(2006) 09 UK CK 0008

In the Uttarakhand High Court

Commissioner, Sales Tax APPELLANT

Vs

Ratan Lal Sah and Sons RESPONDENT

Date of Decision : 07-09-2006

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

Citation : (2007) 8 VST 37

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This revision, u/s 11(1) of the U. P. Sales Tax Act, 1948 has been preferred against the judgment and order dated September 18, 1991, passed by the Sales Tax Tribunal.

2. Brief facts of the case are that the assessee Ratan Lal Sah, opposite party, is a dealer in Indian-made foreign liquor and having licence of F. L. 5 for the purpose he is, as such, authorised to make imports of Indian-made foreign liquor from the dealers having F. L. 2 and to sell the same.

3. On July 27, 1991, the authorities of the Excise Department found 96 bottles each weighing 750 M. L., 720 half bottles, each weighing 375 M. L., and 47 quarters each containing 180 M. L. Consequently, the Excise Inspector making raid of the shop of the assessee-firm seized all the materials and lodged the F.I R. against him on one hand and on the other hand after getting necessary directions sold the same in the open market and fetched a sum of Rs. 48,000 by auction. On account of the F.I. R. the assessee was prosecuted in the court of Magistrate, where he made confession that he was found in possession of Indian-made foreign liquor in the quantity as detailed above. The assessee was convicted and in the appeal his conviction of rigorous imprisonment was commuted and reduced to fine only. On account of all the aforesaid happenings, the sales tax department took cognisance of the matter and the Sales Tax Officer

made assessment and imposed the assessment tax.

4. Aggrieved by the order of the assessment, appeal was preferred. The appellate court remanded the case back. After remand of the case the assessing officer again took up the matter and arrived at the conclusion that no doubt the auction of the quantity of the Indian-made foreign liquor as was seized from the shop of the assessee, fetched Rs. 48,000 only, still the market value of that goods was not less than Rs. 1,14,000 as it was assessed by the authorities prior to remand. The assessing authority made an estimation that it was the only instance during the year in which the assessee was found in possession of Indian-made foreign liquor without making entries of the same in the account books, that he may have indulged in such clandestine activity prior and subsequent to that seizure and auction also during the year and on that assessment the assessing authority estimated that the assessee might have sold goods in the amount of Rs. 6,00,000. Accordingly the tax was imposed.

5. Aggrieved by the order of the assessing authority, an appeal was preferred. The first appellate authority struck down the finding in regard to the value of the seized goods of Rs. 1,14,000 on the ground that there had been specific evidence from the side of the Excise Department that the price fetched in auction was Rs. 48,000 only and as such keeping in mind that there may have been repetitions of such activities of clandestine business during the year he estimated the turnover of such transactions in the value of Rs. 1,00,000 and imposed tax accordingly.

6. Aggrieved by the order passed by the first appellate authority, the department went in the second appeal. The assessee also filed the second appeal. The second appellate authority/Sales Tax Tribunal clubbed both the appeals and decided by a common judgment.

7. The Tribunal after considering the arguments advanced by the parties, was pleased to dismiss the second appeal filed by the Revenue Department. The Tribunal at the same time partly allowed the appeal filed by the assessee and the net turnover was reduced to Rs. 50,000 and tax thereupon was determined as Rs. 13,000 at the rate of 26 per cent.

8. Feeling aggrieved by the judgment and order of the Tribunal, the department has filed the revision before the honourable Allahabad High Court, which has been transferred to this court for disposal, after creation of new State.

9. The following question of law was formulated in the revision:

Whether, the Trade Tax Tribunal has erred in law in treating the annual turnover of the dealer at Rs. 50,000 only, while the value of the unauthorised liquor seized by the Excise Department was alleged to be Rs. 1,14,000 ?

10. Heard learned Counsel for the parties and perused the record.

11. There is no evidence on record on the basis of which it could be said that the

Indian-made foreign liquor was being imported into the State by the assessee. There is no dispute with regard to this fact that the assessee had himself not sold the Indian-made foreign liquor and it was sold in auction by the Excise Department as such there should have been no liability of tax upon the assessee.

12. As regards the point, as to whether it was an import by the assessee or not, it may be said that no doubt the manufacturer of this foreign liquor was having its unit within the State of U.P., but the latter part of Section 12-A raises the presumption which is rebuttable and once an assessee has led all primary evidence or placed all relevant facts before the assessing authority under the law he has discharged the burden of proof that lay on him under this section. Therefore, in such situation the burden shifts to the department either to fasten tax liability on the assessee or to point out the material or facts which will not entitle the assessee to relief claimed by him u/s 3-A.

13. In the instant case the assessee claimed that it was not an import made by him, as such he had to establish that he had purchased that liquor directly from the manufacturer which was not possible because he was not the holder of F. L. 2. The question which remains to be considered is that -- as to what should have been the quantity or the amount of turnover in his behalf in which the tax should have been levied. It is true that once it is found that the assessee had concealed purchases and got the same beyond the account books, then it may be presumed that he might have done so on other occasions also during the year and in such estimate guess-work cannot be avoided but the guess-work should have been of some nexus between the turnover disclosed and the turnover determined. The disclosed turnover in the instant case is taken as an amount of Rs. 48,000 that was fetched in the auction of the Indian-made foreign liquor, by the Excise Department. There is no other evidence on the basis of which it could be said that the assessee has indulged in such activities on other occasions also during the year and as such it would, in the fitness of things, be sufficient to determine the tax liability on the amount of Rs. 50,000 at the rate of 26 per cent treating it as first sale after import.

14. As the learned Tribunal has recorded the finding of fact, that there is no other evidence on the basis of which it could be said that the assessee had indulged in such activities on other occasions also during the year, thus it rightly dismissed the second appeal filed by the department and partly allowed the appeal filed by the assessee. The impugned judgment and order passed by the Sales Tax Tribunal does not suffer from any infirmity.

15. I do not find any merit in this revision and in my opinion the same is liable to be dismissed.

16. The question of law framed in this revision is decided in favour of the assessee and against the Revenue department.

17. The revision is dismissed.

