(2014) 03 AHC CK 0064

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 403 of 2001

Ghaziabad Bhatta Samiti APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 72 VST 542

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ashok Kumar, Advocate for the Appellant; Standing Counsel, Advocate for the Respondent

Judgement

Sudhir Agarwal, J.—The only question, pressed before this court is, whether freight of coal could have been included with the turnover of assessee-revisionist for the purpose of taxability ? The assessing authority found that coal was purchased by society and after transportation, it has been distributed amongst the members of society dividing the cost and freight equally on the basis of "no profit-no loss" but the sale price would include the freight. This part of finding that sale price would include freight was reversed by first appellate authority vide its judgment dated October 19, 1996, which has been reversed by the Tribunal vide judgment dated February 20, 2001.

2. Sri Ashok Kumar, learned counsel for revisionist, could not dispute that railway receipts were issued in the name of revisionist-assessee and freight are paid in advance at the time of preparation of railway receipts, which are issued in the name of society. Therefore, there was no evidence to show that freight was not paid by society and in that view of the matter, I do not find any perversity or illegality in the judgment of Tribunal or in the view taken by it that freight has to be included in the turnover of assessee.

3. In taking the above view, I am also supported by an earlier judgment of this court in Commissioner, Trade Tax Vs. Agrawal Mandi Janta Ent Nirmata

Association, wherein this court, referring to Ramapati Tewari Jainath Tewari [2005] UPTC 76 and The Commissioner of Trade Tax Vs. S/S Sharma Coal Company, in para 7 of the judgment said as under (page 529 in 16 VST):

"In the present case, dealer was registered under the U.P. Trade Tax Act and Central Sales Tax Act. Coal was imported against form XXXI from outside the State of U.P. and form C were also issued to the selling party. Goods were imported through the railway and the railway receipts were in the name of the dealer. It was not the case of the dealer that the railway receipts were endorsed in favour of the purchasers and after the endorsement of the railway receipt, delivery of the goods was taken by them on the payment of freight charges. Dealer only contended that the freight was paid by the customer to the railway, though the dealer was not able to substantiate its claim that the freight was paid by the purchaser, but even assuming that it was paid by the customer since railway receipt was in the name of the dealer and liability to pay the freight was of the dealer, it is deemed to have been paid on behalf of the dealer by the purchaser. Freight incurred for transporting the goods from outside the State of U.P. to inside the State of U.P. was inward freight made prior to the sale and, thus, it would be a part of the turnover. Reliance is placed on the decisions of this court in the case of Commissioner of Trade Tax v. Ramapati Tewari Jainath Tewari [2005] UPTC 76 and The Commissioner of Trade Tax Vs. S/S Sharma Coal Company,

4. In view of the above, the question is answered against the assessee. The revision is dismissed.

