(2007) 09 AHC CK 0175

In the Allahabad High Court

Commissioner, Trade Tax — APPELLANT

Vs

Tullu Motors Private Limited — RESPONDENT

Date of Decision : 13-09-2007

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

Citation : (2007) 09 AHC CK 0175

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—The present 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 June 13, 2003 for the assessment years 1993-94 and 1994-95.

2. Heard Sri K. M. Sahai, learned Standing Counsel and Sri Kunwar Saksena, learned Counsel appearing for the opposite party.

3. Sri K. M. Sahai, learned Standing Counsel, submitted that the dealer for the first time filed certain form C before the Deputy Commissioner (Appeal) V, Trade Tax, Varanasi as an additional evidence u/s 12B of the Act. The first appellate authority has admitted form C as an additional evidence and allowed the benefit of such form C without giving opportunity of rebuttal to the assessing authority. The Revenue filed appeal against the order of the first appellate authority and challenged the order on the ground that the benefit of form C was allowed without giving opportunity of rebuttal as required u/s 12B of the Act. He submitted that the Tribunal has illegally dismissed the appeal with the observation that at the time of hearing State Representative was present and it was the duty of the State Representative to put this issue before the appellate authority and if it has not been challenged by the Revenue before the appellate authority the acceptance of form "C" was justified.

4. Learned Counsel for the opposite party relied upon the order of the Tribunal.

5. Having heard learned Counsel for the parties. I have perused the order of the Tribunal and authorities below:

6. Section 12B of the 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 that upon the additional evidence being taken on record, reasonable opportunity for challenge or rebuttal shall be given to the assessing authority. Therefore, it was incumbent upon the first appellate authority after admitting form C as an additional evidence to provide opportunity of rebuttal to the assessing officer. A perusal of the order of the first appellate authority reveals that no such opportunity was given as required u/s 12B of the Act. The view of the Tribunal that the State Representative should have put the issue for challenge before the appellate authority and since it has not been challenged the appellate authority has rightly allowed the benefit against form C, is erroneous. After acceptance of the additional evidence u/s 12B of the Act it was obligatory on the part of the appellate authority to provide opportunity of rebuttal to the assessing authority. If the State Representative has not said anything it does not mean that the requirement of Section 12B of the Act should not be complied with. There is nothing on record to show that the opportunity of rebuttal was provided by the first appellate authority.

8. In view of the above, the order of the Tribunal as well as the order of the first appellate authority allowing the benefit of concessional rate of tax against form C without giving opportunity of rebuttal to the assessing authority is patently illegal. The matter is remanded back to the first appellate authority to decide the appeals afresh and consider the claim of the concessional rate of tax against form C which have been filed as an additional evidence in appeal after giving opportunity of rebuttal to the assessing authority, as required u/s 12B of the Act. In the result, both the revisions are allowed. The order of the Tribunal dated June 13, 2003 and the order of the Deputy Commissioner (Appeal) dated May 6, 1998 are set aside. The first appellate authority is directed to decide the appeal No. 331 of 1997 for the assessment year 1994-95 and second appeal No. 409 of 1997 for the assessment year 1993-94 afresh in the light of the observation made above.