(2009) 08 AHC CK 0235

In the Allahabad High Court

Commissioner, Trade Tax U.P. — APPELLANT

Vs

Ghanshyam Trading Co. — RESPONDENT

Date of Decision : 28-08-2009

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

Citation : (2009) 08 AHC CK 0235

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—Both 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 10.8.2007 passed by the U.P. Trade Tax Tribunal for the assessment years mentioned above.

2. In the absence of the assessees, I have heard Sri Sanjeev Shankdhar, learned Counsel for the department.

3. The facts and circumstances in both the revisions are almost identical. Hence, both the revisions are being disposed of by this consolidated order for the sake of convenience.

4. The brief facts of the cases are that the assessee is a commission agent for the purchase and sales of Galla, Paddy, Khali, vegetable oil, tilhan etc. The assessee makes the purchases for ex-U.P. principals on commission basis. At the time of assessment, the A.O. found that no contract whatsoever has been entered into with the ex-U.P. principals and the ex-U.P. principals never appointed the opposite-parties as their agents and supply orders are made only on the basis of the alleged telephonic calls and as such their verification and also their status could not be ascertained. The A.O. also observed that the purchases from the farmers were not verified as the full address of the farmers were not given. The A.O. refused to treat the said transaction as inter-State purchases during the assessment years under consideration. The A.O. observed that the

purchases were made for self, so he levied the tax which was restricted by the first appellate authority. Not being satisfied, the assessee has filed the second appeals before the Tribunal. The Tribunal vide its impugned order accepted the plea of the assessee by observing that the assessee has sent its goods outside the U.P. Not being satisfied, the department is before this Court.

5. With this background, I have heard the learned Counsel for the department and gone through the material available on record.

6. From the record, it appears that the goods were issued after the gate-pass of Mandi Samiti where the quantity of the goods were mentioned. Regarding the despatch of the goods, there was no delay and before sending the goods outside the U.P., the gate pass, builty number, permit number were also maintained by the assessee. When the goods despatched to ex-U.P. principals, certainly the goods might have purchased. The goods are generally agriculture produce, it cannot be manufactured, hence the goods were purchased from the agriculturists. The proof for trade transaction of the goods outside the U.P., builty number, despatch number etc. were already maintained by the assessee.

7. It may be mentioned that in the case of English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, , it was observed that when the movement of the goods from one State of another is an incident of the contract, it is a sale in the course of inter-State sale and it does not matter which is the State in which the property passes. For inter-State trade, three essential ingredients are required:

(I) There must be a contract to sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods;

(II) The goods must actually move from one State to another, pursuant to such contract of sale, the sale being the proximate cause of movement; and

(III) Such movement of goods must be necessary corollary of these principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale.

8. In the instant case, it appears that there was implied contract which may be a telephonic contract. The goods were sent through transportation where the address of the recipient was mentioned. No attempt was made by the department to verify these facts from the recipient. When the goods were sent to ex-U.P. principals, certainly these goods were purchased from the agriculturists. The fee was already paid to the Mandi Samiti before having the gate pass. However, the full address of the agriculturists were not possible. Sometimes, the sellers are small farmers who change their residence or came from the remote areas. No advance money is required for the contract. In some cases, the goodwill is sufficient to have a transaction with the ex-U.P. principals. No former contract is mandatory in the age of electronic era. In this regard, yardstick will have to be from businessman''s viewpoint as per the ratio laid down by the

Hon''ble Supreme Court in Commissioner of Income Tax, Bombay Vs. Walchand and Co. Private Ltd.,

9. In the light of above discussions, I agree with the order of the Tribunal where it was observed that the assessee being a commission agent has made the purchases of the goods for ex-U.P. principals. The grounds taken by the department are question of facts. No question of law is emerging from the impugned order of the Tribunal. Hence, both the above revisions filed by the department are liable to be dismissed.

10. Both the revisions are dismissed.

