(2017) 01 AHC CK 0298

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 16 of 2017

M/S Chandra Brick Field — APPELLANT

Vs

Commissioner, Commercial Taxes — RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 183

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Piyush Agrawal, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Disposed Off

Judgement

Ashwani Kumar Mishra, J.—This revision challenges an order passed by the tribunal, disallowing the benefits to the revisionist on the ground that Form-D as prescribed under rule 5 of U.P. Entry Tax Rules has not been filed before the authorities including the tribunal. So far as the determination of liability on other counts by the orders under challenge is not disputed. Along with this revision Form-D has been filed before this Court and it has been stated that due to inadvertent error, this form could not be presented before the authorities.

2. Learned counsel has placed reliance upon an order passed by this Court in M/s Dhan Prakash Cane Crusher v. Commissioner of Trade Tax: 2002 UPTC 634, in which following observations have been made in para 8 & 9 of the judgment:-

"8. In peculiar facts and circumstances when the transaction has already been made and covered on Form 3-Ga (4), therefore, the applicant/revisionist if in unavoidable circumstances could not obtain the form and produce even at the tribunal stage then this Court may direct the acceptance of Form 3-Ga(4) at the subsequent stage provided claim has already been made for the same.

9. In view of the above facts and circumstances, the order dated 4th February, 2002 passed by Tribunal is set aside and the question of law is dealt with the

affirmatively and the Tribunal is directed to consider the Form 3-Ga(4) above mentioned produced by the applicant/revisionist. The second appeal No.9 of 1997 for the Assessment Year 1986-87 shall be expeditiously decided within two months from the date of receipt of a certified copy of this order with the co-operation of the applicant/revisionist."

3. Learned counsel for the revisionist submits that Form-D was available but could not be submitted. Submission is that the matter be remitted back for a fresh consideration of cause by the tribunal.

4. Learned Standing Counsel submits that the issue as to whether Form-D had been validly issued by the concerned authorities is a question of fact, which can be gone into by the tribunal.

5. Considering the facts and circumstances, as have been brought on record, it would be appropriate to remit back the matter to the tribunal for a fresh consideration of cause, in accordance with law. It is open for the revisionist to file original forms before the tribunal, which shall be verified by the tribunal and appropriate orders, as are warranted in law shall be passed thereafter.

6. With the aforesaid directions, the revision stands disposed off.

