(2007) 01 AHC CK 0194

In the Allahabad High Court

Commissioner of Trade Tax APPELLANT

Vs

Vijendra Engineering RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 25 VST 600

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

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 December 10, 1998 relating to the assessment year 1995-96 under the Central Sales Tax Act, 1956.

2. During the year under consideration, dealer/opposite party (hereinafter referred to as, "the dealer") had made stock transfer through its commission agent M/s. M. S. P. Automobiles, Virudhunagar, Tamil Nadu, for Rs. 7,38,680. Dealer had appointed M/s. M. S. P. Automobiles, Virudhunagar, Tamil Nadu as its consignment agent for sale of stock transfer by a written agreement. Under the terms of the agreement commission agent had to pay 90 per cent amount in advance and 10 per cent subsequently. The assessing authority treated the stock transfer as inter-State sales merely on the ground that as per the terms of the agreement, commission agent had to pay 90 per cent of the value of the goods. The first appeal filed by the dealer was rejected. Dealer filed second appeal before the Tribunal. The Tribunal by the impugned order, allowed the appeal and accepted the plea of the dealer. The Tribunal held that the movement of goods to Tamil Nadu was not in pursuance of any prior contract of sales. The goods were dispatched as per the agreement to the commission agent for sale at Tamil Nadu. It has been held that during the course of stock transfer, the freight incurred was debited in the account of the dealer.

3. Heard learned Standing Counsel.

4. No one appears on behalf of the dealer/opposite party.

5. I do not find any error in the order of the Tribunal. Merely because as per the terms of the agreement, some payments were received towards advance from the commission agent it cannot be said that the movement of the goods was in pursuance of prior contract of sales. Sometime principal asks agent to pay some amount as a security against the goods, but mere payment of some amount in advance would not change the nature of transaction. As per the agreement, the dealer had appointed M/s. MSP Automobiles, Virudhunagar, Tamil Nadu as a commission agent. The genuineness of the agreement is not in dispute. The movement of goods was by way of stock transfer to the commission agent for sale. In the circumstances, the view of the Tribunal that the goods had moved by way of stock transfer for sale and not in pursuance of prior contract of sale, cannot be said to be erroneous.

6. In the result, revision fails and is, accordingly, dismissed.

