatsoever has been adduced by the dealer and in the absence of any evidence, the Tribunal has erred in accepting the claim of the dealer that the goods were despatched to

the consignment agent for sale. Learned Counsel for the dealer relied upon the order of the Tribunal.

5. I find substance in the argument of learned Standing Counsel. u/s 6A of the Central Sales Tax Act burden lies upon the dealer to prove that the movement of the goods was not in pursuance of a prior contract of sale in the course of inter-State trade. There is no dispute that during the year under consideration, dealer had despatched the goods for Rs. 5,35,171 and in respect of which no evidence had been adduced. In the assessment order, which was passed in December, 1988, it was mentioned that dealer was not able to furnish the details of the sales of the aforesaid goods. No details of the sale of the goods had been furnished by the dealer even in appeal and before the Tribunal. In the circumstances, the Tribunal has erred in accepting the claim of the dealer that the goods had been despatched for sale on consignment basis, without any evidence. Order of the Tribunal to this extent is liable to be set aside.

6. In the result, revision is allowed in part. Order of the Tribunal deleting the tax on the amount of Rs. 5,35,171 is set aside and the Tribunal is directed to pass the order u/s 11(8) of the Act.

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