(1998) 11 AHC CK 0006

In the Allahabad High Court

Case No : T.T.R. No. 110 of 1994

Crystal and Chemical Laboratories APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 12
Uttar Pradesh Trade Tax Rules, 1948 — Rule 12B

Citation : (2000) 119 STC 365

Hon'ble Judges : S.H.A. Raza, J

Bench : Single Bench

Advocate : V.N. Tandan, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—Section 12-B of the U.P. Trade Tax Act, 1948, which provides for furnishing or giving additional evidence reads as under :

"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."

2. In the instant case the applicant-revisionist sold certain goods to the tune of Rs. 1,25,818.50 but did not file form III-C(5) (which has been mentioned as form III-D in the order of Tribunal) before assessing authority. As according to the revisionist-applicant the same was not available to him at the relevant time, the said form was filed at the stage of second appeal before the U.P. Trade Tax Tribunal, Lucknow Bench. The said additional evidence which was sought to be

produced by the revisionist was not admitted by the Tribunal during the pendency of second appeal. The appeal was dismissed as only the ground of non-acceptance of form III-C was raised in the appeal. Thereafter the present revision has been filed on behalf of the State.

3. The learned Standing Counsel submitted that u/s 12-B of the U.P. Trade Tax Act the Tribunal has been vested with the discretion to reject the additional evidence, if sought to be produced by the assessee, if it could be produced earlier. The revisionist-applicant failed to produce the form III-C before the assessing authority and thereafter before the 1st appellate court, hence it cannot be said that the revisionist-applicant acted diligently. It was asserted that no reason except that it was not available with the assessee was indicated in the appeal.

4. It was also asserted by the learned Standing Counsel that a finding of fact has been recorded by the tax authorities including the Tribunal that the reason indicated by the revisionist-applicant was not sufficient to admit, the form III-C hence no interference can be made in the revision.

5. The question of acceptance or refusal to admit the document at the appellate stage is a mixed question of fact and law at the appellate stage. The assessing authority may adroit or refuse to admit the evidence if after exercise of due diligence the document was not within the knowledge or could not be produced by him before the assessing authority. The words "could not be produced by him before the assessing authority" are of paramount importance. If the assessee satisfies that it was not within his reach to file the document at the stage of assessment or at the stage of first appeal, then in the second appeal the document can be admitted. The assessee has indicated the reason that in spite of his best efforts he could not get the form within the prescribed time and as soon as it was available, it was sought to be filed. In support of that contention an affidavit was filed. From the order, it transpires that the said allegation was not rebutted on behalf of the taxing authority by filing a counter-affidavit but it was only asserted that form III-C was not produced within the time prescribed for giving evidence, hence it cannot be admitted at the stage of second appeal.

6. It is the matter of common knowledge that whenever the goods are sold form III-C is issued by the purchaser. In the instant case as soon as the assessee received the said form from the purchaser he tried to file the same, hence it was not proper for the Tribunal to refuse to admit the said evidence. The view which I have taken is supported by several decisions of this Court.

7. In Commissioner of Sales Tax v. Ganpat Ram and Sons 1983 UPTC 1328 it observed :

"Section 12-B permits production of additional evidence at the appellate stage. The assessee could hence validly take advantage of this provision and file the forms as additional evidence provided the conditions mentioned in Section 12-B were satisfied. The conditions mentioned in Section 12-B is that the evidence sought to be adduced was not within the knowledge of the assessee or could not be produced before the assessing authority in spite of exercise of due diligence. It is for this specific purpose that the Judge (Revisions) has remanded the matter to the appellate authority.

In that regard the court relied upon the observations made in the case Commissioner of Sales Tax, U.P., Lucknow v. Kanpur Dal and Rice Mills [19701 25 STC 511 (All.), wherein it was held that the assessee would be entitled to seek redress from an appellate authority if the Sales Tax Officer refuses it to allow sufficient time to him in case he has not been able to produce them and the appellate authority would be within its jurisdiction to grant him the necessary relief."

8. In Rajendra Prasad Mahura Prasad v. Commissioner of Sales Tax 1984 UPTC 1274 it was held :

"The first appellate court did not consider the forms III-C filed by the assessee on the ground that they were not filed before the assessing authority. The case of the assessee was that the forms, which were filed before the appellate authority had not been received by him before the assessment was completed and as such he could not file it before the assessing authority. The second appellate court, i.e., the Tribunal also refused to consider the aforesaid forms III-C filed by the assessee on the ground that the assessee has not taken any such ground in the memorandum of appeal and as such he was debarred from adding the additional ground in the memo of appeal. Filing of the form III-C is a matter of procedure only. The view taken by the second appellate court, i.e., the Tribunal as well as the appellate court was not correct and the authorities should have considered the 11 form III-C filed by the assessee."

9. In Kisan Cane Crusher v. Commissioner of Sales Tax 1985 UPTC 207 it was indicated :

"Form 3-Ga was not filed before the assessing authority. The Assistant Commissioner (Judicial) refused to consider the aforesaid form for granting exemption on the ground that it was not produced before the assessing authority. It is true that the assessee was not entitled to file additional evidence in the first appeal or in the second appeal stage as a matter of right but it can furnish an explanation for not having filed the same before the assessing authority. The explanation, if offered, should be considered and after considering the same a finding should be recorded whether the explanation offered was plausible or not. The Tribunal has not considered the claim of exemption of the assessee on the ground that the requisite form for claiming exemption was not filed before the assessing authority. The matter requires reconsideration by the Assistant Commissioner (Judicial) on the question of exemption."

10. In view of the aforesaid decisions of this Court I am of the view that undoubtedly it was within the jurisdiction of the Tribunal to admit or refuse to admit form III-C(Ga) at the appellate stage but it is well-settled that the

discretion which is vested to authority should be exercised in a fair, just and reasonable manner. If the said form was not available to the applicant-revisionist at the time when the assessment was made or at the first appellate stage, and the revisionist-applicant got it only when he filed the second appeal, then there existed no justification for the Tribunal to refuse to admit that document. It may be said that the revisionist-applicant could not indicate sufficient reasons in his application and the affidavit for producing the additional evidence earlier but at least it was said that the required form was not available and when it was available or it could be made available, it was filed. The said allegation remained unrebutted, hence the form III-C should have been admitted by the Tribunal, and thereafter it may call upon the taxing authority to file evidence in rebuttal.

11. In view of what has been indicated hereinabove the revision is allowed. The order passed by the Tribunal dated 30-...-1994 is set aside. The case is remitted to the Tribunal u/s 11(8) of the U.P. Trade Tax Act. The Tribunal after admitting the document form III-C(Ga), as evidence, will give an opportunity to the respondent to file evidence in rebuttal, and thereafter decide the appeal on merits.