

(2009) 09 AHC CK 0182
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

Mahindra and Mahindra

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 12B, 15A(1), 28B, 7(4)

Citation : (2010) 30 VST 649

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—All the revisions have been filed by the Department u/s 11 of the U.P. Trade Tax Act, 1948 against the judgment and order dated January 2, 2007 passed by the Trade Tax Tribunal for the assessment years mentioned above where the Tribunal has cancelled the levy of penalty imposed under Sections 15A(1)(q) and deleted the addition made u/s 7(4) of the U.P. Trade Tax Act, 1948.

2. I have heard Sri Sanjay Sarin, learned Counsel for the Department and Sri S.M.K. Chaudhary, Senior Advocate, counsel for the assessee, assisted by Sri Manish Misra.

3. The brief facts of the case are that the assessee, M/s. Mahindra and Mahindra Limited, is a public limited company involved in the manufacturing and sale of tractors. The company has its principal place in U. P., Lucknow. During the assessment years under consideration, the assessee has sent goods to Uttranchal-via-U. P. The tractors were passed through U.P. and going to its destination in Uttranchal and other places. The transit passes were made at "incoming check-post" and were due for cancellation at the "out going check-posts" of the U. P. For some reason or other, these transit passes were not put on the "outgoing check-posts" for cancellation. Hence, the Department has presumed that the said tractors were sold in U. P. and have not gone outside the

U. P. Therefore, the assessing officer has made the assessment u/s 7(4) as well as levied the penalty u/s 15A(1)(q) of the Trade Tax Act, 1948. These orders were passed ex parte. The first appellate authority has confirmed the said orders ex parte too.

4. However, in second appeal, the Tribunal has examined the entire material and evidence submitted by the counsel for the revisionist u/s 12B of the Trade Tax Act and invited the objections from the Department, but no objections were filed. The Tribunal in its order has specifically mentioned that the evidence submitted by the assessee regarding the concerning vehicles, has shown that the vehicles have gone out of U. P. and got its entry in the stock registers of the recipient stockyards of the other States. The evidence, as submitted by the assessee, was also examined by the Tribunal as well as State representative. Finally, it was proved that those vehicles were sold by the stockyards to the customers in their States. For vehicles, going to Uttranchal, photo copy of form C of that State was also filed and the officer of that State has verified the same. Thus, ample evidence was furnished to that effect that the vehicles in question have crossed the border of the U.P. and were sold in other States. The Tribunal also relied upon the ratio laid down in the case of Sodhi Transport Co. and others Vs. State of U.P. and others,

5. With this background, I heard the counsel of both the parties and gone through the material available on record.

6. It may be mentioned that the honourable Supreme Court in the case of Sodhi Transport Co. and others Vs. State of U.P. and others, observed that (at page 391 of 62 STC):

...the words contained in Section 28B of the Act only require the authorities concerned to raise a rebuttable presumption, that the goods must have been sold in the State if the transit pass is not handed over to the officer at the check-post or the barrier near the place of exit from the State. The transporter concerned is not shut out from showing by producing reliable evidence that the goods have not been actually sold inside the State. It is still open to him to establish that the goods had been disposed of in a different way. He may establish that the goods have been delivered to some other person under a transaction which is not a sale, they have been consumed inside the State or have been redespached outside the State without effecting a sale within the State, etc. It is only where the presumption is not successfully rebutted the authorities concerned are required to rely upon the rule of presumption in Section 28B of the Act. It is, therefore, not correct to say that a transaction which is proved to be not a sale is being subjected to sales tax. The authority concerned before levying sales tax arrives at the conclusion by a judicial process that the goods have been sold inside the State and in doing so relies upon the statutory rule of presumption contained in Section 28B of the Act which may be rebutted by the person against whom action is taken u/s 28B of the Act....

7. In the instant case, I found that the assessing officer has made assessments for the assessment years under consideration ex parte without appreciating true meaning of the rule of presumption contained in Section 28B of the Act. The Departmental authorities proceeded on the basis of the section contained as a rule of conclusive presumption but the Tribunal has rightly observed that the presumption is rebuttable. With the evidence tendered by the assessee before the Tribunal, the presumption was rebutted.

8. By considering the totality of the facts and circumstances of the case, it appears that the assessee has already furnished sufficient evidence to prove that the goods have crossed the border of the U.P. and were never sold in the U.P. The Tribunal is a final fact finding authority as per the ratio laid down in the case of Kamala Ganapathy Subramaniam and Another Vs. Controller of Estate Duty,

9. In the light of above discussions, I find no reason to interfere with the Tribunal's impugned order which is hereby sustained along with the reasons mentioned therein. No question of law emerges from the impugned order of the Tribunal.

10. In the result, all the revisions filed by the Department have no merit and the same are hereby dismissed.