(1987) 02 AHC CK 0022

In the Allahabad High Court

Case No : Sales Tax Revision No. 339 of 1986

Ganesh Industries APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 27-02-1987

Acts Referred:

Citation : (1987) 67 STC 374

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : The, for department, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—This is a revision for the assessment year 1976-77 against the Tribunal''s order dated 9th January, 1986,

2. The assessee is a dealer in scrap. The assessee stated that the entire purchases of scrap were made from the local "kabaris". The vouchers prepared by the assessee himself were shown. The assessing officer failed to locate the persons from whom scrap was purchased by the assessee under the self-prepared vouchers. The assessee was then called upon by the assessing officer to produce some of the sellers himself, but the assessee also failed to produce any seller before the assessing officer. The latter, therefore, drew an inference that the scrap was purchased from outside U. P. and, thus, he brought the purchases to tax.

3. The Assistant Commissioner (Judicial) also affirmed the rejection of the books. On further appeal, the Tribunal concurred with the appellate authority.

4. I have heard learned counsel for the assessee and learned Standing Counsel. The contention of the assessee that the account books were accepted in appeal for the next preceding year as well as at least for next following two years, is borne out from the record. The contention of the assessee is that when his books

were accepted in the preceding and following years and when the same state of affairs continued during the year in question there is no good reason to single out the assessment year 1976-77. I agree with the assessee in this regard. The only objection taken by the assessing officer was that on the self-prepared vouchers, the house number of the persons from whom the scrap was purchased, was not mentioned. No details have been given of the amount of the self-prepared vouchers. If the purchases under a single voucher are of substantial amount, then only the assessing officer could be justified to draw an inference from the absence of house number in the vouchers. But if the purchases under a single voucher are of a paltry amount, then no adverse inference can be drawn merely from the absence of the house number in the voucher, because a small man selling scraps of a paltry amount to the assessee, may live in an improvised house and he may not be having any regular accommodation, which is subjected to house tax, etc., and, therefore, that may not be numbered by the Municipal Board or the Town Area. Since this exercise has not been done by the Revenue in this case, no adverse inference can be drawn from the absence of house number in the vouchers. Looking to the past and the future assessments, I hold that the Tribunal was not right in upholding the inference that the purchases of scrap were made from outside U. P. There is no good reason to disbelieve the contention of the assessee that all purchases were made from within U.P., which are not taxable.

5. The revision is allowed, the orders of the authorities below are set aside. Let a copy of this order be sent to the Tribunal for passing an order u/s 11(8) of the Act, accepting the book version. No order as to costs.