(1986) 09 AHC CK 0063

In the Allahabad High Court

Case No : Sales Tax Revision No. 60 of 1986

Commissioner, Sales Tax APPELLANT

Vs

Puri Sons RESPONDENT

Date of Decision : 15-09-1986

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

Citation : (1987) 67 STC 460

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Misra, J.—The present revision is directed as against the order passed by the Sales Tax Tribunal, Bench I dated 3rd September, 1986.

2. The opposite party carries on business in kirana goods. For the assessment year 1976-77 his book of account was accepted. The assessing authority disallowed certain exemption and fixed net turnover at Rs. 1,14,876 as against the disclosed turnover of Rs. 9,702. The dealer filed appeal which was also dismissed. The second appellate court allowed the exemption on the turnover of Rs. 66,600 on the ground that the dealer had made purchase in the course of import from Nepal and the same were accordingly exempted u/s 6(2) of the Central Sales Tax Act.

3. It was urged on behalf of the department that the exemption granted by the Tribunal was unwarranted as the dealer did not file any evidence either before the assessing authority or before the first appellate court and thus the granting of exemption on the basis of copies of assessment order dated 17th November, 1976 and 27th February, 1976 in the case of Maqsood Ahmad & Sons, Sitapur and J. Bhatwara Trading Co., Kayamganj is uncalled for. It was further urged that since there is nothing to show that copies of these orders were filed either before the assessing authority or before the first appellate court, then in case this was

permitted to be filled by the Tribunal, then the opportunity to the department should have been given as provided u/s 12-B of the U. P. Sales Tax Act.

4. I have perused the various orders passed by the authorities below and I find both the assessment orders of the first appellate court make it clear that the dealer did not file any evidence to substantiate his claim for exemption. However, the second appellate court in the order recorded a finding that the dealer submitted two agreements before the assessing authority entered into with M/s Maqsood Ahmad & Sons, Sitapur and J. Bhatwara Trading Co., Kayamganj. It is on the basis of these documents he granted exemption in favour of the dealer. By the orders passed by both the assessing and the appellate authorities it is clear that the dealer did not file any such evidence before it and the finding recorded by the Tribunal, therefore, cannot be sustained. It was argued on behalf of the department that it seems that these agreements were really filed before the Tribunal, then no separate order was passed on the same as required u/s 12-B of the said Act. It is clear u/s 12-B that before the dealer is entitled to produce the additional evidence before the appellate court, the dealer must satisfy that such evidence was refused by the assessing authority wrongly or such evidence in spite of its due diligence was not within his knowledge or could not be produced by him before the assessing authority. Thereafter in case the appellate authority permitted such additional evidence to be brought on record, then an opportunity must be given to the other side to rebut the same. In the present case there is no such order on the record to show that such evidence was really admitted by the Tribunal. In view of this, reliance placed by the Tribunal on the aforesaid two agreements could not be made without following the procedure as laid down u/s 12-B of the said Act. Admittedly in this case neither there is any order justifying any admission of such document nor affording any opportunity to the department. In view of this the order passed by the Sales Tax Tribunal could not be sustained.

5. As observed above the order passed by the Tribunal on account of the aforesaid finding, is not sustainable and the same is set aside. The case is sent back to the Tribunal for deciding afresh this question in accordance with the aforesaid observations.

