
(1976) 05 AHC CK 0062
In the Allahabad High Court
Case No : S.T.R. No. 825 of 1973

M/S. KAMAL INDUSTRIES

APPELLANT

Vs

COMMISSIONER OF SALES TAX.

RESPONDENT

Date of Decision : 17-05-1976

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 12

Citation : (1976) 5 CTR 262

Hon'ble Judges : R. M. Sahai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R. M. Sahai, J. - The following two questions have been referred for the opinion of this court :

"1. Whether on the facts and in the circumstances of the case, rejection of accounts and the best judgment assessment were permissible for the alleged non-compliance of Rule 72(2), within the meaning and scope of section 12 of the U.P. Sales Tax Act ?"

2. Whether on the facts and in the circumstances of the case, the articles sold by the petitioner were rightly taxed as motor parts @ 10% in 1968-69. If not, what should have been the appropriate rate applicable to them ?"

The assessee manufactured motor parts. The assessing authority rejected the amount books on two grounds-non-maintenance of production register and its rejection by the Income Tax Department. The assessee went up in appeal against this order which was dismissed. Dissatisfied with the order passed by the appellate court and the assessing authority a revision was filed which was also dismissed by the Additional Judge Revision, Sales Tax, Kanpur. The parts supplied by the assessee were cooling water pipe, start for Radiator Frame, Distant Sirens etc. All these items were sold by the assessee to Small Arms Factory, Kanpur. An enquiry made from this factory revealed that all these articles were used in the

manufacture of Shaktiman trucks. The counsel for the assessee urged that his account books could not be rejected for non compliance with rule 72(2) of the rules framed under U.P. Sales Tax, Act. He has placed reliance on *Devi Charan Sri Mohan Dass Vs. Commissioner of Sales Tax*, . The Judge Revision accepted the contention of the assessee that the account books could not be rejected merely because the assessee's account books were rejected by the Income Tax Department but the other ground for rejection of the account books i.e., non compliance of rule 72(2) was sustained. Mere non compliance with rule 72(2) is not sufficient in law to discredit the accounts of the assessee. It is a different matter if the assessing authority finds that the account books maintained by the assessee are not in an intelligible form and it is not possible for the assessing authority to find out after examining them the nature and the quantum of the business. The purpose of maintenance of account books is not only for commercial Taxes department. It is as much a right of the business community to maintain its account books in any manner which is in keeping with the various system of account keeping as of the revenue to insist that the account books are maintained not only in an intelligible form but also in a manner to inspire confidence about their authenticity. But the mere fact that the dealer did not maintain his account books as required under rule 72(2) does not render him liable for a best judgment assessment. We therefore agree with the principle of law enunciated in *Devi Charan Sri Mohan Dass Vs. Commissioner of Sales Tax*, and answer the first question in the negative.

2. Admittedly the goods manufactured by the assessee were sold to Small Arms Factory and they were used in the manufacture of Shaktiman trucks. The relevant Notification under which tax has been levied is ST 1738/X-1012-1963 dated June 1, 1963. Item No. 10 reads as follows : Motor vehicles including chassis of motor vehicles, motor tyres and tubes and spare of motor vehicles, not being such parts as are ordinarily also used for purposes other than parts of motor vehicles. A close reading of the Notification indicates that spare parts of motor vehicles have been spilt up in two parts, one which are used only for purposes of motor vehicles another which are used for purposes other than as parts of motor vehicles, for instance bulb, waxine, springs etc. which are used both as spare motor parts and which can be used otherwise as well. In every case it shall have to be affirmatively established by the assessee if he desires not to be covered by the Notification issued u/s 3-A that the goods are such that they are also used for purposes other than parts of motor vehicles. The liability to be taxed at the rate of 10 percent arises if an assessee sells motor parts and the Department would be well within its right to assess the turnover of the sale of such parts at 10 per cent but in case the assessee is able to establish that although he is a manufacturer of spare parts but they are used for purposes other than parts of motor vehicles his case would not fall within the scope of item No. 10 of the Notification issued on 1st of June 1963. In this case the assessee did not lead any evidence that the spare parts manufactured by him were used for purposes other than parts of motor vehicles. In our opinion the courts below

were justified in treating the assessee as manufacturer of spare motor parts and rightly assessed his turnover at the rate of 10 per cent.

3. In view of what we have stated above our answer to the first question is in the negative in favour of the assessee and against the Department and the answer to the second question is in the affirmative against the assessee and in favour of the Department. In view of the dividend success of the parties they shall bear their own costs.