(2007) 08 AHC CK 0278

In the Allahabad High Court

Commissioner, Trade Tax APPELLANT

Vs

Kanpur Tractors Private Ltd. RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:
Central Sales Tax Act, 1956 — Section 10A
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 493

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J

1. These three 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 August 26, 2002 relating to the assessment years 1988-89, 1989-90 and 1991-92 by which Tribunal had deleted the penalty u/s 10A of the Act.

2. Brief facts of the case are that the dealer/opposite party (hereinafter referred to as "the dealer") appears to be authorised dealer of M/s. Maruti Udyog Limited and was carrying on the business of sale and purchase of vehicles. The dealer purchased spare parts from outside the State of U.P. against form C for the sale of such parts. However some of such parts purchased against form C had been used under the warranty claim of the customers free of cost and after using such parts under the warranty claim, the claim had been made from M/s. Maruti Udyog Limited for which credit note was issued. The assessing authority levied the penalty u/s 10A of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act") for the alleged violation of clause (d) of Section 10 of the Central Act namely, that the parts purchased against form C had not been resold but had been used under the warranty claim free of cost. The Tribunal held that the dealer in fact purchased such parts for sale and only some of such parts had been used under the warranty claim for which the claim had been made from M/

s. Maruti Udyog Limited for which credit note was issued.

3. Heard learned Standing Counsel.

4. Section 10(d) of the Central Act reads as follows:

If any person,--

after purchasing any goods for any of the purposes specified in clause (b) or clause (c) or clause (d) of Sub-section (3) of Section 8 fails, without reasonable excuse, to make use of the goods for any such purpose;

5. In the present case, on the facts of the case, no case has been made out that there was no reasonable cause. In the case of Mohd. Ekram Khan & Sons v. Commissioner of Trade Tax reported in [2004] 136 STC 515 : [2004] UPTC 1198, the apex court held that the parts supplied under the warranty claim amounts to sale. In view of the above, penalty is not sustainable.

6. In the result, all the revisions fail and are accordingly, dismissed.

