(2005) 07 UK CK 0051

In the Uttarakhand High Court

Case No : Sales Tax Revision No. 01 of 2003 (Old. No. 1670 of 1990)

Commissioner, Sales Tax	APPELLANT
Vs	
Surendra Prakash Kaushik and Sons	RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 2

Citation : (2006) 144 STC 208

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Sayeed Nadeem, for the Appellant;

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard learned Standing Counsel appearing on behalf of the applicant-revisionist. No one turned up on behalf of the assessee, even after sufficient service.

2. This revision, preferred u/s 11(1) of the U.P. Sales Tax Act, 1948, was filed before the Allahabad High Court in the year 1990 from where it has been received by transfer u/s 35 of the U.P. Reorganisation Act, 2000, for its disposal. The revision is directed against the order dated August 21, 1990, passed by the Sales Tax Tribunal, Dehradun.

3. The question of law involved in this revision is as under : "Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was legally justified to hold that the purchases were made in the dealer''s own account directly from the agriculturists and that the sale of ex-U.P. had been made by the consignment whereas the dealer had himself issued 6-R and 9-R showing himself as selling ?"

4. The assessee is a dealer, who deals in sonth (dry ginger), ginger, potato, onion, etc. The case pertains to the assessment year 1983-84. The taxable

turnover of sonth, as admitted by the dealer for the year under consideration, was Rs. 721.80 and accordingly he paid a tax of Rs. 29 thereon. However, it appears that the department issued a notice of demand along with assessment order dated November 12, 1987 to the assessee, raising a demand of Rs. 6,421.30 against the assessee. The case of the assessee is that the liability to pay tax on the turnover relating to dry ginger either lies with the importer or with the manufacturer. The assessee is neither of the two. It was alleged by the assessee that he purchased dry ginger through mandi samiti, as such, no tax was liable on such turnover. On the other hand, the department alleges that the first sale has been made by the assessee to himself, as there is only one account. The department argues that the assessee, cannot sell as item to himself.

In C.V. Ramaswamy Goundar Sons v. Deputy Commercial Tax Officer [1990] 77 STC 58 Mad it has been held that if the dealer has acted only as an intermediary, by receiving goods from the seller and made over to the purchaser, he is not liable to tax, as the sale is not completed when he received the items from the cultivators. In Commissioner of Sales Tax v. Sunil Kumar & Company 1989 UPTC 395 it has been held that in the business of chillies directly purchased from farmers, if the assessee is neither importer nor manufacturer, he is not liable to tax. In the present case also, what assessee has done is this he received dry ginger from farmers through mandi samiti, by issuing 6-R in the name of cultivators and 9-R in his own name. As such, that he has acted as selling agent of the cultivators. Learned counsel for the applicant-revisionist, argued that the act on the part of the assessee is a sale u/s 2(ee). I am unable to accept the said submission for the reason that Section 2(ee) defines manufacturer and provides that in relation to any goods, the manufacturer means the dealer, who makes first sale of such goods in the State after they are manufactured. Since, sale could not have been made to himself by the assessee, as such, it cannot be said to be the first sale in the State. Therefore, the assessee, cannot be said to be the manufacturer. That being so, there appears no error in the impugned order passed by the learned Sales Tax Tribunal that the assessee was not liable to pay tax on "sonth", purchased from cultivators and sent directly outside U.P. to other dealers. It is significant to mention here that there was no purchase tax on the purchaser of "sonth" for the assessment year in question.

5. In view of the above discussion, the question of law is answered in negative, that is, in favour of the assessee and against the department. Accordingly, the revision is dismissed.

