(2002) 04 AHC CK 0187

In the Allahabad High Court

Case No : Trade Tax Revision No. 172 of 2002

Dhan Prakash Cane Crusher APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Citation : (2002) 128 STC 654

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Piyush Agarwal, for the Appellant; B.K. Pandey, for the Respondent

Judgement

R.B. Misra, J.—The present trade tax revision has been preferred u/s 11 of the U.P. Trade Tax Act, 1948 (in short called "the Act") against the order dated February 4, 2002 passed in second appeal No. 9 of 1997 for the year (1986-87) by learned Trade Tax Tribunal.

1. Heard Sri Piyush Agarwal, learned counsel for the applicant-revisionist and Sri B.K. Pandey, learned Standing Counsel for the parties. With the consent of the learned counsel for the parties, the present trade tax revision is being decided finally at this stage under second proviso to Rule 2 of Chapter XXII of High Court Rules.

2. The brief facts necessary for adjudication of the present revision are that the applicant-revisionist is a registered partnership firm, and is carrying on the business of manufacture and sale of khandsari and gur, etc., registered under local and Central Sales Tax Act for the assessment year (1986-87). The applicant could not obtain form III-Ga(4) from Agrawal Trading Corporation, Navin Mandi, Muzaffarnagar and Brij Lal Manmohan for which the applicant-revisionist has sought time from assessing authority, however, the same was not allowed and the assessing authority on July 21, 1994 (annexure 1) while accepting the account books of the applicant-revisionist did not grant the exemption in respect of sale to the extent of Rs. 4,28,741.86 to the aforesaid parties and for non-

production of the above form tax liability to the tune of Rs. 17,149.67 has been imposed over the applicant-revisionist. Being aggrieved, the applicant-revisionist filed appeal u/s 9 of the Act before the Assistant Commissioner (Judicial) which was dismissed by order dated February 12, 1996 (annexure 2). The second appeal u/s 10 of the Act too was dismissed on February 4, 2002 (annexure 3) by learned Tribunal.

3. It has been contended on behalf of the applicant-revisionist that because of conflict and dispute between the applicant/commission agent in respect of statement of accounts and there the form III-Ga(4) could not be obtained however, form III-Ga(4) Nos. 319530 and 319531 relating to assessment year 1986-87 from Brij Lal Manmohan Lal and form III-Ga(4) No. 194577 from other parties were obtained on February 18, 2002 and March 4, 2002, i.e., these forms were obtained only after passing of the order of the Tribunal dated February 4, 2002. The benefit of the same according to the applicant-revisionist should be given, as the applicant-revisionist is paying trade tax regularly.

4. In the present facts and circumstances, the following questions emerges for consideration :

(1) Whether in view of the law laid down by this honourable court in the case of Popular Cycle Manufacturing Co. (Pvt.) Limited [2002] 128 STC 652 and N.A. Traders [2002] 128 STC 653 the order passed by the Trade Tax Tribunal is justified ?

(2) Whether the Trade Tax Tribunal was justified in law in not granting some time to the applicant for filing form 3-Ga(4) at subsequent stage?

5. Learned counsel for the applicant-revisionist has submitted that the claim for form III-Ga(4) is existing material of fact and the benefit of the same could be given even at the Tribunal or even at subsequent stage also. According to the applicant-revisionist in reference to the order dated April 17, 2001 passed by this Court in T.T.R. No. 462 of 2000 [Popular Cycle Manufacturing Co. (Pvt.) Limited, Agra v. Commissioner, Sales Tax] [2002] 128 STC 652 where the benefit of form D was given at the direction of this Court at subsequent stage, should also be considered by learned Tribunal in the present case.

6. In the order dated May 16, 2001 passed by this Court in T.T.R. No. 364 of 2001 (N.A. Traders v. Commissioner of Trade Tax) [2002] 128 STC 653 the form III-A could not be submitted before the Tribunal and this Court allowed to submit the same before the Tribunal for giving benefit of the claim of form III-A to the assessee.

7. In peculiar facts and circumstances, when the transaction has already been made and covered on form III-Ga(4), therefore, the applicant-revisionist if in unavoidable circumstances could not obtain the form and produce even at the Tribunal stage then this Court may direct the acceptance of form III-Ga(4) at subsequent stage provided claim has already been made for the same.

8. In view of the above facts and circumstances, the order dated February 4, 2002 passed by Tribunal is set aside and the question of law is dealt with affirmatively and the Tribunal is directed to consider the form III-Ga(4) abovementioned produced by the applicant-revisionist. The second appeal No. 9 of 1997 for the assessment year 1986-87 shall be expeditiously decided within two months from the date of receipt of a certified copy of this order with the co-operation of the applicant-revisionist.

A certified copy of this order shall be furnished to the learned counsel for the applicant-revisionist within one week on payment of usual charges.

