(2010) 12 AHC CK 0004

In the Allahabad High Court

Case No : Commercial Tax Revision No''s. 1197 of 2009 with 1177, 1178, 1179, 1180, 1181, 1194, 1195, 1196, 1198, 1199, 1200, 1201, 1202, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211 and 1212 of 2009

Gagan Handloom — APPELLANT

Vs

Commissioner, Commercial Tax — RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 4

Citation : (2011) 44 VST 316

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Rohit Agarwal, for the Appellant;

Judgement

Rajes Kumar, J.—These revisions are against the order of the Tribunal dated August 22, 2009 for the assessment year 2004-05. The cases of the applicants are that they have imported cotton and cotton yarn and used the same in the manufacturing of handloom clothes. Handloom clothes are exempted u/s 4 of the U.P. Trade Tax Act, 1948 (called "the Act", for short). Cotton and cotton yarn have never been sold. For the purchases, sales and manufacturing, the applicants have maintained regular books of account which have been produced before the assessing authority. Though the assessing authority accepted the manufacturing of clothes but has estimated the turnover of imported cotton on the ground that some imported cotton has been sold as such. The contention of the applicants is that there is no evidence that the cotton as such has been sold and has not been utilised in the manufacturing of clothes.

2. The learned counsel for the petitioner submitted that the burden lies upon the Revenue to prove that the cotton imported from outside the State has not been utilised in the manufacturing of clothes but has been sold. The Revenue has failed to establish its case.

3. The Tribunal has not considered that the applicants have maintained all the

records relating to purchases, sales and manufacturing and without any material on record that the cotton has been sold as such upheld the order of the assessing authority.

4. Sri Rohit Agarwal, learned counsel for the applicants submitted that in a similar situation in the case of Rose Handloom Product v. Commissioner, Commercial Taxes, U.P., Lucknow reported in [2010] UPTC 1397 (All) this court has set aside the order of the Tribunal and remanded back the matter to the Tribunal to decide the appeal afresh.

5. On the facts and circumstances, the present cases are also remanded back to the Tribunal in terms of the order of this court, referred hereinabove. The Tribunal is directed to decide the appeals afresh. In view of above, all the revisions are disposed of accordingly.