(1986) 01 AHC CK 0065

In the Allahabad High Court

Case No : Sales Tax Revision No. 699 of 1985

Commissioner, Sales Tax — APPELLANT

Vs

Electro India Ltd. — RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:

Citation : (1987) 67 STC 397

Hon'ble Judges : Anshuman Singh, J

Bench : Single Bench

Advocate : The Chief Standing, for the Appellant; J.C. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anshuman Singh, J.—The Commissioner of Sales Tax feeling aggrieved against the judgment dated 21st May, 1985 passed by the Sales Tax Tribunal, Lucknow, has come to this Court u/s 11(1) of the Act. The question raised on behalf of the Revenue in the instant revision is :

Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was justified in their majority judgment to hold that the assessee was not liable to any penalty u/s 15-A(1) of the Act in spite of the decision of the High Court in the case of United Traders, Rudrapur v. Commissioner of Sales Tax, U.P. 1984 ATJ 435 ?

2. I have heard learned Chief Standing Counsel appearing for the Commissioner, Sales Tax, U.P. and Mr. J.C. Bhardwaj, learned counsel for the assessee.

3. The facts, which are not disputed in this case are that a cheque was issued by the assessee for Rs. 3,85,861.84 which was not honoured due to the lack of funds in the account of the assessee and as soon as the assessee came to know about the said fact, he deposited the entire amount and also paid interest till the date of payment. The stand of the department is that since the assessee issued a cheque which was dishonoured, therefore, he acted mala fide and was liable to

pay penalty u/s 15-A(1)(a)of the Act The Tribunal has recorded a categorical finding that there was no mala fide on the part of the assessee and the assessee has acted under a bona fide belief that he would be getting payment from the electricity department and it was on that expectation he issued a cheque in favour of the Sales Tax Department. As soon as the assessee came to know about the dishonour of the cheque, he immediately deposited the amount and also paid the interest. Whether the assessee acted mala fide or bona fide is a question of fact. The Tribunal on the basis of the entire material on record has come to the conclusion that the assessee under a bona fide belief had issued the cheque. It is also well-settled that the authorities under the fiscal statute while imposing the penalty has to exercise its discretion after considering the explanation offered by the assessee. In the present case the authorities have exercised the discretion after considering the explanation offered by the assessee and as such, the order passed by the Tribunal does not require any interference by this Court u/s 11(1) of the Act.

4. In the result, the revision fails and is accordingly dismissed. The question referred above is answered in favour of the assessee and against the department. There will be no order as to costs.

