
(2007) 05 AHC CK 0381
In the Allahabad High Court

Commissioner, Trade Tax

APPELLANT

Vs

P.K. Agriculture Industries

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Citation : (2008) 14 VST 468

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vikram Nath, J.—Heard learned Counsel for the parties.

2. The dispute relates to the assessment year 1998-99 (U. P.). The questions of law sought to be raised in this revision are as follows:

(i) Whether, on the facts and in the circumstances of the case, the Trade Tax Tribunal is legally justified to hold the dealer non-taxable despite the adverse material available on record indicates otherwise?

(ii) Whether the Tribunal has properly utilised the adverse material available on record?

3. The dealer is involved in manufacturing and sale of agricultural implements for the assessment year in question. He had filed his returns and claimed there was no tax liability. The assessing officer disbelieved the returns and imposed tax liability of Rs. 40,000 by the order dated January 29, 2000.

4. Aggrieved by the same, the dealer filed appeal before the Deputy Commissioner (Appeals). The appeal was partly allowed and the Deputy Commissioner reduced the tax liability from Rs. 40,000 to Rs. 16,000 by the order dated March 9, 2000.

5. Against the said order, two appeals were filed one by the Department and other by the dealer. The Tribunal by the impugned order dated August 23, 2001

dismissed the appeal of the Department and allowed the appeal of the dealer and held that the dealer was not liable to pay any tax.

6. The submission of the learned Standing Counsel is that the assessing officer had found that the dealer had imported iron without disclosing the value of Rs. 5 lakhs and further had purchased iron from unregistered dealer u/s 3AAAA of the Act and therefore, without upsetting the said findings the order of the Tribunal holding that the dealer was not liable to pay tax cannot be sustained.

7. Having perused the orders passed by the authorities, I find that the dealer furnished the relevant forms with regard to import of iron and the assessing officer without considering the explanation given by the dealer had imposed tax liability. The appellate authority recorded that the main business of the dealer was of agricultural implements and the business of sale of iron was nominal and therefore, it reduced the sale amount to Rs. 4 lakhs and accordingly imposed tax of Rs. 16,000. The Tribunal while dealing with both the appeals was of the view that there the transaction with unregistered dealers u/s 3AAAA of the Act was not established and therefore, the Deputy Commissioner (Appeals) had rightly deleted the said transaction and therefore, the appeal of the department was liable to be dismissed. The Tribunal further found with regard to the import of iron and subsequent sale, that it was raised on the basis of complaint.

8. However, the details of the complaints were never disclosed and the own case of the dealer was that he was importing iron for his own use and any sale of the iron was denied by the dealer and without any basis, the said sale had been accepted by the Deputy Commissioner (even though reduced). The only reason given by the two authorities below regarding illegal import and sale of iron was the proximity of the other States. The Tribunal relying upon the decision in the case of *Kishori Lai Agarwal v. Commissioner, Trade Tax* reported in [1999] UPTC 87 held that only on the ground of proximity of the other States assumption of illegal import and sale of iron cannot be accepted. It accordingly accepted the returns filed by the dealer and deleted the tax liability completely.

9. In my opinion, the Tribunal has given sound reasons in holding that the dealer was not liable to pay tax and account books and returns were accepted. Nothing adverse has been furnished by the Department to show that the order of the Tribunal was bad in law.

10. In my opinion the order of the Tribunal is based on material evidence on record and on the legal pronouncements and therefore it does not suffer from any illegality.

11. No question of law arises.

12. Revision is accordingly, dismissed.