(1984) 01 AHC CK 0056

In the Allahabad High Court

Case No : Sales Tax Revision No. 5 of 1983

Commissioner, Sales Tax — APPELLANT

Vs

Krishna Brick Field — RESPONDENT

Date of Decision : 23-01-1984

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1985) 58 STC 336

Hon'ble Judges : R.B. Lal, J

Bench : Single Bench

Advocate : R. Ranjan, for the Respondent

Final Decision : Allowed

Judgement

R.B. Lal, J.—This revision has been filed by the Commissioner, Sales Tax, U. P. The assessee-opposite party carries on business of manufacture of bricks. For the assessment year 1974-75, the assessee disclosed certain taxable turnover and produced its account books. The assessing authority rejected the account books on three grounds and proceeded to determine the taxable turnover to the best of his judgment. The assessee appealed. The appellate authority agreed with the assessing authority that the account books of the assessee could not be relied upon, but it reduced the amount of the taxable turnover. The assessee filed second appeal before the Sales Tax Tribunal. Before the Tribunal the assessee took up the stand that the grounds for rejecting its books of account were not made out or were not sufficient for rejection. The Tribunal agreed and allowed the appeal and accepted the books of account of the assessee and reduced the sales tax to the admitted amount.

2. The Commissioner of Sales Tax has not felt satisfied and filed this revision u/s 11(1) of the U. P. Sales Tax Act (briefly the Act).

3. The following questions of law have been raised by the Commissioner in this revision :

(1) Whether on the facts and in the circumstances of the case, the Tribunal (Sales Tax) was legally justified to hold that provisions of Section 8-A(4) applies only in case of cash memo and not in case of bills ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal (Sales Tax) was legally justified to accept the account books of the assessee ?

4. I have heard the learned counsel for the parties.

5. The main question for consideration in this revision is as to what is the true and correct meaning of Sub-section (4) of Section 8-A of the Act. The relevant portion of Sub-section (4) reads thus :

(4) Without prejudice to the provisions of Section 12, any dealer who sells goods shall issue to the purchaser a cash memo or a bill, as the case may be, signed and dated by himself or by his servant, manager or agent, and shall preserve its carbon copy for a period of five years from the expiration of the assessment year during which it is issued, in the following cases, namely....

6. The Tribunal deal with the provisions of Section 8-A(4) in these words :

The provisions of Section 8-A(4) apply to cash memos and not to credit memos. Credit memos are always open to verification. It is in the cash memos that the verification is not possible and therefore, maintenance of exact copy of cash memo issued in the form of a carbon copy is necessary.

7. The above view of the Tribunal is wholly erroneous so far as it relates to credit memos. Sub-section (4) which has been quoted above, clearly shows that the requirement of preparing and preserving a carbon copy is applicable both in respect of a cash memo or a bill issued to the purchaser. The expression "bill" will take within its ambit a credit memo or a chalan. In the sub-section the expression "bill" has been used in contradiction of the expression "cash memo". From a plain reading of Sub-section (4), it is clear that the requirement of preparing and preserving a carbon copy is also in respect of a bill and not only in respect of the cash memo. This requirement of law is because in the case of a carbon copy the checking authority can be sure that that part of the bill or credit memo which was given to the purchaser was the same as the carbon copy. The view taken by the Tribunal is erroneous. Answer to question No. (1) is that the Tribunal was not legally justified to hold that the provision of Section 8-A(4) applies only in case of cash memo and not in case of bills. The second question is not answered, it will be for the Tribunal to consider the question whether or not the books of account should be accepted, in the light of the answer to question No. (1) given by this Court.

8. In the result, the revision is allowed. The case is sent back to the Tribunal u/s 11(8) of the Act for a fresh determination of the appeal in the light of what has been held above. In the circumstances of the case there will be no order as to costs.

