(2007) 04 AHC CK 0060

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Azad Scrap Traders — RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 768

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Judgement

Vikram Nath, J.—Case has been called out in the revised list.

2. Heard learned Standing Counsel for the revisionist. Even though the name of Sri N.R. Kumar and Sri Vishwajeet, Advocates, have been printed in the cause list on behalf of assessee-opposite party but they are not present in the revised call.

3. This revision u/s 11 of the U.P. Trade Tax Act, 1948 (for short, referred to as "the Act") has been filed against the order of the Trade Tax Tribunal dated April 30, 1997, whereby the second appeal filed by the assessee was allowed and the demand raised by the department against the assessee was set aside.

4. The only issue involved in the matter is as to whether during the course of inter-State sales where Central sales tax has been paid under the notification dated January 7, 1969, the liability would be of only one per cent upon further sale or where Central sales tax has not been paid during the course of inter-State sale, the liability would be as per the Act. In the present case, the Tribunal has set aside the demand on the ground that the assessee had made the purchase from the registered dealer and therefore, there was no liability to pay any tax. The submission of the learned Standing Counsel is that it is not enough that the purchase should be made from the registered dealer but what is further required is that Central sales tax should have been paid at the time of inter-State sales.

5. In the present case Central sales tax has not been paid at the time of inter-

State sale and therefore, the judgment of the Tribunal cannot be sustained. The assessing officer as well as the first appellate authority have held that there was tax liability against the assessee for the subsequent sale.

6. Learned Standing Counsel further relied upon the decision of this Court in the case of Kohinoor Scrap Traders, Kilatganj, Aligarh v. Commissioner of Trade Tax, U.P. Lucknow reported in [2006] 29 NTN 286, wherein this Court while dealing with the similar issue has held that it is not sufficient that purchases were made from registered dealer and further finding was necessary that the goods purchased were tax-paid under the Central Sales Tax Act.

7. In view of the above discussion and relying upon the judgment of this Court in the case of Kohinoor Scrap [2006] 29 NTN 286, this revision is allowed.

8. The order of the Tribunal is set aside and that of the assessing officer is maintained.