(2007) 10 AHC CK 0175

In the Allahabad High Court

Mohd. Sultan khan APPELLANT

Vs

Commissioner, Trade Tax RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 235

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal dated August 5, 2003 relating to the assessment year 1990-91.

2. Brief facts of the case are that the applicant is the owner of bus and have entered into a contract/agreement with General Electric Company of India Limited, Naini, Allahabad (hereinafter referred to as "GEC") for the transportation of their employees from their residence to the factory and from factory to their residence. On the basis of the information received by the assessing authority that the applicant had received transportation charges, proceedings u/s 7 of the Act were initiated. Before the assessing authority, it was contended that only the transportation charges were charged and the possession of the vehicle had never been transferred to GEC. It was submitted that the driver and conductor were of the applicant and the entire expenses in operating the buses and other incidental expenses were borne by the applicant and at no stage the possession of the bus was delivered to GEC for use. The assessing authority had not accepted the plea of the applicant and assessed the transportation charges u/s 3F of the Act treating the transactions as transfer of right to use the bus. Feeling aggrieved by the order of the assessing authority, the applicant filed appeal before the Deputy Commissioner (Appeals), which was dismissed. The applicant further filed appeal before the Tribunal. The Tribunal by the impugned order dismissed the appeal.

3. Heard the learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the agreement is annexure 1 to the revision petition. He submitted that similar nature of agreement has been considered by this Court in the case of Mohd. Wasim Khan, Allahabad v. Commissioner of Trade Tax [2009] 20 VST 196 : [2007] UPTC 300 and on the consideration of the agreement, this Court held that the possession of the vehicle had not been given to the GEC and it was always remained with the applicant, therefore, there was no transfer of right to use the buses and accordingly, the tax levied u/s 3F of the Act has been deleted. Learned Standing Counsel also agrees that similar agreement has been considered and the issue is squarely covered by the decision of this Court in the case of Mohd. Wasim Khan, Allahabad v. Commissioner of Trade Tax [2009] 20 VST 196 : [2007] UPTC 300.

5. Respectfully, following the aforesaid decision, it is held that it is not the case of transfer of right to use the bus and the levy of tax on the transportation charges is liable to be set aside.

In the result, revision is allowed. The order of the Tribunal is set aside. The Tribunal is directed to pass appropriate orders u/s 11(8) of the Act. However, there shall be no order as to cost.