(2007) 09 AHC CK 0218

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Bhola Bhandar RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 12B

Citation : (2008) 15 VST 462

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present two revisions u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") are directed against the order of the Tribunal dated May 27, 2000 relating to the assessment year 1991-92 and 1992-93.

2. The dealer-opposite party (hereinafter referred to as "the dealer") was carrying on the business of foodgrains, oil-seeds, etc. It appears that the assessing authority has accepted the claim of the dealer but disallowed the claim of exemption on certain purchases on the ground that the dealer could not furnish the requisite form prescribed u/s 3D(7) read with rule 12B of the U.P. Trade Tax Rules, 1948. For the assessment year 1992-93 apart from the rejection of the claim of exemption on account of non-furnishing of requisite form, the claim of exemption for Rs. 1,16,87,000 against form IIIC(2) No. 298093 was disallowed on the ground that in the said form IIIC(2) required ticket was not affixed.

3. Being aggrieved by the two assessment orders, the dealer filed two appeals before the Deputy Commissioner (Appeal). Before the Deputy Commissioner (Appeal) the dealer filed certain form IIIC(2) both for the assessment years 1991-92 and 1992-93 as an additional evidence along with applications u/s 12B of the Act and for the assessment year 1992-93 also pleaded that in case, if the

form IIIC(2) No. 298093 was not proper the same should be returned to the dealer for re-submission. The appellate authority accepted the forms filed for the first time before it as an additional evidence. However, for the purposes of verification the matter was remanded back to the assessing authority. For the assessment year 1992-93, the appellate authority has also directed the assessing authority to return form IIIC(2) No. 298093 for filing of fresh form IIIC(2). The Deputy Commissioner (Appeal) accordingly remanded back the case to the assessing authority. The dealer filed two appeals before the Tribunal. The Tribunal by the impugned order allowed the appeals. The Tribunal has allowed the exemption against form IIIC(2) which was furnished for the first time as an additional evidence before the Deputy Commissioner (Appeal)-. The Tribunal has so allowed the claim of exemption against form IIIC(2) No. 298093.

4. Heard Sri B.K. Pandey, learned Standing Counsel. Despite the service of the notice, no one appears on behalf of the opposite party.

5. The learned Standing Counsel submitted that the Tribunal has heard and allowed the claim of exemption against the forms submitted for the first time as an additional evidence before the first appellate authority without giving opportunity of rebuttal to the assessing officer as required u/s 12B of the Act. He submitted that the first appellate authority after accepting the forms as an additional evidence has rightly remanded back the matter to the assessing officer to examine the forms.

6. I find substance in the argument of the learned Standing Counsel. Section 12B of the U.P. Sales Tax Act reads as follows:

Section 12B. Additional evidence on appeal or revision.: The assessee shall not be entitled to produce additional evidence, whether oral or documentary, before the appellate authority or the Tribunal except where the evidence sought to be adduced is evidence, which the assessing authority had wrongly refused to admit or which after exercise of due diligence was not within his knowledge or could not be produced by him before the assessing authority, and in every such case, upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the Commissioner of Sales Tax.

7. Section 12B of the Act provides opportunity of rebuttal to the assessing authority after the acceptance of the additional evidence unless the opportunity of the rebuttal is provided to the assessing officer the claim against the additional evidence cannot be allowed straightaway. The Deputy Commissioner has rightly remanded back the matter to the assessing officer for examination and verification of the forms. The Tribunal has illegally interfered with the order of the Deputy Commissioner (Appeal). The order of the Tribunal is contrary to the provision of Section 12B of the Act and, therefore, cannot be sustained.

In the result, both the revisions are allowed. The order of the Tribunal is set aside and the order of the first appellate authority is restored. The assessing authority is directed to pass assessment orders for both the assessment years in accordance with the law.