(2011) 02 AHC CK 0001

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 548 of 2004

Commissioner, Trade Tax APPELLANT

Vs

Balvir Auto Agency RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 30

Citation : (2013) 57 VST 328

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : B.K. Pandey, for the Appellant; Piyush Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—This is the revision against the order of the Tribunal dated October 14, 2003 for the assessment year 1994-95. The applicant was carrying on the business of motorcycle and scooter parts. During the year under consideration, the applicant has disclosed the sales in the return at Rs. 17,35,386. Before the assessing authority, the assessee did not appear despite the notice being issued and has not produced any books of accounts and the purchase vouchers. The assessing authority levied the tax on the turnover disclosed treating it as the sale of imported motor parts. The applicant filed application u/s 30 of the Act, but the same has also been rejected on the ground that no one appears on behalf of the assessee. Being aggrieved by the assessment order, the applicant filed the appeal before the Deputy Commissioner (Appeal). The Deputy Commissioner (Appeal) by the order dated February 12, 2001, allowed the appeal in part. The appellate authority given the benefit that some of the purchases might have been made within the State of U.P. and some of the purchases have been made from outside the State of U.P.

2. Being aggrieved by the order of the appellate authority, the applicant as well as the Commissioner, Trade Tax, filed appeals before the Tribunal. The Tribunal by the impugned order allowed the appeal filed by the assessee and rejected the

appeal filed by the Commissioner, Trade Tax. The Tribunal has held that there is no material on record to show that the applicant has used any form XXXI and imported the goods from outside the State of U.P. The Tribunal accordingly allowed the exemption on the entire disclosed turnover treating it sales of the U.P. purchased goods.

3. Heard Sri B.K. Pandey, learned standing counsel and Sri Piyush Agrawal.

4. The learned standing counsel submitted that u/s 12A of the Act, the burden lies upon the assessee to prove its case that the purchases were made within the State of U.P. He submitted that there is no dispute about the sales. The assessee himself has disclosed sales, but the assessee should produce the purchase vouchers to prove that the goods have been purchased within the State of U.P., which the assessee failed to do. Therefore, the assessing authority has rightly presumed such goods as the imported goods. He further submitted that without any basis the first appellate authority has apportioned the disclosed sale and allowed the relief to some extent on the ground that some of the sales were relating to U.P. purchased goods. He submitted that the Tribunal has erred in declaring the entire sale exempted from tax on the ground that it was U.P. purchased goods as there is no evidence that the goods have been imported from outside the State of U.P. and no form XXXI has been issued.

5. The learned counsel for the applicant submitted that there is no evidence that the goods have been imported from outside the State of U.P. and, therefore, the Tribunal has rightly granted exemption on such turnover.

6. I have considered the rival submissions and perused the impugned order.

7. The applicant itself has disclosed the turnover of Rs. 17,35,385 in the return. Admittedly, no purchase vouchers have been produced before any of the authority to establish that the sale relates to the goods purchased within the State of U.P.

8. Section 12A of the U.P. Trade Tax Act provides that "in any assessment proceedings, when any fact is specially within the knowledge of the asses-see, the burden of proving that fact shall lie upon him, and in particular, the burden of proving the existence of circumstances bring the case within any of the exceptions, exemptions or reliefs mentioned. . .". Clause (b) of section 12A of the Act further provides that "the burden of proving the existence of facts and circumstances on the basis of which he claims such exemption from liability shall lie upon him, and in particular, the dealer shall also be liable to disclose full particulars of the person from whom he has purchased the goods in such transaction of purchase. . ."

9. Therefore, under the aforesaid provision burden lies upon the assessee to furnish the particulars of the purchases to substantiate the claim that the sales made by it relate to the goods purchased within the State of U.P. In the present case, the assessee failed to do so. Therefore, on the ground that the applicant

has not used any form XXXI and there is no material of import on record, the exemption granted by the Tribunal is wholly erroneous. In the result, the revision is allowed. The order of the Tribunal and the order of the first appellate authority are set aside and the order of the assessing authority is restored.

