(1982) 02 AHC CK 0073

In the Allahabad High Court

Case No : Sales Tax Revision No. 417 of 1981

Mohd. Ishaaq APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1983) 52 STC 239

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Rajesh Kumar Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—In this revision application u/s 11(1) of the U. P. Sales Tax Act by the dealer, the controversy is about the question whether the sale of timber, said to have been imported by the dealer and then sold, was liable to tax in his hands. The case of the dealer is that he had not imported any timber during the year and all the timber sold by him had been purchased by him within the State.

2. The dispute relates to the year 1973-74. The dealer had not accepted liability for payment of any tax on sale of timber as he had imported none. The assessing authority, after rejecting this stand of the dealer, estimated the taxable turnover at Rs. 61,000. In appeal, the taxable turnover was reduced to Rs. 25,000 by the Assistant Commissioner (Judicial), Sales Tax, which was affirmed by the Sales Tax Tribunal, Bareilly.

3. It is not in dispute that during the relevant year sale of timber was taxable in the hands of the importer, and no tax was chargeable on timber purchased within the State and sold by any dealer. A perusal of the order of the Tribunal shows that it was, like the assessing authority, under an impression that the dealer had to establish by cogent evidence that the timber sold by him was not imported.

Reliance has been placed by the Tribunal in this respect upon Section 12-A of the U. P. Sales Tax Act for that assumption. The approach of the authorities, including the Tribunal, is not sound in law.

4. Since the only point of tax on the sale of timber in the State, during the relevant year, was by the importer, it had to be found as a fact by the authorities in the first instance that what was sold by the dealer was timber imported by him from outside the State. But for such a finding, the dealer could not be made to pay tax on the turnover of sale of timber by him.

5. In similar circumstance relating to the turnover of sale of tyres during the years 1973-74 and 1974-75, this Court held in Punjab Tyres v. Commissioner of Sales Tax (Sales Tax Revision No. 221 of 1981 connected with Sales Tax Revision No. 338 of 1981, decided on 19th February, 1982) [1983] 52 STC 238 that a positive finding had to be recorded that the dealer had made sale of the commodity after importing it. It was observed in that case : "Before the turnover of sale, even as estimated, could be subjected to tax in the hands of the applicant-dealer it had to be found, as a fact, that what had been sold by him were tyres imported by him from outside the State. Further, this finding had to be based on positive material to which reference should have been contained in the orders passed."

6. The dictum of that case fully covers the present one. Since the Tribunal was under an erroneous impression that some exemption was being claimed by the applicant-dealer, and it proceeded to consider the dealer''s case in that light, it has become necessary to require the Tribunal to go into the matter again in accordance with law. Its order is, therefore, set aside.

7. The revision succeeds. The case is remanded to the Tribunal for reconsideration. A copy of the decision shall be forwarded to the Tribunal in terms of Section 11(8) of the Act.

8. Parties shall bear their own costs.

