(2008) 08 AHC CK 0077

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

India Traders — RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10B

Citation : (2009) 26 VST 313

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The present revision is against the order dated July 31, 2000 passed by the Trade Tax Tribunal in Second Appeal No. 68 of 2000 relating to the assessment year 1991-92. The facts of the case lie in a narrow compass. The dealer-opposite party carries on the business of raw hide and skin. He admitted no sales or purchase in the documents filed before the assessing authority. The assessing authority accepted the contention of the dealer-opposite party and passed the assessment order summarily. The said order has been revised by the Deputy Commissioner (Executive), Trade Tax, Moradabad in exercise of power conferred on him u/s 10B of the U.P. Trade Tax Act. The revising authority has found that on January 15, 1992, the dealer-opposite party was found transporting raw hide outside the State of U. P., on sale. This order has been set aside by the Tribunal by the order under revision. The Tribunal held that either the said information was not there or if it was there, the same was left out of consideration when the original assessment order was passed. In the memo of the revision the following question of law has been framed:

Whether the Trade Tax Tribunal is legally justified to set aside the order passed u/s 10B of the Act despite the assessing authority has not considered the relevant information available on record at the time of assessment?

2. Heard the learned Standing Counsel for the Department. None is present on behalf of the dealer-opposite party. Affidavit of service has been filed and it is held that the dealer-opposite party has been sufficiently served.

The contention of the learned Standing Counsel for the Department is that in view of the judgment of this Court in Commissioner of Sales Tax v. J.K. Satch, Agricultural Machines Ltd. [1999] UPTC 1297, the Tribunal was not justified in holding that on the facts and circumstances of the case the power u/s 10B of the U.P. Trade Tax Act, 1948 could not have been exercised. Coming to the facts of the present case, it may be noted that the assessment order was passed in the summary proceeding and there is absolutely no discussion therein. The revising authority has found that there is evidence to show that the dealer-opposite party is carrying on the business of sale or purchase of raw hides. In this regard, the information dated January 15, 1992 was on record. The Tribunal, while setting aside the order passed u/s 10B, has not recorded any finding as to whether the information dated January 7, 1992 whereby the assessing authority was informed that in the road checking dated January 15, 1992 the dealer-opposite party was found transporting raw hides outside the State of U. P., was already there at the time when the assessment order was passed or not. If the said information was already there, then non-consideration of the said information by the assessing authority entitles the revising authority to revise the order u/s 10B of the Act. Section 10B of the Act is very widely worded. It provides that any order passed by the authorities below may be revised on the ground of illegality or impropriety. Non-consideration of information which if available on record amounts to impropriety on the part of the assessing authority. The Tribunal ought to have recorded a finding as to whether the said information given through letter dated March 7, 1992 was available to the assessing authority at the time when the assessment order was passed. Having failed to do so the order of the Tribunal cannot be sustained.

4. The revision succeeds and is allowed. The order of the Tribunal dated July 20/31, 2000 is set aside and the matter is restored back to the Tribunal to rehear and re-decide the appeal in the light of the observations made above in accordance with law.

5. No order as to costs.

