(1999) 08 AHC CK 0218

In the Allahabad High Court

Case No : Trade Tax Revision No''s. 615 and 616 of 1996

Mahesh Chand APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 30

Citation : (2000) 118 STC 401

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

M.C. Agarwal, J.—These two revision petitions u/s 11 of the U.P. Trade Tax Act for the assessment years 1987-88 and 1988-89 are directed against a common order dated November 16, 1996, passed by the Trade Tax Tribunal, Aligarh, whereby it dismissed the dealer''s second appeal Nos. 745 and 746 of 1990.

2. I have heard Sri V.K. Agarwal, learned counsel for the revisionist and Sri B.K. Pandey, learned Standing Counsel.

3. The facts are that March 5, 1990 was the date fixed for proceedings of assessment before the assessing officer. The dealer''s case is that although he was ill, he went to the office of the assessing officer and waited there till 4 p.m. but as the assessing officer was not there and the dealer was not feeling well, he did not wait further and returned back. The assessments were made ex parte on March 13, 1990. The dealer applied for setting aside the ex parte assessment. The assessing officer dismissed the dealer''s application on the ground that he had gone for an official meeting at Aligarh and had returned by 2 p.m. and had worked in the office thereafter and the assessee was absent. This view has been taken throughout. The revisionist has filed a copy of the order sheet for the assessment year 1987-88 which shows that the only note made on March 5,

1990 was that the dealer was absent. The signatures on this entry do not tally with the signatures on the other entries dated February 15, 1990, February 26, 1990 and March 13, 1990 which lends support to the dealer''s contention that the officer was not actually there. In any case, it is admitted that the assessing officer had not come to his office till 2 p.m. The notice must have been issued for attendance at 10 a.m. Therefore, if a dealer who had been summoned for attendance at 10 a.m. and the officer was unable to sit in his office till about 2 p.m. it was not a reasonable exercise of discretion to proceed ex parte if the dealer had left. The assessing officer should, in such circumstances, have issued a fresh notice of hearing which has not been done. In my view, it was a fit case in which the ex parte assessment should have been recalled in exercises of powers u/s 30 and the orders rejecting the applications are not legally sustainable.

4. These revision petitions are, therefore, allowed. The Tribunal''s order dated November 16, 1995 is set aside and it is ordered that the dealer''s aforesaid appeals shall stand allowed and the ex parte assessment orders will stand set aside.