(1988) 09 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 572 of 1982

M.P. Traders and Another — APPELLANT

Vs

Sales Tax Tribunal and Others — RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 2

Citation : (1990) 76 STC 194

Hon'ble Judges : R.R. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Misra, J.—By the impugned order dated 14th May, 1982, passed u/s 11(8) of the U.P. Sales Tax Act, 1948, the Sales Tax Tribunal has directed the assessing authority to include the freight realised from the purchaser in the taxable turnover of the assessee.

2. The sole contention of the learned counsel for the petitioners is that the said inward freight in this case was separately charged and, therefore it was not liable to be included in the taxable turnover.

3. After hearing learned Standing Counsel and after perusing the impugned order passed by the Sales Tax Tribunal, I find that the Tribunal has specifically found in the present case that the bills drawn by the assessee-petitioners separately showed the amount of freight charged by them. The Tribunal has, however, held that the said amount is liable to be included by the assessing authority in the taxable turnover. Earlier in the case of Commissioner, Sales Tax Vs. Vinod Coal Syndicate, , this Court had taken the view that the said amount of freight is liable to be included in the taxable turnover. But very recently the Supreme Court has upset the aforesaid decision of this Court in the case of Vinod Coal Syndicate v. Commissioner of Sale Tax [1989] 73 STC 317 (all) ; 1988 UPTC 218. It has been held by the Supreme Court in the said case that if the freight was

separately charged, the same is not liable to be included in the taxable turnover of the assessee. In view of the aforesaid decision of the Supreme Court, in my opinion, the Tribunal is in error in holding in the impugned order that the freight, which was separately charged in this case, is liable to be included in the taxable turnover of the assessee.

4. In the result, the writ petition succeeds and is allowed with costs. The impugned order passed by the Sales Tax Tribunal is hereby quashed and it is held that the freight in question, which was separately charged by the assessee, is not liable to be included in the taxable turnover of the assessee-petitioners.